# DÁIL ÉIREANN

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## AN COMHCHOISTE UM DHLÍ AGUS CEART, GNÓTHAÍ BAILE AGUS IMIRCE

## JOINT COMMITTEE ON JUSTICE, HOME AFFAIRS AND MIGRATION

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*Dé Máirt, 10 Feabhra 2026*

*Tuesday, 10 February 2026*

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Tháinig an Comhchoiste le chéile ag 3 p.m.

The Joint Committee met at 3 p.m.

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Comhaltaí a bhí i láthair / Members present:

| **Teachtaí Dála / Deputies** | **Seanadóirí / Senators** |
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| Tom Brabazon, | Robbie Gallagher, |
| Catherine Callaghan, | Garret Kelleher, |
| Albert Dolan, | Michael McDowell. |
| Gary Gannon, | |
| Alan Kelly, | |
| Pádraig O'Sullivan, | |
| Mark Ward. | |

I láthair / In attendance: Senator Linda Nelson Murray.

Teachta / Deputy Matt Carthy sa Chathaoir / in the Chair.

**General Scheme of the Judicial Council (Amendment) Bill 2026: Discussion**

**An Cathaoirleach:** No apologies have been received at this point. As usual, I remind members to turn off their mobile or switch them to flight mode. The purpose of this meeting is primarily to receive an oral briefing on the general scheme of the judicial council (amendment) Bill 2026. We are joined by three officials from the Department who work in the areas of access to justice and civil legislation: Mr. Brien Henderson, principal officer; Ms Liz Lyne, assistant principal officer; and Mr. Greg Daly, administrative officer.

The format of the meeting is that I will invite Mr Henderson to brief the committee on the proposed legislation and then I will invite members of the committee in the order in which they indicate to me to put their questions. To manage the committee's time effectively, I propose that we allow slots of seven minutes initially for members to engage with witnesses. If time allows after the initial engagement, we will have a second round.

I want to advise the following in relation to parliamentary privilege: witnesses and members are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him or her or if identifiable or otherwise engage speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with such direction.

I invite Mr Henderson to make his opening statement.

**Mr. Brien Henderson:** My colleagues and I thank the Cathaoirleach and the members of the committee for the opportunity to be here today and to assist in the pre-legislative scrutiny of the general scheme of the judicial council (amendment) Bill 2026. This is a short technical Bill with three main aims. The first is to amend the process for the adoption of personal injuries guidelines and to make it more transparent and comprehensive. The second is to address the process for the adoption of sentencing guidelines to comply with the requirements of the Delaney judgment. The third is to deliver on a programme for Government commitment to enable the Minister to ask the Judicial Council to draw up sentencing guidelines in a particular area. The Bill also provides that future secretaries of the Judicial Council will be classed as civil servants of the State rather than public servants.

I will give a little bit of background before I go on to the provisions of the Bill itself. With regard to the personal injuries guidelines, to comply with the requirements of the Delaney judgment, the Judicial Council Act was amended in 2024 with the Court's Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024 to require that amendments to the guidelines be laid before each House of the Oireachtas and to be adopted by the Judicial Council only after a positive resolution has been passed by both Houses. In February 2025, the Judicial Council proposed revised personal injuries guidelines, applying an across-the-board increase of 16.7%, in line with inflation, for compensation of amounts awarded under the guidelines. In September 2025, the Minister, Deputy O'Callaghan, laid the draft personal injuries guidelines before the Oireachtas but did not bring a resolution before the Houses seeking their approval at that time.

The Bill will provide for deemed adoption of guidelines once the Oireachtas has passed resolutions proving same and for a mechanism for the Judicial Council to reconsider revised personal injuries guidelines should the Oireachtas not approve guidelines presented to it.

It further proposes that the review period for guidelines should be increased from three to five years with this review period dating from the date on which new guidelines are adopted.

The Bill seeks to ensure that the Judicial Council personal injuries guidelines committee will have access to sufficient information to enable a meaningful analysis to be carried out on the level of damages provided for particular categories of injuries and be able to compare these to the level of damages provided for similar injuries in other jurisdictions. While the committee may currently consult the Personal Injuries Resolution Board, PIRB, when reviewing the personal injuries guidelines, the Bill makes it a requirement to consult with the board as well as other stakeholders. It also requires the committee to conduct research on damages for personal injuries, including the level of damages awarded by courts and quasi-judicial bodies outside the State as well as the level of damages mediated or assessed by the PIRB. In the interests of transparency, any such research should be published in a manner the committee considers appropriate and no later than the date the council submits a draft of the guidelines or amendments it proposes to adopt to the Minister.

In acknowledging the central role of the board in implementing the guidelines, the Bill will require that in preparing personal injuries guidelines, the committee will have regard to the level of damages mediated or assessed for personal injuries by the board and the fact that the guidelines are used not just by the courts but also by the board and so must take into account how they would be used by the board.

Given the relatively small number of court judgments for personal injuries, it is possible that for large categories of injuries, there may never be enough Irish court decisions to be statistically significant. The proposed amendments will address this situation by requiring the committee to have regard to assessments made by the Personal Injuries Resolution Board and thereby enable a higher degree of review of individual categories of injuries and the related guideline damages.

With regard to sentencing guidelines, to comply with the requirements of the Delaney judgement, the Bill will mirror the adoption procedures regarding personal injuries guidelines, namely that sentencing guidelines be laid before each House of the Oireachtas and are deemed adopted only after a positive resolution has been passed by both Houses. In the event that sentencing guidelines are not approved by the Oireachtas, the Bill will provide for a mechanism for the Judicial Council to reconsider same. The Bill also includes a new provision to enable the Minister to ask the Judicial Council to draw up sentencing guidelines in a particular area.

The Bill includes a technical amendment to provide that future secretaries of the Judicial Council will be classed as civil servants rather than public servants. This addresses practical and administrative difficulties that have arisen regarding the current classification. I look forward to discussing the Bill with the committee and answering any questions it may have.

**An Cathaoirleach:** Before we proceed, I acknowledge and welcome Mr. Calum O'Keeffe, an intern in the Department of Justice, Home Affairs and Migration who in the Visitors' Gallery. Hopefully, our deliberations today will not put him off his career prospects. I acknowledge that this is Deputy Dolan's first meeting as a member of the committee. He is replacing Deputy

Cahill on the committee so we record our thanks to Deputy Cahill for his work on the committee. We look forward to working with Deputy Dolan.

I thank Mr. Henderson for his opening statement. When announcing this legislation, one of the Ministers stated that this would be part of reform of the insurance sector and improve affordability, transparency and availability. How will it improve affordability?

**Mr. Brien Henderson:** The Bill is part of a wider reform programme and is included in the action plan for insurance reform. The Bill will provide greater assistance and information to the personal injuries guidelines committee of the Judicial Council. When it is revising or considering revising the personal injuries guidelines, it will have greater access not just to macro data but will have much more granular information so that it can drill down into particular categories of damages and see whether they need to be adjusted. It is part of a much wider programme.

**An Cathaoirleach:** Last year, the Judicial Council proposed an increase in awards of about 16.7%. The Government effectively vetoed that. What would the new arrangements have meant in that instance?

**Mr. Brien Henderson:** As the Cathaoirleach will appreciate, I cannot speak for the Judicial Council. In its draft personal injuries guidelines, the council noted that the very small number of cases that had gone before the High Court applied the personal injuries guidelines. What this will do is enable the personal injuries guidelines committee when it is considering it to have a look at all of the decisions, not just from the courts but from the Personal Injuries Resolution Board as well, so it will have a greater amount of information. Instead of looking to apply a blanket increase, it will be able to look at each individual category and make adjustments on that level.

**An Cathaoirleach:** What will the Oireachtas oversight be?

**Mr. Brien Henderson:** The oversight remains as is. The resolutions will be laid before the Houses and both Houses will have an opportunity to consider them and approve or refuse.

**An Cathaoirleach:** Has there been any consideration of including something that would ensure consumers actually get a benefit from these Bills? Personal injury claims have fallen by about 35% since 2019. The cost to anybody who has been paying premiums has not reduced by that amount. In fact, the cost has actually risen over the past 12 months or more. If the Oireachtas is making efforts to ensure that essentially the costs of insurance companies are being reduced, is there a mechanism whereby we can ensure that the cost to consumers will be reflected in that?

**Mr. Brien Henderson:** As the Cathaoirleach can appreciate, some of the questions are directed more to my colleagues in the Department of Finance and elsewhere. What we can see from the data from the Central Bank is that the awards for personal injuries have been declining as more cases come through where the personal injuries guidelines have applied. That is where we see the benefit. The awards for particular injuries are declining.

**Senator Linda Nelson Murray:** I thank the Cathaoirleach for letting me in here today. I worked for many years on making sure we had judicial guidelines in place. I come from a small business background. I nearly lost my business eight years ago because I could not get insurance given there were three claims against my business at the time. Even though I was

told by mu insurance company that it was not my fault, these things happen and it turned out that I could not get insurance. Along with a couple of other people around the country, I brought 120 leisure businesses together and formed a group called Play Activity and Leisure Ireland and we got our first group scheme six or seven years ago. We are on our sixth or seventh group scheme now. The only reason I have insurance and still employ 25 people is I am in a group scheme. I am in the leisure business - the likes of go-karting, bowling alleys and soft play centres. If I was to go out and try to get insurance today for that type of industry, I would not be able to.

We have seen a myriad of reforms in this space. We have the Garda fraud unit, the personal injuries guidelines, the duty of care and the setting up of the competition. I could name everything. We started an action plan again last July yet I still cannot get insurance. These guidelines were going to increase by up to 17% last year but, thankfully, through a lot of work, we managed to stop that from happening. However, I am aware of a case in the past couple of weeks where they were more or less applied. When we have a set of guidelines that we hope the judicial system is going to adhere to, and I appreciate that 80% of all cases never get that far, will the awards in court stay at the level in the guidelines? Is it expected that they will go up given that those guidelines were not increased a few months ago?

I really welcome the amendments two weeks ago from the Minister where we will look at judicial guidelines on a five-year basis instead of a three-year basis.

That is another game-changer because it can take about four years for cases to get through court. I welcome the fact that when next we look at judicial guidelines, we are going to take into account some stakeholders and not just leave it up to the Judiciary.

I could go on. I am passionate about this subject and passionate about business and the survival of businesses and their ability to get insurance. Even with all we have done, that is still very difficult. That is my statement. I would be glad to hear the witnesses' thoughts on that. Thank you.

**Mr. Brien Henderson:** As members will appreciate, I cannot comment on particular cases. However, under the Judicial Council Act, it is not just that we have the personal injuries guidelines but that the courts are obliged to have regard to them. Where courts deviate from those guidelines, they are obliged to state the reasons. The legislation is clear that the courts are required to have regard to the guidelines.

**Senator Linda Nelson Murray:** Can I broach the subject of legal fees? Do we think that we will get to a situation such as that in the North of Ireland, where in certain courts an amount of £5,000 attaches to personal injury claims. We can see many examples where the legal fees have outweighed the award. Is work being done on that? Will we get to a situation where we can bring them down and make it easier for people to get insurance? For years we have heard legal people saying the fault is with the insurance people. Insurance Ireland will say it is legal people's fault. Those who suffer are the businesses, community groups, sports clubs and GAA clubs in the middle.

**An Cathaoirleach:** Senator, it is absolutely in order to ask any question but our guests are here to clarify the legislation. Therefore, it is at Mr. Henderson's discretion as to whether he responds.

**Mr. Brien Henderson:** While that is outside the scope of the Act itself, it is referenced in the action plan for insurance reform. One of the commitments from the Department of justice is to look at a scale of fees. However, there is a sequencing. As the Senator is probably aware, work is ongoing in the Department of communications regarding a scale of fees for judicial review on environmental matters. It is a sequence. We will be looking to see how that progresses and then take the lessons learned from that and look to apply them in this area.

**Senator Linda Nelson Murray:** New amendments a couple of weeks ago extended the time to five years and introduced a facility whereby the judges who come up with the new awards will not have to take account of what stakeholders might say. This is a good move. Would Mr. Henderson agree it is good news?

**Mr. Brien Henderson:** The existing legislation provides or enables the Judicial Council to consult with people. The amendments we are proposing will require it to do so. The legislation will require it to engage with the Injuries Resolution Board and have regard to what it says.

**Senator Linda Nelson Murray:** Would Mr. Henderson welcome that?

**Mr. Brien Henderson:** We are proposing it in the legislation.

**Senator Linda Nelson Murray:** Yes, so it is good. I appreciate that.

I am sorry I came in late. That is it for now from my point of view. I appreciate being allowed to speak.

**An Cathaoirleach:** I thank the Senator. I have a few further questions. In regard to the sentencing guidelines, I think members of this committee and the committee generally will receive quite an amount of correspondence and contact from people who are dissatisfied with the sentencing they see being applied inconsistently. This legislation in part aims to address that. On the consultation that will now be required in developing those guidelines, there is a move now to put an obligation for a consultation to carried out. What will that look like in practice?

**Mr. Brien Henderson:** Just to clarify, most of those changes regarding consultation are for the personal interest guidelines. What we are looking to do on the sentencing guidelines is to mirror the adoption process, underlining that it is requiring that both Houses of the Oireachtas pass positive resolutions before those sentencing guidelines can be adopted. I cannot speak for the Judicial Council, but when it has done work on sentencing guidelines for areas in domestic violence, it has done extensive consultation with a lot of the interest groups in those areas.

**An Cathaoirleach:** If there is no obligation for consultation, where will the guidelines emerge from? Is it going to look at precedent or analysis of decisions made across courts? Is it as part of the informal consultation Mr. Henderson mentioned? Where will those guidelines emerge from?

**Mr. Brien Henderson:** Again, we are going outside the scope of the amendments here. The legislation provides for certain categories of items that the sentencing guidelines committee should take into account. Some of those are principles around sentencing. Much of it is to do with looking at the existing practices of the courts. However, before I came in here, I had a look at the report on the sentencing guidelines on domestic violence and it has quite a number of stakeholders that have been engaged with.

**An Cathaoirleach:** In regard to the reporting and the review of those sentencing guidelines, what will the legislation put in place in terms of obligations for an ongoing analysis of how they are being applied?

**Mr. Brien Henderson:** What the amendments are looking to do here is simply address the question of adopting them to make sure they are compliant with the requirements of the Delaney judgment.

**An Cathaoirleach:** It is as simple as that. In terms of the guidance, laypeople are often frustrated because there is an obligation on a court to have regard to guidelines. This amendment also provides a mechanism whereby any deviation from the guidelines would be explained. How robust is this regard? What weight does the Department envisage that will carry? I could have regard to a request to be somewhere for 2 p.m. but I might not really intend to be there until 4 p.m.

**Mr. Brien Henderson:** I do not want to get into the question of the interpretation of the courts. However, when the courts are requested to have regard to it, it means it should be forming.

**An Cathaoirleach:** Does the Department envisage at any point that as a result of this legislation the Judicial Council would review mitigations that are taken into account in sentencing? Many of the victims we deal with here in committee have expressed huge frustration at instances where an alleged perpetrator at the last moment enters a guilty plea for the first time when it is quite evident to everybody that the result is going to be a guilty verdict. That can actually result in quite a significant mitigation. It is not somebody who has not co-operated or shown remorse from day one but rather at the last moment, yet that is presented as a mitigation factor and usually taken into account during sentencing. Will the legislation allow for this type of mitigation also to be reviewed?

**Mr. Brien Henderson:** The legislation regarding sentencing guidelines is focusing purely on the process by which they are adopted. It is not changing any of the other procedural aspects of it. The report the Judicial Council published last year on sentencing guidelines for domestic violence matters goes through the mitigation factors in respect of when they should or should not be applied and the aggravating factors. It is a process and a map that judges should take into account.

**An Cathaoirleach:** Does this legislation deal with the sentencing information system or the database?

**Mr. Brien Henderson:** No.

**An Cathaoirleach:** Was putting that on a formal footing considered?

**Mr. Brien Henderson:** I do not have any knowledge on that. However, the legislation itself is addressing a number of technical matters regarding the Judicial Council.

**An Cathaoirleach:** I thank Mr. Henderson.

**Deputy Tom Brabazon:** I have a couple of questions. On the overall scheme, there is the doctrine of the separation of powers between the Executive, the Legislature and the courts. This and the principal Act seem to have pulled that all very tightly together and blurred the

lines significantly. Is there any concern about the constitutionality of this legislation? Has legal advice been given in respect of it?

My understanding of the draft legislation is that it subjugates the Judiciary to the board, which is a significant move.

**Mr. Brien Henderson:** The policy on this is laid down in the 2019 Act and that is subject to the Delaney judgment. On foot of that decision, various changes were made to the legislation, primarily regarding the requirement for the Oireachtas to approve the guidelines. We are satisfied those matters have been addressed.

**Deputy Tom Brabazon:** Mr. Henderson has no concerns about the constitutionality of the proposal.

**Mr. Brien Henderson:** We are satisfied that no concerns were raised about the proposals.

**Deputy Tom Brabazon:** Mr. Henderson, however, has no concerns about it.

**Mr. Brien Henderson:** I am satisfied that what we are proposing is constitutionally sound.

**Senator Linda Nelson Murray:** On the access to information, in his opening statement, Mr. Henderson referred to it enabling "meaningful analysis to be carried out on the level of damages" and stated that the Bill makes it a requirement to consult the board and other stakeholders. Will the research be Irish based or will we be looking at other countries? I have asked for the Oireachtas library to see where we are on payouts in comparison with other countries. Will that be taken into account or will the payouts that have gone through the Injuries Resolution Board and the courts be considered?

**Mr. Brien Henderson:** The existing legislation enables the Judicial Council to do research on personal injuries awards in Ireland and in courts overseas. The amendments propose to extend that to make it a requirement to do the research and to include the assessments made by the Injuries Resolution Board and awards made by quasi-judicial bodies in other jurisdictions. It is a mixture of Irish and overseas equivalents.

**Senator Linda Nelson Murray:** That is excellent because we are still very much an outlier in regard to awards. That is good.

**Deputy Albert Dolan:** I am delighted to join the justice committee and I look forward to working with members over the coming months.

What assessment has been carried out to ensure the new ministerial power, under head 7, to request sentencing guidelines does not compromise judicial independence or the separation of powers? Was any assessment of that carried out?

**Mr. Brien Henderson:** This is something on which we will be working closely with the Office of the Parliamentary Counsel to the Government, OPC, and the Attorney General's office when we draft the legislation. We can expect a bit of amendment of that or an expansion of it.

**Deputy Albert Dolan:** No assessment, therefore, has been carried out to date.

**Mr. Brien Henderson:** We are conscious of the potential issues and they will be addressed in drafting.

**Deputy Albert Dolan:** How will the Judicial Council be resourced to meet the significantly tighter timelines for adopting and publishing guidelines, especially given the new obligation for extensive research and consultation under head 4?

**Mr. Brien Henderson:** We are looking to expand the timeframe. Currently, it is a three-year cycle, which starts on the date on which the first review has been completed by the committee. We are going to change that to a five-year cycle that only starts from the date on which the most recent guidelines have been adopted.

**Deputy Albert Dolan:** What safeguards exist to ensure the new Oireachtas approval mechanism, under heads 3(2)(a) to 3(2)(d), inclusive, does not politicise decisions on personal injuries or sentencing guidelines?

**Mr. Brien Henderson:** The Delaney judgment required amendments to the original legislation such that, for the guidelines to have the force of law, they would be approved by the Oireachtas. That is a requirement. These amendments are providing a mechanism for a situation whereby the Oireachtas is not in a position to approve guidelines. Either there will be a positive decision to reject them or, after a six-month period during which there has been no decision, they will revert to the Judicial Council.

**Deputy Albert Dolan:** How will the requirement under head 5 for the secretary of the Judicial Council to become a civil servant impact the autonomy and internal governance structures of the council?

**Mr. Brien Henderson:** There should be no change. All the other staff of the Judicial Council at the moment are civil servants. The change is being put in place purely to address an administrative issue whereby difficulties have arisen from having one public servant in an organisation, as regards payments, salaries, pensions, etc. This seeks to resolve that issue.

**Deputy Albert Dolan:** Does Mr. Henderson believe that issue will be resolved?

**Mr. Brien Henderson:** Yes, it is an administrative and technical issue that arises from having just one public servant in that position.

**Deputy Albert Dolan:** Given that the adoption of guidelines can fail if the Houses do not approve the draft within six months, what contingency plans are there to avoid gaps in guidance that could affect consistency in damages or sentencing?

**Mr. Brien Henderson:** Section 100 of the Act provides that the personal injuries applicable when making a decision are those that are in force on the date on which the case commenced. Therefore, the existing guidelines will remain in place.

**Deputy Albert Dolan:** The existing guidelines will remain in place if the case has started prior to the collapsing of guidelines.

**Mr. Brien Henderson:** No, there is no time limit on the operation of the guidelines. There is a requirement to conduct the review within five years.

**An Cathaoirleach:** No other members are indicating. Does Senator Nelson Murray want to come back in?

**Senator Linda Nelson Murray:** I just want to say I very much welcome the work that was put into this. Speaking on behalf of community groups, sports clubs and businesses, had those personal injury guidelines been increased by 16.7%, had we not done the work to increase the period to five years, and had the committee, the Department and the Minister not done the work, we would be worse off. This is really beneficial and it is good news, so I thank the Department. I thank the Chair for allowing me to speak today.

**An Cathaoirleach:** I thank Mr. Henderson, Ms Lyne and Mr. Daly. That concludes our engagement on the matter. I thank them for the briefing. They are now free to withdraw from the meeting.

I propose that the committee go into private session to deal with some housekeeping items. Is that agreed? Agreed.

The joint committee went into private session at 3.36 p.m. and adjourned at 3.51 p.m. until 3 p.m. on Tuesday, 17 February 2026.