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Judicial Appointments

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This research paper has been prepared to assist the Committee for Justice with its inquiry into judicial appointments in Northern Ireland.

Overview

What is this paper about?

The paper was produced in response to a request from the Committee for Justice. The Committee is planning an inquiry into judicial appointments and wanted information on a number of areas related to the topic. These are outlined in the introduction to the paper.

What are the main points from the paper?

At April 2013 there were 661 members of the judiciary in Northern Ireland. This includes all members from the Lord Chief Justice to lay magistrates. Of the total number, 377 were men and 284 were women; 343 were Protestant and 278 were Catholic, with 40 'not determined'. The data is broken down into eight different groups, and the paper provides more information on the level of representation within each group. Women, for example, accounted for 36 of the possible 136 positions in groups 1 to 4, which include all the judge-level appointments.

The Northern Ireland Judicial Appointments Commission has recommended 283 people for appointment since 2006-07.

Have there been any recent developments relating to judicial appointments?

The Crime and Courts Act 2013 introduced significant changes to the appointments process in England and Wales, in particular by introducing an 'equal merit' provision into the selection process used by the Judicial Appointments Commission in England and Wales. This allowed the Commission, in circumstances where two candidates were of equal merit, to make a decision based on improving diversity within the judiciary.

This provision is not without its critics, with some senior members of the judiciary suggesting that it could dissuade good candidates from applying because they think their chances will be reduced to accommodate ethnic or other groups.

The Judicial Appointments Commission itself has come in for some criticism for the narrow way in which it has implemented the new provision – the UK Constitutional Law project welcomed the provision but said its impact will be diluted because it is only being applied at the final stage of selection and will only apply to race and gender.

What about international guidelines or best practice in the area of judicial appointments?

Several organisations have produced guidelines and principles outlining what they consider to be best practice in the area of judicial appointments. A consistent theme throughout these documents is the emphasis that selection should be based on merit and should be independent of the executive. Diversity is to be encouraged, but the European Network of Councils for the Judiciary cautions that: "any attempt to achieve diversity in the selection and

appointment of judges should not be made at the expense of the basic criterion of merit".

So what is the practice in other countries?

Previous research has suggested that there are three basic models of judicial appointment: Executive appointment; Legislative approval; Judicial appointment commissions. The first two are not without merit – executive appointment, when conducted properly, can allow for reliable information about a person's technical legal quality. Legislative approval provides a form of public scrutiny that allows for a person's ideological leanings to be thoroughly explored (as in the US Senate hearings of Supreme Court nominees). However, both of these models have significant drawbacks – executive appointment can perpetuate social biases while legislative approval can make an appointee beholden to the party that nominated them. But only judicial appointment commissions provide an adequate (although not necessarily total) separation from the executive and the legislature.

Are there any countries that stand out in terms of their approach to judicial appointments?

The difficulty in attempting to identify a country or countries with a system that has clearly improved their appointments system is that most democracies will probably claim to have an impartial, robust system of judicial appointments, even if they are in the process of changing it. For example, in the Republic of Ireland a process is under way to reform the judicial appointments process, but during the debate the Minister was keen to emphasis the high regard in which the Republic's judiciary is held.

Belgium does provide a concrete example where a specific reform was introduced to rectify a longstanding issue. A gender quota has recently been introduced for the Constitutional Court, requiring the Court to be composed of at least a third of judges of each gender. The requirement will only enter into force when the Court is in fact composed of at least one third of female judges. In the meantime, a judge of the underrepresented gender will be appointed every time that the two preceding appointments have not increased the number of judges of this gender. So, if women remain unrepresented on the Court and the next two appointees are men, the third appointment will have to be a woman.

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1 Introduction

This paper has been prepared in response to a request from the Committee for Justice. The Committee requested information on the following points:

- Statistical information regarding the profile of those holding judicial appointments currently in Northern Ireland, broken down by category of court/tribunal and the profile of appointments made by the Northern Ireland Judicial Appointments Commission since its establishment.
- Relevant developments in Northern Ireland including research findings/recommendations
- Relevant developments in Great Britain since the last paper was produced, including research/report recommendations and legislative change.
- Information/recommendations on best practice as recommended by any relevant international body.
- Comparative information particularly in any (one or two) jurisdictions that can be identified as having highly regarded, impartial judicial appointments systems and a judiciary which is significantly more representative of the community than that in Northern Ireland, particularly if the jurisdiction has introduced new systems or structures which are seen to have improved its standing in this regard.

2 Statistical information on the Judiciary in Northern Ireland

The following tables contain information reproduced from the Northern Ireland Statistics and Research Agency's 2013 Equity Monitoring report on the Judiciary in Northern Ireland. There are eight groupings of judicial offices. Groups 1, 2, 3 and 4 contain judges up to and including the Lord Chief Justice along with the Social Security and Child Support Commissioner and other senior offices. Groups 5, 6 and 7 contain the tribunals and group 8 comprises lay magistrates. See Appendix 1 for the full list of offices in each group.

The following tables provide information on the total number of office holders by gender, community background and ethnicity. Groups 1 to 4 are highlighted to distinguish judge-level appointments from other appointments.

Table 1: Overall composition of the Northern Ireland judiciary by gender at 1 April 2013[1]

	Male		Female		Total
	Number	%	Number	%	Number
Group 1	14	100	0	0.0	14
Group 2	47	82.5	10	17.5	57
Group 3	31	77.5	9	22.5	40
Group 4	14	56.0	11	44.0	25
Group 5	11	45.8	13	54.2	24
Group 6	88	48.1	95	51.9	183
Group 7	94	69.6	41	30.4	135
Group 8	78	42.6	105	57.4	183
Total	**377**	**57.0**	**284**	**43.0**	**661**

Table 2: Overall composition of the Northern Ireland judiciary by community background at 1 April 2013[2]

	Protestant		Catholic		Not determined		Total
	Number	%	Number	%	Number	%	Number
Group 1	7	50.0	6	42.9	1	7.1	14
Group 2	32	56.1	18	31.6	7	12.3	57
Group 3	20	50.0	20	50.0	0	0.0	40
Group 4	16	64.0	9	36.0	0	0.0	25
Group 5	10	41.7	13	54.2	1	4.2	24
Group 6	87	47.5	81	44.3	15	8.2	183
Group 7	64	47.4	61	45.2	10	7.4	135
Group 8	107	58.5	70	38.3	6	3.3	183
Total	**343**	**51.9**	**278**	**42.1**	**40**	**6.1**	**661**

[1] NISRA Equity Monitoring Report 2013: http://www.nijac.gov.uk/index/what-we-do/publications/nisra_equity_monitoring_report_2013.pdf

[2] As above

Table 3: Overall composition of the Northern Ireland judiciary by ethnicity at 1 April 2013[3]

	White		Other		Total
	Number	%	Number	%	Number
Group 1	14	100	0	0.0	14
Group 2	57	100	0	0.0	57
Group 3	40	100	0	0.0	40
Group 4	25	100	0	0.0	25
Group 5	24	100	0	0.0	24
Group 6	178	97.3	5	3.5	183
Group 7	133	98.5	2	1.8	135
Group 8	181	98.9	2	1.9	183
Total	**652**	**98.6**	**9**	**1.8**	**661**

Table 4: Total number of recommended appointments by NIJAC since 2006-07[4]

	Total for reporting year	Male	Female	Protestant	Catholic	Neither Protestant or Catholic	White	Other
2012-13	**23**	19	4	12	8	3	22	1
2011-12	**32**	24	8	14	14	4	32	0
2010-11	**16**	11	5	8	7	1	16	0
2009-10	**25**	12	13	12	11	2	24	1
2008-09	**25**	18	7	10	14	1	24	1
2007-08	**11**	9	2	4	6	1	11	0
2006-07	**151**	88	63	87	55	9	151	0
Total for all years	**283**	**181**	**102**	**147**	**115**	**21**	**280**	**3**

3 Recent developments in Great Britain, including research/report recommendations and legislative change

The Crime and Courts Act 2013 introduced significant changes to the judicial appointments process in England and Wales. The Judicial Appointments Commission highlighted some of the key changes[5] (particularly as they would relate to the work of the Commission):

[3] NISRA Equity Monitoring Report 2013: http://www.nijac.gov.uk/index/what-we-do/publications/nisra_equity_monitoring_report_2013.pdf

[4] Information taken from NIJAC Annual Reports

[5] Judicial Appointments Commission: http://jac.judiciary.gov.uk/about-jac/2608.htm

•The JAC will determine the processes to select a pool of candidates from which future authorisations as deputy High Court judges will be made. Circuit judges, Recorders and certain tribunal judges are eligible. The JAC will also determine our concurrence role in authorisations for Circuit judges to sit in the Court of Appeal Criminal Division. The processes will be published on our website when they are agreed. Fundamental to the proposed new approach will be open and transparent processes that will provide opportunities for all eligible candidates to be objectively assessed. The policy for this is being finalised.
•The introduction of an 'equal merit provision' to clarify that where two persons are of equal merit, a candidate can be selected on the basis of improving diversity. During the summer, the JAC consulted widely on how this could be applied in practice and we are now developing a policy.
•The Lord Chancellor and Lord Chief Justice have joined the JAC in having a statutory diversity duty. They are now required to take such steps they consider appropriate for the purpose of encouraging judicial diversity.
•For positions below High Court, the JAC is no longer required under statute to consult two judges with relevant knowledge of the judicial vacancies on the candidates it is minded to select. This 'statutory consultation' can be with one judge and for some vacancies, for example lay tribunal positions, no statutory consultation may be necessary.
•The Lord Chancellor's powers to accept, reject or ask for reconsideration of recommendations for judicial appointments below the High Court have been transferred to the Lord Chief Justice or to the Senior President of Tribunals for tribunal appointments. The Lord Chancellor will therefore focus on the more senior judicial positions. The only exception to this is tribunal appointments outside of the First-tier and Upper Tribunal structure (for example the Employment Tribunals), which remain with the Lord Chancellor.
•In line with the previous point, consultation with the Lord Chancellor has been introduced for appointments to the Lord Chief Justice, Heads of Division, and the Lords Justices of Appeal.

Report from the House of Lords Constitution Committee

In March 2012 the House of Lords published its report *Judicial Appointments*[6]. The report made a number of recommendations aimed at increasing the diversity of judicial appointments in England and Wales. It highlighted the slow progress in appointing more female and black and minority ethnic judges to the bench and suggested that: "A more diverse judiciary can bring different perspectives to bear on the development of the law and to the concept of justice itself"[7]. The report also explored the concepts of diversity and merit in the appointments process:

> The simple fact that an individual is from an under-represented group does not make him or her a more meritorious candidate than someone who is not. Diversity is not, in that simplistic sense, a part of merit. However, a suggestion made by some of our witnesses was that merit and diversity, whilst not identical, are related. Lord Justice Etherton argued that the courts must be sufficiently diverse in their expertise to be able to deal, as a body, with the work that comes before them; a candidate who can "bring to bear on a difficult subject ... some additional qualities" may therefore be considered more meritorious….
>
> Under the CRA (Constitutional Reform Act), appointments to the courts and tribunals of England and Wales must be made "solely on merit". One issue which strongly divided our witnesses was that of whether merit should continue

[6] House of Lords Constitution Committee, *Judicial Appointments*: http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

[7] As above

> to remain the sole criterion for appointments or whether it should be treated as a threshold (or plateau) beyond which considerations of diversity could be taken into account…
>
> The weight of the evidence we received was, however, against the use of a merit threshold, primarily on the ground that it would undermine the core meaning of the merit principle.

The equal merit provision

The Committee's report noted that Section 159 of the Equality Act 2010 provides that "where a person is choosing between two equally qualified individuals for a recruitment or promotion exercise, the individual with a protected characteristic may be chosen over the individual without that characteristic (in cases where participation in the relevant activity by those with the protected characteristic is disproportionately low)"[8]. The Committee supported use of the provision in judicial appointments processes, noting that it "would send out a strong signal that diversity in judicial appointments is important, without undermining the merit principle"[9].

Crime and Courts Act 2013

The Crime and Courts Act 2013 enacted the equal merit provision for appointments up to and including the Supreme Court. Previous research has highlighted the divergence of views on the principle, with not all informed commentators supportive of the move:

> Even amongst the Supreme Court Justices, there did not appear to be unanimous support on changes relating to diversity. Lord Sumption, who had previously sat as a member of the Judicial Appointments Commission, questioned the concept of 'equal merit', arguing that at the upper end of the ability range, there is usually clear water between every candidate once one looks at them in detail.
>
> (Lord Sumption continued):
>
> If you dilute the principle of selecting only the most talented candidates by introducing criteria other than merit, you will end up with a bench on which there are fewer outstanding people. But there is a more serious problem even than that. It is the impact that the changes would have on applications…Outstanding candidates will not apply in significant numbers for judicial appointments if they believe that the appointments process is designed to favour ethnic or gender groups to which they do not belong[10].

The Judicial Appointments Commission has begun to adapt to the changes brought about by the Crime and Courts Act. It has developed a policy to implement the equal

[8] House of Lords Constitution Committee, Judicial Appointments: http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

[9] As above

[10] Alexander Horne, *Is there a case for greater legislative involvement in the judicial appointments process?* Study of Parliament Group, 2014: http://www.studyofparliament.org.uk/spg-paper-3.pdf

merit provision and its most recent annual report described the approach taken by the Commission:

Figure 1: Judicial Appointments Commission policy on implementation of the equal merit provision

The Equal Merit Provision[11]

Following Royal Assent of the CCA the JAC issued a three-month public consultation on the proposed implementation of the provision, which allows that where two or more candidates are of equal merit, the JAC may give preference to a candidate for the purpose of increasing the diversity of the judiciary. The policy (published on 8 April 2014) will apply to all selection exercises launching on or after 1 July 2014.
The provision will apply:

- where two or more selectable candidates are considered to be of equal merit assessed against the advertised requirements for a specific post
- to the categories of race and gender
- only at the final selection decision-making stage

Individual decisions, to be made by the Commission sitting as the Selection and Character Committee, will be based on all the evidence gathered during the selection process.

The JAC will report in its Official Statistics, starting in June 2015, the number of instances where an individual has been selected following application of the policy. The consultation response is on the JAC website alongside the policy. We received 53 responses in total – 69% of the 49 substantive responses were in favour of implementation of the Equal Merit Provision and 29% were against.

A recent article commented on the approach taken by JAC to implementing the equal merit provision. It questioned what it saw as the narrow approach taken by JAC to interpreting the provision, especially against the backdrop of continued under-representation of female and black and minority ethnic groups within the judiciary. The article recognised that recent selection exercises had seen more women appointed to senior roles, but said that improvements had largely been concentrated in the lower ranks, particularly in non-legal tribunal appointments.

The article went on to question why the equal merit provision would be applied only at the final stage:

> *This blunts the provision's potential to increase diversity…applying the provision at shortlisting could help remove barriers that might prevent non-conventional candidates being called for interview. The JAC has further limited the provision's potential by applying it only to race and gender. It has done so on the grounds that the provision should only be used where under-representation can be demonstrated*

[11] Judicial Appointments Commission, 2013-14 Annual Report: http://jac.judiciary.gov.uk/static/documents/JAC_AR_2013-14_web.pdf

by reference to published data. We recognize there are practical difficulties related to the availability of reliable data for some of the 'protected characteristics' under the Equality Act 2010. However, the JAC needs to be more proactive in widening the number of protected groups to whom the equal merit provision can apply. This means collecting reliable data for groups other than race and gender. We further recognize that collecting personal data can be problematic; for example, many applicants in the judicial appointments process seem reluctant to disclose personal data. But this is a problem with which many organizations are grappling as they implement important equality and diversity legislation. The JAC needs to devote more time and resources to being a pioneer on such matters rather than reacting to developments elsewhere. A more pioneering and proactive approach would be consistent with the JAC's duty to 'have regard to the need to encourage diversity in the range of persons available for selection'…

In short, the provision has the potential to be a useful tool to address the diversity deficit. However, as narrowly interpreted by the JAC, the equal provision is likely to have very little impact. If the JAC was strongly committed to using it in its full extent, was willing to apply it at more than one stage of the selection process, and to apply it to a wider range of protected characteristics, the provision could make a difference. The decision to use it in this very limited way is ultimately a political decision about the weight given to diversity. The question that arises is this: why is the JAC seeming to place so little weight on the issue of diversity?

We suspect that the policy on the equal merit provision is a further product of the high levels of judicial influence on the judicial appointments processes. Over half of the responses to the JAC's consultation exercise on the equal merit policy were from judges and their representative bodies. There were also lengthy discussions in private between the JAC, the senior judges and the Ministry of Justice. Possible evidence of the influence of judicial concern about equal merit can be seen in the comments of the JAC Chair in his evidence before the Justice Committee: '[t]here is serious caution among many…the stakeholders…are cautious about [the equal merit provision]'. If we are correct in suspecting that judicial caution is largely responsible for the JAC adopting such a narrow policy on equal merit, then this merely underscores that the challenge confronting the appointments system in the years ahead is less the threat posed by inappropriate ministerial interference, but the cumulative consequences of excessive judicial influence[12].

[12] UK Constitutional Law Association, 'Judicial Appointments, Diversity and the Equal Merit Provision, May 2014: http://ukconstitutionallaw.org/2014/05/06/graham-gee-and-kate-malleson-judicial-appointments-diversity-and-the-equal-merit-provision/

4 International best practice

Council of Europe (Venice Commission)

In 2010 the Council of Europe published a Recommendation and accompanying Explanatory Memorandum on *Judges: independence, efficiency and responsibilities*. Chapter VI deals with the selection of judges:

> 44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.
>
> 45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.
>
> 46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers[13].

A previous publication from the Judicial Appointments Commission drew together a range of commentators, each of whom addressed a different aspect of judicial appointments. In a chapter entitled *'The Growing International Consensus in Favour of Independent Judicial Appointment Commissions'*, the author addressed the Venice Commission's report in the context of appointment and promotion of judges:

> The Venice Commission report is more nuanced, providing that, although merit is the 'primary criterion', "Merit is not solely a matter of legal knowledge, analytical skills or academic excellence. It also should include matters of character, judgement, accessibility, communication skills, efficiency to produce judgements etc".
>
> The Venice Commission report then goes a step further than others to date, endorsing diversity not as a goal in itself, but to further both judicial legitimacy and equality of opportunity. Paragraph 26 provides that: "Diversity within the judiciary will enable the public to trust and accept the judiciary as a whole. While the judiciary is not representative, it should be open and access should be provided to all qualified persons in all sectors of society".

European Network of Councils for the Judiciary

[13] http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf

In 2012 the European Network of Councils for the Judiciary published the *Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary*. It set out indicators of minimum standards expected in the recruitment of members of the judiciary. Two of the minimum standards relate to merit and diversity:

> 1. Judicial appointments should only be based on merit and capability. There requires to be a clearly-defined and published set of selection competencies against which candidates for judicial appointment should be assessed at all stages of the appointment process.
>
> 8. Diversity in the range of persons available for selection for appointment should be encouraged, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas per se, adding that any attempt to achieve diversity in the selection and appointment of judges should not be made at the expense of the basic criterion of merit[14].

5 Practice in other jurisdictions

One of the difficulties in attempting to identify highly regarded judicial appointments systems is that most developed democracies would probably describe themselves as having "highly regarded, impartial judicial appointments systems", even though the method of judicial appointments employed may differ across jurisdictions and even in circumstances, such as the Republic of Ireland, where reform is being undertaken to address perceived deficiencies within a system.

Methods of appointment[15]

There are three basic models of judicial appointment:

- Executive appointment
- Legislative approval
- Judicial appointment commissions

Executive appointment

Under this system, the executive (usually Minister of Justice or head of government) makes appointments without parliamentary involvement or the involvement of a judicial appointments commission.

When conducted within a culture of integrity, this model has the advantage of providing reliable information about the technical legal quality of candidates. But it can also perpetuate social biases and ignore candidates from non-

[14] European Network of Councils for the Judiciary, Dublin Declaration: http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_dublin_declaration_def_dclaration_de_dublin_recj_def.pdf

[15] Information in this section has been taken from a chapter entitled 'The Growing International Consensus in Favour of Independent Judicial Appointment Commissions', in the document 'Judicial Appointments: Balancing Independence, Accountability and Legitimacy', Judicial Appointments Commission, 2010

conventional backgrounds. It might also be unsuitable for a judiciary which will rule on political matters.
The process of executive appointment offends the separation of powers and the perception of judicial independence.

Legislative approval

This model involves the approval of a candidate by a legislative body, for example the US Senate for Supreme Court appointments or either House of the Federal Parliament in Germany for appointments to the Constitutional Court.

This model attempts to legitimise the process by gaining the support of the legislature, whose laws the judge will have the power to review or strike down. However, the American approach to the politicisation of the appointments process to the extent that judges rarely vote against the philosophy of the party that nominated them. In Germany, any perception of bias induced by the involvement of political parties in the nomination process is somewhat diluted by the fact that a two-thirds majority is required for the approval of candidate. The need therefore for a strong degree of consensus about the candidate provides an incentive to make less 'ideological' appointments.

Nevertheless, the process as a whole retains the perception that judges, to be approved, will feel bound, in future judgements, to satisfy their political appointers of their ideological reliability.

Judicial appointments commissions
This model offers the advantage of having perceived independence, but only if the commission is free from political interference. This so the case in the UK, but not in South Africa, where the Judicial Services Commission is composed of 15 politicians and only eight lawyers. Furthermore, the commission can be charged with positively seeking to enhance the legitimacy of the judiciary, for example by taking steps to widen the pool of potential appointees (as in South Africa, where the 1996 Constitution provides the "need for the judiciary to reflect broadly the racial and gender composition of South Africa").

The commission is usually wholly or relatively independent of the executive and parliament. The requirements of the separation of powers and judicial independence at the appointments stage are thus met to a greater extent than under the first two models.

Belgium

In April 2014 the Belgian Parliament passed legislation that introduced gender quotas for the composition of the Constitutional Court, requiring the Court to be composed of at least a third of judges of each sex. The requirement will only enter into force when the Court is in fact composed of at least one third of female judges:

> In the meantime, a judge of the underrepresented sex shall be appointed every time that the two preceding appointments have not increased the number of judges of this underrepresented sex. For example, if women remain unrepresented on the Court (as they currently are, representing only around 16% the Court), and the next two appointees are men, the third appointment will have to be a woman[16].

[16] Belgian Parliament Introduces Sex Quota in Constitutional Court: http://ohrh.law.ox.ac.uk/belgian-parliament-introduces-sex-quota-in-constitutional-court/

Belgium of course provides a good example where conflicting ethnic identities have to be accommodated within the political and legal institutions at federal level. The Constitutional Court itself has not been immune to these requirements:

> …the CC has, from its creation, required linguistic and "professional" quotas: six judges should be Dutch-speaking, three of whom should be former MPs, and six judges should be French-speaking, again, three of whom should be former MPs. Even this new introduction of sex-based quotas is not completely at odds with the previous spirit of the rules surrounding judicial appointments: the Act on the CC has stated since 2003 that 'the Court shall be composed of judges of both sexes'. However, this previous requirement was a minimal one and did not guarantee the achievement of meaningful sex diversity: only four women – all former MPs – have been appointed to the Constitutional bench since its creation in 1984. Moreover, up until January 2014, the Court has never counted more than one woman at a time among the twelve judges sitting on the bench. Requiring at least one woman on the bench has led (until 01/2014) to the appointment of only one woman to the bench at any particular time. No more[17].

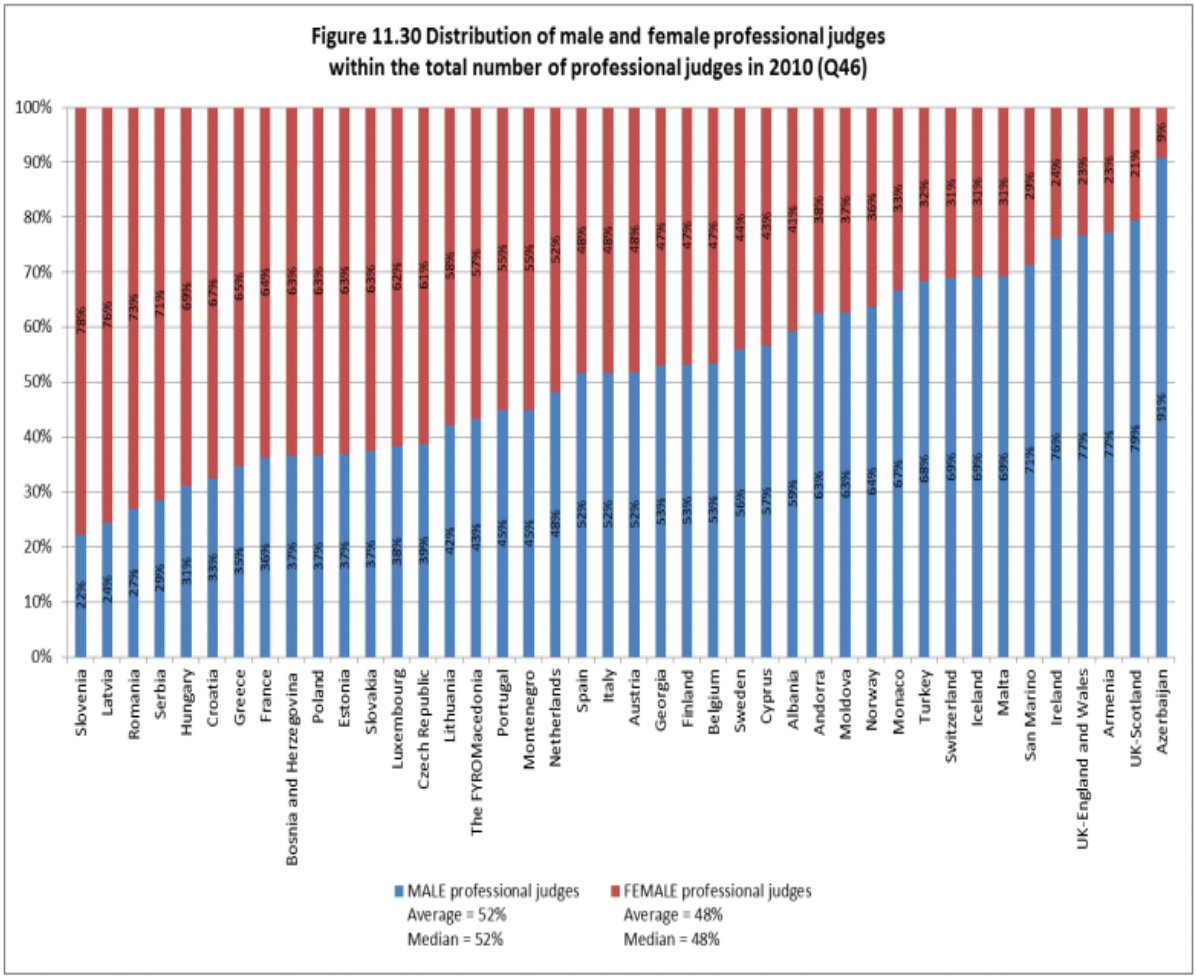
European Commission for the Efficiency of Justice

A 2012 report produced by the European Commission for the Efficiency of Justice ranked 42 states and 'entities' on gender distribution. Figure 1 shows that, based on data from 2010, the UK and Ireland ranked well down the list in terms of female representation among professional judges. According to the report, Northern Ireland was unable to supply the relevant data[18].

[17] Belgian Parliament Introduces Sex Quota in Constitutional Court: http://ohrh.law.ox.ac.uk/belgian-parliament-introduces-sex-quota-in-constitutional-court/

[18] http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf

Figure 1: Gender distribution among professional judges in 42 states and entities



Reform of the appointments system in the Republic of Ireland

The Republic of Ireland has recently consulted on proposed changes to its system of judicial appointments. Announcing the consultation in December 2013, the then Justice Minister said that while the Republic's current system of appointment, through the Judicial Appointments Advisory Board, was "a model of best practice in its day, it seems to me that it would be worthwhile now to review the operation of the judicial appointments system to ensure it reflects current best practice, that it is open, transparent and accountable and that it promotes diversity."[19]

In its response to the consultation, the Judicial Appointments Review Committee said that the current system needed significant change: "Public confidence that justice will be administered fairly by persons of the highest quality and integrity is vitally important in maintaining the confidence of citizens in the State. The judicial appointments system

[19] http://www.justice.ie/en/JELR/Pages/PR13000413

needs to change to ensure this is so, and is seen to be so".[20] The committee said the principle of appointing a judge by merit should be established in legislation.

Under the Constitution, judges are appointed by the President acting on the advice of the Government. Under the existing system of appointment the Judicial Appointments Advisory Board (JAAB) submits to the Minister for Justice and Equality the names of the persons who have applied for judicial appointment and whom it recommends for appointment. The Minister then brings the names to Government, which in turn submits its advice to the President.

The JAAB was established under the Courts and Court Officers Act 1995, for the purpose of identifying persons and informing the Government of the suitability of those persons for appointment as judges. The procedures do not apply where the Government proposes to advise the President to appoint a serving judge to another court[21].

Private Members' Bills

A Private Member's Bill was introduced in 2013[22] aimed at reforming the appointments system by removing Government influence. The Government welcomed elements of the Bill but believed that it did not address some aspects of the process which would need to be considered if meaningful reform was to take place[23].

Subsequently, two further attempts at Private Members' legislation were brought forward:

- Thirty-Fourth Amendment of the Constitution (Judicial Appointments) Bill 2013 sponsored by Deputy Shane Ross)
- Judicial Appointments Bill 2014 (sponsored by Deputy Niall Collins

The Government's consultation on changes to the appointments process closed on 31 January 2014. To date, no draft legislation has been brought forward to give effect to any proposed changes.

[20] http://www.rte.ie/news/2014/0130/501243-judges/
[21] http://www.justice.ie/en/JELR/Pages/PR13000413
[22] Reform of Judicial Appointments Procedures Bill 2013, sponsored by Deputy Pádraig Mac Lochlainn
[23] See Dail Eireann debate: http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014060600015?opendocument

Appendix 1 – Judicial offices in Northern Ireland by group

Group 1	Supreme Court - Lord Chief Justice, Lord Justices of Appeal, High Court Judges & Temporary judges of High Court
Group 2	County Court Judges; deputy County Court Judges; Chief Social Security and Child Support Commissioner; Social Security and Child Support Commissioner & deputies
Group 3	District Judges (Magistrates' Courts) and deputies
Group 4	District Judges & deputies; Masters; Coroners and deputies; Deputy Statutory Officer; Official Solicitor
Group 5	Industrial Tribunals & Fair Employment Tribunal (President FT, Vice President FT, Chairman FT, Chairman FP)
Group 6	Appeal Tribunals (President of Appeal Tribunals FT, Legal Chairman FT, Legal Member FP, Financial Member FP, Medical Consultant Member FP, Medical General Member FP, Expert Member FP)
Group 7	Special Educational Needs Disability Tribunal (President FP, Chairman FP); MentalHealth Review Tribunal (Chairman FP, Deputy Chairman FP, Legal FP, Medical FP, Experienced FP); Lands Tribunal (President FP, Member FT); Pensions Appeal Tribunal (President FP, Deputy President FP, Legal Member FP, Medical Member FP, Service Member FP); Northern Ireland Valuation Tribunal (President FP, Legal FP, Ordinary Member FP, Valuation FP); National Security Certificates Appeal Tribunals (Chairman FP, Deputy Chairman FP, Legal FP, Lay FP); Charity Tribunal (President FP, Legal Member FP, Ordinary Member FP); Health and Safety Appeal Tribunals (Legal Chairman FP); Care Tribunal (Chairman FP); Reserve Forces Appeal Tribunals (Chair of the Reserve Forces Re-Instatement Committee FP); Northern Ireland Traffic Penalty Tribunal (Adjudicator FP); Criminal Injuries Compensation Appeals Panel for NI (Chairman FP, Adjudicator: Legal FP, Medical FP, Lay FP
Group 8	Lay Magistrates FP