



Number 43 of 1997

COURTS (NO. 2) ACT, 1997

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Number of ordinary judges of High Court.
 3. Amendment of section 14 of the Law Reform Commission Act, 1975.
 4. Appointment of presiding judges.
 5. Supplemental provision on number of judges.
 6. Former presiding judges and vacancies in relevant court.
 7. *Ex-officio* membership of courts.
 8. Maintenance of judicial remuneration, etc.
 9. Precedence between judges of Supreme Court and High Court.
 10. Functions exercisable by presiding judges.
 11. References to senior ordinary judge.
 12. Assignment of former Presidents of the District Court.
 13. Short title, construction and collective citation.
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[No. 43.]

Courts (No. 2) Act, 1997.

[1997.]

Acts Referred to

Courts (Establishment and Constitution) Act, 1961	1961, No. 38
Courts (Supplemental Provisions) Act, 1961	1961, No. 39
Courts (Supplemental Provisions) Acts, 1961 to 1997	
Courts Act, 1996	1996, No. 26
Courts Act, 1997	1997, No. 6
Courts and Court Officers Act, 1995	1995, No. 31
Courts of Justice Act, 1924	1924, No. 10
Law Reform Commission Act, 1975	1975, No. 3



Number 43 of 1997

COURTS (NO. 2) ACT, 1997

AN ACT TO INCREASE THE NUMBER OF ORDINARY JUDGES OF THE HIGH COURT, TO PROVIDE FOR THE PERIODS OF APPOINTMENT OF JUDGES OF THE SUPREME COURT, THE HIGH COURT, THE CIRCUIT COURT AND THE DISTRICT COURT AS THE PRESIDING JUDGES OF EACH OF THOSE COURTS, RESPECTIVELY, TO AMEND THE ORDER OF PRECEDENCE OF JUDGES OF THE SUPREME COURT AND HIGH COURT, TO AMEND THE LAW REFORM COMMISSION ACT, 1975, AND TO PROVIDE FOR CONSEQUENTIAL AND OTHER RELATED MATTERS. [18th December, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this section—

Interpretation.

“the Act of 1995” means the Courts and Court Officers Act, 1995;

“presiding judge” means—

- (a) in the case of the Supreme Court, the judge of that Court who is also the Chief Justice;
- (b) in the case of the High Court, the judge of that Court who is also the President of the High Court;
- (c) in the case of the Circuit Court, the judge of that Court who is also the President of the Circuit Court;
- (d) in the case of the District Court, the judge of that Court who is also the President of the District Court.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,

S.1 (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Number of ordinary judges of High Court. **2.**—The Act of 1995 is hereby amended by the substitution of the following section for section 9 (inserted by the Courts Act, 1997):

“9.—The number of ordinary judges of the High Court shall not be more than 24.”.

Amendment of section 14 of the Law Reform Commission Act, 1975. **3.**—Section 14 of the Law Reform Commission Act, 1975, is hereby amended by the insertion of the following paragraphs for paragraph (a) and paragraph (b) (inserted by the Courts Act, 1997) of section 14 (1) of the Law Reform Commission Act, 1975:

“(a) in case on being so appointed such person is a judge of the Supreme Court, other than the Chief Justice or a judge who is *ex-officio* an additional judge of that Court, then for so long as such person continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for may be exceeded by one:

Provided that, in the case of a former Chief Justice to whom *section 4(2)* of the *Courts (No. 2) Act, 1997*, relates, for so long as such person continues to hold the judicial office held on being so appointed, such person shall not be taken into account for the purposes of *subsection (1)* of *section 6* of that Act and any vacancy consequent on the application of that subsection to such person may be filled but without prejudice to the application of that subsection to that person upon his or her ceasing to be so appointed but remaining a former Chief Justice to whom the said *section 4(2)* relates,

(b) in case on being so appointed such person is the President of the High Court or another judge of the High Court, other than a judge who is *ex-officio* an additional judge of that Court, then for so long as such person continues to hold the judicial office held by such person on so being appointed the number of ordinary judges of the High Court otherwise provided for may be exceeded by one:

Provided that, in the case of a former President of the High Court to whom *section 4(2)* of the *Courts (No. 2) Act, 1997*, relates, for so long as such person continues to hold the judicial office held on being so appointed, such person shall not be taken into account for the purposes of *subsection (2)* of *section 6* of that Act and any vacancy consequent on the application of that subsection to such person may be filled but without prejudice to the application of that subsection to that person upon his or her ceasing to be so appointed but remaining a former President of the High Court to whom the said *section 4(2)* relates.”.

Appointment of presiding judges. **4.**—(1) A person who, after the commencement of this Act, is appointed as the presiding judge of the Supreme Court, High Court, Circuit Court or District Court shall be so appointed—

(a) for a period of 7 years, or

(b) until he or she reaches the appropriate age of judicial retirement as a judge of that Court, S.4

whichever first occurs, and, in a case to which *paragraph (a)* relates, shall not be eligible for re-appointment as presiding judge of that Court.

(2) Except in a case to which *paragraph (b) of subsection (1)* relates, nothing in that subsection shall be construed as affecting the continuance of a person as a judge of the court of which he or she was the presiding judge and, accordingly, every such person shall, as the case may be, continue to serve as a judge of that court.

5.—(1) This section shall not apply where, at the time a judge to whom *section 4(2)* relates ceases to be a presiding judge, there is a vacancy in the court concerned to which *section 6* does not already relate— Supplemental provision on number of judges.

(a) in the case of the Supreme Court, the High Court or the Circuit Court, amongst the ordinary judges of that Court, and

(b) in the case of the District Court, amongst the judges of that Court other than the President of the District Court.

(2) Notwithstanding section 1 (as amended by section 6 of the Act of 1995) of the Courts (Establishment and Constitution) Act, 1961, the number of judges of the Supreme Court provided for by that section may, subject to *section 6*, be exceeded by one in each case where a former Chief Justice serves as a judge of the Supreme Court by virtue of being a former Chief Justice to whom *section 4(2)* relates.

(3) Notwithstanding section 9 (inserted by *section 2*) of the Act of 1995, the number of judges of the High Court provided for by section 2(2) of the Courts (Establishment and Constitution) Act, 1961, and by the said section 9 may, subject to *section 6*, be exceeded by one in each case where a former President of the High Court serves as a judge of the High Court by virtue of being a former President of the High Court to whom *section 4(2)* relates.

(4) Notwithstanding section 10 (as amended by section 1 of the Courts Act, 1996) of the Act of 1995, the number of judges of the Circuit Court provided for by section 4(2) of the Courts (Establishment and Constitution) Act, 1961, and by the said section 10 may, subject to *section 6*, be exceeded by one in each case where a former President of the Circuit Court serves as a judge of the Circuit Court by virtue of being a former President of the Circuit Court to whom *section 4(2)* relates.

(5) Notwithstanding section 11 of the Act of 1995, the number of judges of the District Court provided for by that section may, subject to *section 6*, be exceeded by one in each case where a former President of the District Court serves as a judge of the District Court by virtue of being a former President of the District Court to whom *section 4(2)* relates.

6.—(1) In respect of each former Chief Justice who is still serving as a judge of the Supreme Court and to whom *section 4(2)* relates, a vacancy which, but for the application of this subsection to such Former presiding judges and vacancies in relevant court.

S.6

judge, could be filled in the number of ordinary judges of that Court—

- (a) at the time when he or she ceases to be the Chief Justice, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former Chief Justice so serving,

shall not be filled until that former Chief Justice has ceased to be a judge of the Supreme Court to whom *section 4(2)* relates.

(2) In respect of each former President of the High Court who is still serving as a judge of the High Court and to whom *section 4(2)* relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of ordinary judges of that Court—

- (a) at the time when he or she ceases to be the President of the High Court, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former President of the High Court so serving,

shall not be filled until that former President of the High Court has ceased to be a judge of the High Court to whom *section 4(2)* relates.

(3) In respect of each former President of the Circuit Court who is still serving as a judge of the Circuit Court and to whom *section 4(2)* relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of ordinary judges of that Court—

- (a) at the time when he or she ceases to be the President of the Circuit Court, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former President of the Circuit Court so serving,

shall not be filled until that former President of the Circuit Court has ceased to be a judge of the Circuit Court to whom *section 4(2)* relates.

(4) In respect of each former President of the District Court who is still serving as a judge of the District Court and to whom *section 4(2)* relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of judges (other than as President) of that Court—

- (a) at the time when he or she ceases to be the President of the District Court, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any

other preceding former President of the District Court so S.6
serving,

shall not be filled until that former President of the District Court has ceased to be a judge of the District Court to whom *section 4(2)* relates.

7.—(1) Nothing in this Act shall be construed as affecting a former Chief Justice who serves as a judge of the Supreme Court to whom *section 4(2)* relates from continuing to be *ex-officio* an additional judge of the High Court. *Ex-officio membership of courts.*

(2) Nothing in this Act shall be construed as affecting a former President of the High Court who serves as a judge of the High Court to whom *section 4(2)* relates from continuing to be *ex-officio* an additional judge of the Supreme Court.

(3) Nothing in this Act shall be construed as affecting a former President of the Circuit Court who serves as a judge of the Circuit Court to whom *section 4(2)* relates from continuing to be *ex-officio* an additional judge of the High Court.

(4) A former President of the District Court who serves as a judge of the District Court to whom *section 4(2)* relates shall be *ex-officio* an additional judge of the Circuit Court.

8.—Notwithstanding the provisions of section 46 of the Courts (Supplemental Provisions) Act, 1961, a former presiding judge of any court who subsequently serves, until judicial retirement, as a judge of that court to whom *section 4(2)* relates shall be paid the same remuneration as provided, from time to time, for the presiding judge of that court for as long as he or she remains a judge of that court to whom *section 4(2)* relates and, upon judicial retirement, shall be entitled to the same pension and any other entitlements relating to such retirement as if he or she had been the presiding judge of that court at the date of such retirement. *Maintenance of judicial remuneration, etc.*

9.—The Courts of Justice Act, 1924, is hereby amended by the substitution of the following section for section 9: *Precedence between judges of Supreme Court and High Court.*

“9.—The precedence between judges shall be as follows:

- (a) the Chief Justice shall rank first;
- (b) the President of the High Court shall rank after the Chief Justice;
- (c) then shall rank the judges of the Supreme Court who are former Chief Justices each according to priority of his or her appointment as Chief Justice;
- (d) next shall rank the other judges of the Supreme Court, other than the *ex-officio* judges of that Court to whom paragraph (e) relates, each according to priority of his or her appointment as an ordinary judge of the Supreme Court;
- (e) then shall rank the judges of the High Court who are *ex-officio* judges of the Supreme Court (being former Presidents of the High Court to whom *section*

S.9

7(2) of the Courts (No. 2) Act, 1997, relates) each according to priority of his or her appointment as President of the High Court;

- (f) next shall rank the other judges of the High Court, other than the *ex-officio* judges of that Court to whom paragraph (g) or (h) relates, each according to his or her priority of appointment as an ordinary judge of the High Court;
- (g) then shall rank the President of the Circuit Court by virtue of being an additional judge of the High Court; and
- (h) next shall rank the other judges of the Circuit Court who are *ex-officio* judges of the High Court (being former Presidents of the Circuit Court to whom section 7(3) of the Courts (No. 2) Act, 1997, relates) each according to priority of his or her appointment as President of the Circuit Court.”.

Functions exercisable by presiding judges.

10.—References, however expressed, in any enactment to functions exercisable by a presiding judge shall be construed as references to functions so exercisable by the person who is for the time being the presiding judge of the court concerned.

References to senior ordinary judge.

11.—References in any enactment, however expressed, to the senior ordinary judge of the Supreme Court or to the senior ordinary judge of the High Court shall be construed—

- (a) in the case of the Supreme Court, by reference to the order of precedence of judges of that Court contained in paragraphs (c) and (d) of section 9 of the Courts of Justice Act, 1924 (inserted by section 9), and
- (b) in the case of the High Court, by reference to the order of precedence of judges of that Court contained in paragraphs (e) and (f) of section 9 of the Courts of Justice Act, 1924 (as so inserted).

Assignment of former Presidents of the District Court.

12.—(1) Subject to subsection (2), in respect of a former President of the District Court to whom section 4(2) relates, he or she shall continue to be permanently assigned by virtue of section 35(2) of the Courts (Supplemental Provisions) Act, 1961, to the Dublin Metropolitan District.

(2) Nothing in subsection (1) shall prevent the application of subparagraphs (3) and (4) of paragraph 2 of the Sixth Schedule to the Courts (Supplemental Provisions) Act, 1961, to a former President of the District Court to whom section 4(2) relates.

Short title, construction and collective citation.

13.—(1) This Act may be cited as the Courts (No. 2) Act, 1997.

(2) The collective citation “the Courts (Supplemental Provisions) Acts, 1961 to 1997, shall include this Act other than sections 3 and 9, and the said Courts (Supplemental Provisions) Acts, 1961 to 1997, shall be construed together as one.