



An Roinn Dlí agus Cirt  
Department of Justice

# Consultation Paper on Jury Reform

October 2024



# Table of Contents

Introduction.....	4
Our approach to this consultation process .....	5
How to share your views with us .....	5
Chapter One: Jury Selection and Qualification for Jury Service .....	6
Juror qualification.....	6
Chapter One: Consultation questions.....	6
Chapter Two: Jury Challenges.....	7
Peremptory challenges .....	7
Challenges for cause shown .....	7
Pre-trial juror questionnaires .....	8
Chapter Two: Consultation questions.....	8
Chapter Three: Capacity to carry out the functions of a juror .....	9
Physical capacity and eligibility .....	9
Ill health or decision making capacity and eligibility .....	11
Reading and linguistic capacity .....	12
Chapter Three: Consultation questions .....	13
Chapter Four: Ineligibility, excusal and deferral .....	15
Persons ineligible.....	15
Persons excusable as of right .....	17
Deferrals .....	19
Chapter Four: Consultation questions .....	19
Chapter Five: Disqualification from jury service .....	21
Disqualification.....	21
Persons remanded in custody awaiting trial, and persons remanded on bail awaiting trial.....	22
Persons convicted of an offence committed outside the State.....	22
Jury vetting .....	23
Chapter Five: Consultation questions.....	24
Chapter Six: Jury tampering .....	26
Jury tampering offences.....	26
Access to jury lists .....	26
Juror daily roll call .....	27
Juror identification requirements .....	28

Chapter Six: Consultation questions .....	28
Chapter Seven: Juror misconduct: independent investigations and internet searches ..	29
Judge’s direction to juries on searches and misconduct.....	29
Juror misconduct offences .....	29
Protocol on prosecutions for offences .....	30
Chapter Seven: Consultation questions .....	31
Chapter Eight: Juror compensation and expenses.....	32
Juror compensation .....	32
Provisions for small business and self-employed persons.....	32
Chapter Eight: Consultation questions .....	32
Chapter Nine: Lengthy trials and juror comprehension .....	33
Court appointed assessor .....	33
Chapter Nine: Consultation questions .....	33
Chapter Ten: General Questions on Jury Reform.....	34
Chapter Eleven: Full List of Consultation Questions .....	35
Appendix A: Research Recommendations.....	40
Appendix B: Previously Implemented Recommendations .....	42

## Introduction

The jury has often been viewed as a right of the accused person in criminal trials to be tried by a group of his peers, or as a democratic institution allowing community input and the voice of the people into the criminal justice process.<sup>1</sup>

The jury system in Ireland is governed by Article 38.5 of Bunreacht na hÉireann and by the Juries Act 1976, as amended. Article 38.5 makes jury trials mandatory for most serious criminal offences with the exception of minor offences, trials by military tribunals and trial by special courts. The constitution does not stipulate how juries are to be composed or how they are to operate this is left to the legislature.

The Juries Act 1976 as amended includes provisions relating to eligibility, qualification and liability for jury service; selection procedures; general matters (admin. etc.); and, offences. There have been a few major changes in juries since the introduction of the Act, they include the introduction of majority verdicts<sup>2</sup>, the removal of the upper age limit for jury service<sup>3</sup> and the introduction of a provision allowing for the appointment of up to three additional jurors to ensure continuity in lengthy criminal trials.<sup>4</sup>

The Law Reform Commission published a Report on Jury Service (LRC 107-2013) in 2013.<sup>5</sup> The general scope of the report was to examine how people are selected for jury service and related matters. This included:

- the process of jury selection based on the electoral register and the use of ICT;
- whether qualification for jury service should be extended beyond Irish citizenship;
- jury challenges;
- capacity and competence to carry out the functions of a juror;
- the categories of persons who are ineligible for jury service;
- persons who are excusable as of right from jury service;
- deferral of jury service;
- disqualification from jury service arising from criminal convictions;
- jury tampering;
- juror misconduct, including independent investigations such as internet searches;
- juror expenses;
- lengthy and complex jury trials; and,

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<sup>1</sup> Jeffers, James M., *The Representative and Impartial Jury in the Criminal Trial: An Achievable Reality in Ireland Today?* Irish Criminal Law Journal 2008, 18(2), 34-41; Hamilton, Claire, *Replacing the Offences Against the State Acts: Shaking the Security Mindset*, Irish Criminal Law Journal 2024, 34(1), 15-18

<sup>2</sup> Introduced by s.25 of the Criminal Justice Act 1984

<sup>3</sup> The upper age limit of 70 years for jury service was removed via Section 54 of the Civil Miscellaneous Provisions Act 2008. Part II of the First Schedule of the 1976 Act, as amended by s.64(b) of the Civil Law (Miscellaneous Provisions) Act 2008, provides that persons aged sixty-five years or upwards are excusable as of right from jury service.

<sup>4</sup> Section 23 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013

<sup>5</sup> Law Reform Commission Report on Jury Service (LRC 107-2013), available at: <https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/36948>

- empirical research on the jury process.

In total, the Report makes 56 recommendations, under ten Chapter headings.<sup>6</sup> It includes five recommendations on research, which are listed in Appendix A. A number of recommendations made in the report have already been implemented, these are listed in Appendix B.

This consultation paper is informed by the remaining LRC recommendations. The Department of Justice is now seeking stakeholder views on the continued relevance of these recommendations. Findings from this consultation will inform the development of policy proposals for the reform of jury service in Ireland.

## Our approach to this consultation process

Each Chapter of this paper covers an aspect of jury reform. It includes the current law or practice, the LRC's recommendations on reform and then lists some suggested consultation questions for you to consider when providing your feedback. We invite you to respond to these questions. There is also an opportunity for you to make general comments at the end.

## How to share your views with us

The Department of Justice invites stakeholder organisations to share their views with us.

Written submissions can be submitted in electric format by **29 November 2024**.

- Please email your submissions in word format to:

**juryreformconsultation@justice.ie**

Please limit your submissions to a maximum of 5000 words.

### Publication of submissions

You should be aware that any submissions made may be published, in whole or in part in a report or separately on the Government website.

Please also note that your submission will be subject to the provisions of the Freedom of Information Acts.

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<sup>6</sup> Some of the recommendations in the LRC report contain several recommendations in one. These recommendations have been split in this paper to make them easier to analyse and comment on.

# Chapter One: Jury Selection and Qualification for Jury Service

## Juror qualification

### Current position:

*“Subject to the provisions of this Act, every citizen aged eighteen years or upwards who is entered in a register of Dáil electors in a jury district shall be qualified and liable to serve as a juror for the trial of all or any issues which are for the time being triable with a jury drawn from that jury district, unless he is for the time being ineligible or disqualified for jury service.”* – Section 6 of the Juries Act 1976 as amended

### LRC Recommendations:

- 1.1. The Commission recommends that, in addition to the current position under which Irish citizens who are registered to vote as Dáil electors in a jury district are qualified and liable to serve on juries, the following persons should also be qualified and liable to serve: every citizen of the United Kingdom aged 18 years or upwards who is entered in a register of Dáil electors in a jury district; and every other person aged 18 years and upwards who is entered in a register of local government electors in a jury district.<sup>7</sup>
- 1.2. The Commission also recommends that a non-Irish citizen referred to in the above recommendation must, in order to be eligible for jury service, be ordinarily resident in the State for 5 years prior to being summoned for jury service.<sup>8</sup>

## Chapter One: Consultation questions

- Q.1. What would be the benefits of extending juror eligibility beyond citizenship?
- Q.2. What would be the risks of extending juror eligibility beyond citizenship?
- Q.3. Should jury duty be linked to citizenship? Why do you think so?
- Q.4. Should long-term residents be eligible for jury service? If so, how long should someone be a resident to be considered a long-term resident?

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<sup>7</sup> Law Reform Commission Report on Jury Service; paragraph 2.65

<sup>8</sup> Law Reform Commission Report on Jury Service; paragraph 2.66

## Chapter Two: Jury Challenges

### Peremptory challenges

#### Current position:

*“(1) In every trial of a civil issue which is tried with a jury each party may challenge without cause shown seven jurors and no more.*

*(2) In every trial of a criminal issue which is tried with a jury the prosecution and each accused person may challenge without cause shown seven jurors and no more.*

*(3) Whenever a juror is lawfully challenged without cause shown, he shall not be included in the jury.”* – Section 20 of the Juries Act 1976

#### LRC Recommendations:

2.1. The Commission recommends that the current law in the Juries Act 1976 on challenges without cause shown (peremptory challenges) should be retained.<sup>9</sup>

2.2. The Commission also recommends that the courts should continue to provide clear and consistent guidance to the effect that the use of peremptory challenges does not involve any personal slight on a potential juror and that the Director of Public Prosecutions consider whether general guidance on challenges without cause shown would be suitable for inclusion in the Director’s Guidelines for Prosecutors.<sup>10</sup>

### Challenges for cause shown

#### Current position:

*“(1) In every trial of a civil issue which is tried with a jury any party may challenge for cause shown any number of jurors.*

*(2) In every trial of a criminal issue which is tried with a jury the prosecution and each accused person may challenge for cause shown any number of jurors.*

*(3) Whenever a juror is challenged for cause shown, such cause shall be shown immediately upon the challenge being made and the judge shall then allow or disallow the challenge as he shall think proper.*

*(4) Whenever a juror is challenged for cause shown and such challenge is allowed by the judge, the juror shall not be included in the jury.”* – Section 21 of the Juries Act 1976

<sup>9</sup> Law Reform Commission Report on Jury Service; paragraph 3.38

<sup>10</sup> Law Reform Commission Report on Jury Service; paragraph 3.38

**LRC Recommendation:**

2.3. The Commission recommends that the current law in the Juries Act 1976 on challenges for cause shown should be retained.<sup>11</sup>

## Pre-trial juror questionnaires

**Current position:**

*The Juries Act 1976 does not provide for the use of pre-trial juror questionnaires.*

**LRC Recommendation:**

2.4. The Commission recommends that pre-trial juror questionnaires continue to be prohibited.<sup>12</sup>

## Chapter Two: Consultation questions

Q.1. What are the benefits and risks of peremptory challenges?

Q.2. What would be the effect of reducing peremptory challenges?

Q.3. What would be the effect of abolishing peremptory challenges?

Q.4. Would guidelines on the use of and process of peremptory challenges be useful? Why do you think so?

Q.5. Should there be some level of judicial oversight over the use of peremptory challenges? Please discuss.

Q.6. What would be the pros and cons of reducing the number of challenges for cause shown?

Q.7. What impact would the introduction of pre-trial juror questionnaires have on jury selection? Would this impact be a net positive or negative? Why?

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<sup>11</sup> Law Reform Commission Report on Jury Service; paragraph 3.62

<sup>12</sup> Law Reform Commission Report on Jury Service; paragraph 3.62



## Chapter Three: Capacity to carry out the functions of a juror

### Physical capacity and eligibility

#### Current position:

*“Persons who have—*

*(a) an incapacity to read, or*

*(b) an enduring impairment,*

*such that it is not practicable for them to perform the duties of a juror” are ineligible for jury service - First Schedule, Part I, Persons Ineligible, Juries Act 1976 as amended by section 64 of the Civil Law (Miscellaneous Provisions) Act 2008.*

*The Assisted Decision-Making (Capacity) (Amendment) Act 2022 amended section 7 (Ineligibility) of the 1976 Act, to include a new subsection which reflects that a person who is deaf may not be ineligible from jury service where ISL is the only barrier to them performing their function of a juror.*

*There is no individual assessment of capacity for jury service.*

#### LRC Recommendations:

3.1. The Commission recommends that the current provisions of the Juries Act 1976, which provide that persons are ineligible to serve as jurors if they have an enduring impairment such that it is not practicable for them to perform the duties of a juror, should be replaced with a provision to the effect that a person is eligible for jury service unless the person’s physical capacity, taking account of the provision of such reasonably practicable supports and accommodation that are consistent with the right to a trial in due course of law, is such that he or she could not perform the duties of a juror.<sup>13</sup>

3.2. The Commission recommends that the application of this provision should not involve an individual assessment of capacity.<sup>14</sup>

3.3. The Commission also recommends that the provision should be supplemented by guidance which would remind jurors in general of the requirements of eligibility for jury service, which should be expressed in a manner that encourages those with any doubts as to their physical capacity to carry out the functions of a juror to identify themselves. In making this decision, the judge should apply the presumption of capacity as well as the requirement of juror competence that forms part of the right to a trial in

<sup>13</sup> Law Reform Commission Report on Jury Service; paragraph 4.41

<sup>14</sup> Law Reform Commission Report on Jury Service; paragraph 4.42

due course of law. The guidance should also make it clear to jurors that it is both their entitlement and responsibility to inform the court where a question of capacity regarding another juror arises.<sup>15</sup>

### ***Balancing accommodation of jurors and the right to a fair trial***

#### **Current position:**

*The Department is not aware of any existing cases which indicate that a conflict has arisen between the accommodation of a juror and fairness of a trial. While the UNCRPD binds the State in international law, it should be noted that the constitutional right to a fair trial will naturally prevail.*

#### **LRC Recommendation:**

3.4. The Commission also recommends that if there is a conflict between the accommodation of a prospective juror in accordance with the 2006 UN Convention on the Rights of Persons With Disabilities and the right to a fair trial, the fairness of a trial must be given priority.<sup>16</sup>

### ***Excusals for cause***

#### **Current position:**

*Court officials, judges and practitioners use their experience to discern the most appropriate course of action on a case-by-case basis.*

#### **LRC Recommendation:**

3.5. The Commission recommends that where the judge considers that, even with reasonable and practicable accommodation, a juror will not be capable of carrying out their duties as a juror, the judge should excuse the prospective juror as ineligible to serve.<sup>17</sup>

3.6. The Commission also recommends that a physical disability that may require accommodation or support may constitute “good cause” for the purposes of an application for “excusal for cause.”<sup>18</sup>

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<sup>15</sup> Law Reform Commission Report on Jury Service; paragraph 4.42

<sup>16</sup> Law Reform Commission Report on Jury Service; paragraph 4.42

<sup>17</sup> Law Reform Commission Report on Jury Service; paragraph 4.42

<sup>18</sup> Law Reform Commission Report on Jury Service; paragraph 4.42

## Ill health or decision making capacity and eligibility

### Current position:

*The Assisted Decision-Making Act 2022 amended the Juries Act 1976 under the heading “Other persons” in Part I of the First Schedule, by the substitution of: “A person who does not, in the opinion of the court, have sufficient mental or intellectual capacity to serve as a juror.”*

*for*

*“A person who suffers or has suffered from mental illness or mental disability and on account of that condition either—*

*(a) is resident in a hospital or other similar institution, or*

*(b) regularly attends for treatment by a medical practitioner” is ineligible for jury service.*

*There is no individual assessment of capacity for jury service. Court officials, judges and practitioners use their experience to discern the most appropriate course of action on a case-by-case basis.*

### LRC Recommendations:

3.7. The Commission recommends that the application of this provision should not involve an individual assessment of capacity.<sup>19</sup>

3.8. The Commission also recommends that the provision should be supplemented by guidance which would remind jurors in general of the requirements of eligibility for jury service, which should be expressed in a manner that encourages those with any doubts, arising from their ill health or decision-making capacity, about being able to carry out the functions of a juror to identify themselves. In making this decision, the judge should apply the presumption of capacity as well as the requirement of juror competence that forms part of the right to a trial in due course of law. The guidance should also make it clear to jurors that it is both their entitlement and responsibility to inform the court where a question of capacity regarding another juror arises.<sup>20</sup>

## ***Balancing accommodation of jurors and the right to a fair trial***

### Current position:

*The Department is not aware of any existing cases which indicate that a conflict has arisen between the accommodation of a juror and fairness of a trial. While the UNCRPD binds the State in international law, it should be noted that constitutional right to a fair trial will naturally prevail.*

<sup>19</sup> Law Reform Commission Report on Jury Service; paragraph 4.60

<sup>20</sup> Law Reform Commission Report on Jury Service; paragraph 4.60

**LRC Recommendation:**

3.9. The Commission also recommends that if there is a conflict between the accommodation of a prospective juror in accordance with the 2006 UN Convention on the Rights of Persons With Disabilities and the right to a fair trial, the fairness of a trial must be given priority.<sup>21</sup>

***Excusals for cause*****Current position:**

*Court officials, judges and practitioners use their experience to discern the most appropriate course of action on a case-by-case basis.*

**LRC Recommendation:**

3.10. The Commission recommends that where the judge considers that, even with reasonable and practicable accommodation, a juror will not be capable of carrying out their duties as a juror arising from ill health or decision-making capacity, the judge should excuse the prospective juror as ineligible to serve.<sup>22</sup>

3.11. The Commission also recommends that ill health or decision-making capacity that may require accommodation or support may constitute “good cause” for the purposes of an application for “excusal for cause.”<sup>23</sup>

## Reading and linguistic capacity

**Current position:**

*“Incapable persons*

*A person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury.” - are ineligible as per Schedule 1, Part 1 of the Juries Act 1976 as amended.*

*There is no individual assessment of capacity for jury service.*

**LRC Recommendations:**

3.12. The Commission recommends that, in order to be eligible to serve, a juror should be able to read, write, speak and understand English to the extent that it is practicable for him or her to carry out the functions of a juror.<sup>24</sup>

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<sup>21</sup> Law Reform Commission Report on Jury Service; paragraph 4.60

<sup>22</sup> Law Reform Commission Report on Jury Service; paragraph 4.60

<sup>23</sup> Law Reform Commission Report on Jury Service; paragraph 4.60

<sup>24</sup> Law Reform Commission Report on Jury Service; paragraph 4.88

3.13. The Commission also recommends that this should not involve an individual assessment of capacity but that it should continue to be a matter that is considered by court officials, judges and practitioners using their knowledge and experience to discern indications of capacity or otherwise on a case-by-case basis.<sup>25</sup>

3.14. The Commission also recommends that these arrangements be supplemented by guidance which would remind jurors in general of the requirements of eligibility for jury service, which should be expressed in a manner that encourages those with any doubts as to their capacity to identify themselves. The guidance should also make it clear to jurors that it is both their entitlement and responsibility to inform the court where a question of capacity regarding another juror arises.<sup>26</sup>

### ***Balancing accommodation of jurors and the right to a fair trial***

#### **Current position:**

*The constitutional right to a fair trial takes precedence over rights under the UN Convention on the Rights of Persons With Disabilities.*

#### **LRC Recommendation:**

3.15. The Commission recommends that, as to reasonable accommodation in accordance with the 2006 UN Convention on the Rights of Persons With Disabilities concerning reading and linguistic understanding, any such arrangements must ensure that the trial process retains the fundamental attributes of a trial in due course of law.<sup>27</sup>

## **Chapter Three: Consultation questions**

Q.1. What do reasonably practicable supports and accommodation look like to you?

Q.2. What would be the benefits of individual assessments of capacity for jurors?

Q.3. What would be the disadvantages/risks of individual assessments of capacity for jurors?

Q.4. If required, how could individual assessments of capacity be formulated?

Q.5. Should jurors sign a declaration of capacity when they return their summons?

Q.6. Is the current guidance on the requirements of eligibility for jury service sufficient?

Q.7. Should jurors have a responsibility to inform the court of any question of capacity regarding another juror?

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<sup>25</sup> Law Reform Commission Report on Jury Service; paragraph 4.88

<sup>26</sup> Law Reform Commission Report on Jury Service; paragraph 4.88

<sup>27</sup> Law Reform Commission Report on Jury Service; paragraph 4.89

Q.8. Should there be guidelines on what constitutes 'good cause' for the purposes of an application for 'excusal for cause' in relation to accommodation or supports for persons with capacity issues?

Q.9. Should juror eligibility include the ability to read, write, speak and understand English and/or Irish?

## Chapter Four: Ineligibility, excusal and deferral

### Persons ineligible

#### Current position:

Schedule 1, Part I of the Juries Act 1976 lists the following persons as ineligible for jury service -

*“Uachtarán na h-Éireann.*

*Persons concerned with administration of justice*

*Persons holding or who have at any time held any judicial office within the meaning of the Courts (Establishment and Constitution) Act 1961 (No. 38).*

*Coroners, deputy coroners and persons appointed under section 5 (2) of the Local Authorities (Officers and Employees) Act 1926 (No. 39) to fill the office of coroner temporarily.*

*The Attorney General and members of his staff.*

*The Director of Public Prosecutions and members of his staff.*

*Barristers and solicitors actually practising as such.*

*Solicitors' apprentices, solicitors' clerks and other persons employed on work of a legal character in solicitors' offices.*

*Officers attached to a court or to the President of the High Court and officers and other persons employed in any office attached to a court or attached to the President of the High Court.*

*Persons employed from time to time in any court for the purpose of taking a record of the proceedings of the court.*

*Members of the Garda Síochána.*

*Prison officers and other persons employed in any prison, or any place provided under section 2 of the Prisons Act 1970 (No. 11) or in any place in which persons are kept in military custody pursuant to section 2 of the Prisons Act 1972 (No. 7) or in any place specified to be used as a prison under section 3 of the latter Act; chaplains and medical officers of, and members of visiting committees for, any such establishment or place.*

*Persons employed in the welfare service of the Department of Justice.*

*A person in charge of, or employed in, a forensic science laboratory.*

*Members of the Defence Forces*

*Every member of the Permanent Defence Force, including the Army Nursing Service.*

*Every member of the Reserve Defence Force during any period during which he is in receipt of pay for any service or duty as a member of the Reserve Defence Force.*

*Other persons*

*Persons who have—*

*(a) an incapacity to read, or*

*(b) an enduring impairment,*

*such that it is not practicable for them to perform the duties of a juror.”*

*A person who does not, in the opinion of the court, have sufficient mental or intellectual capacity to serve as a juror.”*

### **LRC Recommendations:**

4.1. The Commission recommends that the following persons continue to be ineligible for jury service:

- The President of Ireland<sup>28</sup>
- Members of the judiciary, and retired members of the judiciary<sup>29</sup>
- Coroners and deputy coroners<sup>30</sup>
- The Attorney General and members of the staff of the Attorney General<sup>31</sup>
- Practising barristers and solicitors<sup>32</sup>
- Solicitors’ apprentices, clerks and other persons employed on work of a legal character in solicitors’ offices<sup>33</sup>
- Officers attached to a court (which, having regard to the establishment of the Courts Service under the Courts Service Act 1998, should also include employees of the Courts Service)<sup>34</sup>
- Persons employed to take court records (stenographers)<sup>35</sup>
- Serving members of An Garda Síochána<sup>36</sup>

<sup>28</sup> Law Reform Commission Report on Jury Service; paragraph 5.25

<sup>29</sup> Law Reform Commission Report on Jury Service; paragraph 5.26

<sup>30</sup> Law Reform Commission Report on Jury Service; paragraph 5.27

<sup>31</sup> Law Reform Commission Report on Jury Service; paragraph 5.28

<sup>32</sup> Law Reform Commission Report on Jury Service; paragraph 5.30

<sup>33</sup> Law Reform Commission Report on Jury Service; paragraph 5.31

<sup>34</sup> Law Reform Commission Report on Jury Service; paragraph 5.32

<sup>35</sup> Law Reform Commission Report on Jury Service; paragraph 5.33

<sup>36</sup> Law Reform Commission Report on Jury Service; paragraph 5.34



- Prison officers and other persons employed in a prison or place of detention<sup>37</sup>
- Persons working in the Probation Service<sup>38</sup>
- Persons in charge of, or employed in, a forensic science laboratory<sup>39</sup>

4.2. The Commission recommends that the following persons should no longer be eligible for jury service:

- Retired members of An Garda Síochána<sup>40</sup>
- Commissioners and staff of the Garda Síochána Ombudsman Commission<sup>41</sup>

4.3. The Commission recommends that the following persons should be eligible for jury service:

- Civilians employed by An Garda Síochána who perform entirely administrative functions<sup>42</sup>
- Members of the Permanent Defence Force, and members of the Reserve Defence Force while in receipt of pay for any service or duty<sup>43</sup>

## Persons excusable as of right

### Current position:

Schedule 1, Part II of the Juries Act 1976 lists the following persons as excusable as of right from jury service -

*“Members of either House of the Oireachtas.*

*Members of the Council of State.*

*The Comptroller and Auditor General.*

*The Clerk of Dáil Éireann.*

*The Clerk of Seanad Éireann.*

*A person in Holy Orders.*

*A regular minister of any religious denomination or community.*

*Vowed members of any religious order living in a monastery, convent or other religious community.*

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<sup>37</sup> Law Reform Commission Report on Jury Service; paragraph 5.38

<sup>38</sup> Law Reform Commission Report on Jury Service; paragraph 5.39

<sup>39</sup> Law Reform Commission Report on Jury Service; paragraph 5.40

<sup>40</sup> Law Reform Commission Report on Jury Service; paragraph 5.35

<sup>41</sup> Law Reform Commission Report on Jury Service; paragraph 5.37

<sup>42</sup> Law Reform Commission Report on Jury Service; paragraph 5.36

<sup>43</sup> Law Reform Commission Report on Jury Service; paragraph 5.41

*The following persons if actually practising their profession and registered (including provisionally or temporarily registered), enrolled or certified under the statutory provisions relating to that profession: Medical practitioners; Dentists; Nurses; Midwives; Veterinary surgeons; Pharmaceutical chemists.*

*A member of the staff of either House of the Oireachtas on a certificate from the Clerk of that House that it would be contrary to the public interest for the member to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.*

*Heads of Government Departments and Offices and any civil servant on a certificate from the head of his Department or Office that it would be contrary to the public interest for the civil servant to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.*

*Any civilian employed by the Minister for Defence under section 30 (1) (g) of the Defence Act 1954 (No. 18) on a certificate from the Secretary of the Department of Defence that it would be contrary to the public interest for the civilian to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.*

*Chief officers of local authorities for the purposes of the Local Government Act 1941 (No. 23), health boards established under the Health Act 1970 (No. 1) and harbour authorities within the meaning of the Harbours Act 1946 (No. 9) and any employee of a local authority, health board or harbour authority on a certificate from its chief officer that it would be contrary to the public interest for the employee to have to serve as a juror because he performs essential and urgent services of public importance that cannot reasonably be performed by another or postponed.*

*The head or principal teacher of the college of a university, of a school or other educational institution, and any professor, lecturer or member of the teaching staff of any such institution on a certificate from such head or principal teacher that the person concerned performs services in the institution that cannot reasonably be performed by another or postponed.*

*Whole-time students at any such educational institution as is mentioned in the preceding paragraph.*

*The secretary to the Commissioners of Irish Lights and any person in the employment of the Commissioners on a certificate from the secretary that the person concerned performs services for the Commissioners that cannot reasonably be performed by another or postponed.*

*Masters of vessels, duly licensed pilots and duly licensed aircraft commanders.*

*Persons aged sixty-five years or upwards.”*

#### **LRC Recommendations:**

4.4. The Commission recommends that section 9(1) and Schedule 1, Part 2, of the Juries Act 1976, which provide for a list of persons excusable from jury service as of

right, should be repealed and replaced with a general right of excusal for good cause, and that evidence should be required to support applications for excusal.<sup>44</sup>

4.5. The Commission recommends that the Courts Service should prepare and publish guiding principles to assist county registrars in determining whether to grant or refuse the application for excusal for good cause.<sup>45</sup>

## Deferrals

### Current position:

*When an individual is granted an excusal from jury service, they are subsequently returned to the original overall pool of potential jurors. This means that these individuals may be called to jury service again within the year, or they may not be called for a number of years, if at all.*

### LRC Recommendations:

4.6. The Commission recommends that the legislation on jury service should include a presumption that, even where a person provides excusal from service for cause shown, his or her jury service should be deferred for a period of up to 12 months.<sup>46</sup>

4.7. The Commission recommends that the guidelines on excusal already recommended in its Report should contain a section on the administration of the deferral system.<sup>47</sup>

## Chapter Four: Consultation questions

Q.1. Should all citizens be eligible for jury duty regardless of the position or office they hold?

Q.2. Is there a risk that people in certain positions or offices could have undue influence over other lay jury members? If so, would a period of ineligibility post-employment serve to minimise the risk? If so, what should that period be?

Q.3. Should solicitors' apprentices, clerks and other persons employed on work of a legal character in solicitors' offices continue to be ineligible for jury service?

Q.4. Should officers attached to a court (which, having regard to the establishment of the Courts Service under the Courts Service Act 1998, should also include employees of the Courts Service) continue to be ineligible for jury service?

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<sup>44</sup> Law Reform Commission Report on Jury Service; paragraph 5.56

<sup>45</sup> Law Reform Commission Report on Jury Service; paragraph 5.57

<sup>46</sup> Law Reform Commission Report on Jury Service; paragraph 5.63

<sup>47</sup> Law Reform Commission Report on Jury Service; paragraph 5.64

Q.5. Should persons employed to take court records (stenographers) continue to be ineligible for jury service?

Q.6. Should civilians employed by An Garda Síochána who perform entirely administrative functions be eligible for jury service?

Q.7. Should Commissioners and staff of the Garda Síochána Ombudsman Commission be ineligible for jury service?

Q.8. Should members of the Permanent Defence Force, and members of the Reserve Defence Force while in receipt of pay for any service or duty, be eligible for jury service?

Q.9. Should section 9(1) and Schedule 1, Part 2, of the Juries Act 1976, which provide for a list of persons excusable from jury service as of right, be repealed and replaced with a general right of excusal for good cause?

Q.10. Should Members of either House of the Oireachtas; Members of the Council of State; The Comptroller and Auditor General; The Clerk of Dáil Éireann; and, The Clerk of Seanad Éireann be deemed ineligible for jury service?

Q.11. Should a deferral system be introduced for jury service, where, if a person provides excusal from service for cause shown, his or her jury service should be deferred for a defined period? If so, why and what should that period be?

## Chapter Five: Disqualification from jury service

### Disqualification

#### Current position:

*“A person shall be disqualified for jury service if on conviction of an offence in any part of Ireland—*

*(a) he has at any time been sentenced to imprisonment or penal servitude for life or for a term of five years or more or to detention under section 103 of the Children Act, 1908, or under the corresponding law of Northern Ireland, or*

*(b) he has at any time in the last ten years—*

*(i) served any part of a sentence of imprisonment or penal servitude, being, in the case of imprisonment, a sentence for a term of at least three months, or*

*(ii) served any part of a sentence of detention in Saint Patrick's Institution or in a corresponding institution in Northern Ireland, being a sentence for a term of at least three months.” – Section 8 of the Juries Act 1976*

#### LRC Recommendations:

5.1. The Commission recommends that a person shall be disqualified from jury service for life where he or she has been sentenced to imprisonment (including where the sentence is suspended) on conviction for any offence for which the person may be sentenced to life imprisonment (whether as a mandatory sentence or otherwise)<sup>48</sup>

5.2. The Commission also recommends that, without prejudice to the immediately preceding recommendation, a person shall be disqualified from jury service for life where he or she has been convicted of: (a) an offence that is reserved by law to be tried by the Central Criminal Court; (b) a terrorist offence (within the meaning of the Criminal Justice (Terrorist Offences) Act 2005); or (c) an offence against the administration of justice (namely, contempt of court, perverting the course of justice or perjury).<sup>49</sup>

5.3. The Commission recommends that, in respect of an offence other than those encompassed by the two immediately preceding recommendations, a person shall be disqualified from jury service: (a) for a period of 10 years where he or she has been convicted of such an offence and has been sentenced to imprisonment for a term greater than 12 months (including a suspended sentence); and (b) for the same periods

<sup>48</sup> Law Reform Commission Report on Jury Service; paragraph 6.29

<sup>49</sup> Law Reform Commission Report on Jury Service; paragraph 6.30

as the “relevant periods” in the Criminal Justice (Spent Convictions) Bill 2012 both in relation to custodial and non-custodial sentences within the meaning of the 2012 Bill.<sup>50 51</sup>

## Persons remanded in custody awaiting trial, and persons remanded on bail awaiting trial

### Current position:

*Persons remanded in custody awaiting trial, and persons remanded on bail awaiting trial, are not currently disqualified from jury service under the Juries Act 1976.*

### LRC Recommendation:

5.4. The Commission recommends that persons remanded in custody awaiting trial, and persons remanded on bail awaiting trial, shall be disqualified from jury service until the conclusion of the trial.<sup>52</sup>

## Persons convicted of an offence committed outside the State

### Current position:

*There is no provision on disqualification of persons who have committed an offence outside of the State in the Juries Act 1976.*

### LRC Recommendation:

5.5. The Commission recommends that a person convicted of an offence committed outside the State which, if committed in the State, would disqualify a person from jury service, shall disqualify that person from jury service in the State on the same basis and for the same periods.<sup>53</sup>

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<sup>50</sup> Law Reform Commission Report on Jury Service; paragraph 6.31

<sup>51</sup> The Criminal Justice (Spent Convictions) Bill 2012 is now the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016. The provisions in the Act are slightly different to the provisions in the Bill:

- The Act provides for a period of not less than 7 years to have elapsed for all spent convictions whereas the Bill provided for varying timeframes from 5-7 years depending on the sentence imposed.

- Excluded sentences are largely the same but: The Bill provides that: ““excluded sentence” means a sentence imposed by a court— (a) of imprisonment for a term of more than 12 months (irrespective of whether that sentence is suspended in whole or in part),” The Act provides that: ““excluded sentence” means a sentence imposed by a court, other than the District Court — (a) of imprisonment for a term of more than 12 months unless it is a sentence specified in paragraph (a) of the definition of “ non-custodial sentence”, ((a) a sentence of imprisonment for a term of 2 years or less, the execution of the whole of which is suspended for a period specified by the court and that suspension is not subsequently revoked in whole or in part by the court)

<sup>52</sup> Law Reform Commission Report on Jury Service; paragraph 6.32

<sup>53</sup> Law Reform Commission Report on Jury Service; paragraph 6.33

## Jury vetting

### Current position:

*The Courts Service note that approximately 300 summonses are issued for any particular case. When the Service has received responses from those summoned, there are usually around 50/60 names on the jury list. Those names are passed to both the prosecution and the defence.*

*There are no nationally agreed procedures and guidelines on vetting.*

*It is an offence to knowingly serve on a jury if you are ineligible or disqualified from jury service:*

*“(1) Any person who serves on a jury knowing that he is ineligible for service shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500.*

*or*

*(2) Any person who serves on a jury knowing that he is disqualified shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000.” –*

*Section 36 of the Juries Act 1976 as amended*

### LRC recommendations:

5.6. The Commission recommends that the principal process for ensuring that a person on a jury list is not disqualified from jury service should continue to be that the Courts Service shall, from time to time, provide jury lists to the Garda Síochána Central Vetting Unit (to be renamed the National Vetting Bureau under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012), and that where the Garda Síochána Central Vetting Unit communicates with the Courts Service that a named person on the jury list is disqualified from jury service the Courts Service shall not summon that person for jury service.<sup>54</sup>

5.7. The Commission also recommends that this process continue to operate on the basis of nationally agreed procedures and guidelines developed by the Courts Service.<sup>55</sup>

5.8. The Commission also recommends that it shall continue to be the case that a person commits an offence if he or she knowingly serves on a jury when she or she is disqualified from jury service.<sup>56</sup>

<sup>54</sup> Law Reform Commission Report on Jury Service; paragraph 6.42

<sup>55</sup> Law Reform Commission Report on Jury Service; paragraph 6.42

<sup>56</sup> Law Reform Commission Report on Jury Service; paragraph 6.42

## Chapter Five: Consultation questions

Q.1. Should disqualification from jury service be based on the type of crime committed, the sentence received or the time since the offending occurred?

Q.2. Do you agree with the LRC's recommendations (5.1, 5.2, 5.3 above) on disqualification, namely:

- a person shall be disqualified from jury service for life where he or she has been sentenced to imprisonment (including where the sentence is suspended) on conviction for any offence for which the person may be sentenced to life imprisonment (whether as a mandatory sentence or otherwise),
- that, without prejudice to the immediately preceding recommendation, a person shall be disqualified from jury service for life where he or she has been convicted of: (a) an offence that is reserved by law to be tried by the Central Criminal Court; (b) a terrorist offence (within the meaning of the Criminal Justice (Terrorist Offences) Act 2005); or (c) an offence against the administration of justice (namely, contempt of court, perverting the course of justice or perjury), and
- that, in respect of an offence other than those encompassed by the two immediately preceding recommendations, a person shall be disqualified from jury service: (a) for a period of 10 years where he or she has been convicted of such an offence and has been sentenced to imprisonment for a term greater than 12 months (including a suspended sentence); and (b) for the same periods as the "relevant periods" in the Criminal Justice (Spent Convictions) Bill 2012 both in relation to custodial and non-custodial sentences within the meaning of the 2012 Bill.

Q.3. Should persons remanded in custody awaiting trial, and persons remanded on bail awaiting trial, be disqualified from jury service until the conclusion of the trial? Why/why not?

Q.4. Should a person convicted of an offence committed outside the State which, if committed in the State, would disqualify a person from jury service, be disqualified from jury service in the State on the same basis and for the same periods? If so, how could this be implemented or monitored?

Q.5. Do you agree with the LRC's recommendation (5.6 above) on the juror vetting system, namely that that the principal process for ensuring that a person on a jury list is not disqualified from jury service should continue to be that the Courts Service shall, from time to time, provide jury lists to the Garda Síochána Central Vetting Unit (to be renamed the National Vetting Bureau under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012), and that where the Garda Síochána Central Vetting Unit communicates with the Courts Service that a named person on the jury list is disqualified from jury service the Courts Service shall not summon that person for jury service? If not, how should juror vetting be undertaken? Are there particular organisations or bodies which should be responsible?



Q.7. Are the fines for knowingly serving on a jury when ineligible or disqualified a sufficient deterrent?

## Chapter Six: Jury tampering

### Jury tampering offences

#### Current position:

*There is a common law offence of embracery and a statutory offence of intimidation.*

*The Court of Criminal Appeal in *The People (DPP) v Walsh* [2006] IECCA 40 approved a definition of embracery as consisting of “any attempt to corrupt or influence or instruct a jury, or any attempt to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats or persuasions, whether the jurors on whom such an attempt is made give any verdict or not, or whether the verdict given be true or false.”*

*Criminal Justice Act 1999, Section 41 (1) Without prejudice to any provision made by any other enactment or rule of law, a person—*

*(a) who harms or threatens, menaces or in any other way intimidates or puts in fear another person who is assisting in the investigation by the Garda Síochána of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, or a member of his or her family,*

*(b) with the intention thereby of causing the investigation or the course of justice to be obstructed, perverted or interfered with,*

*shall be guilty of an offence.*

#### LRC Recommendation:

6.1. The Commission recommends that the elements of the common law offence of embracery which remain of relevance and which do not already overlap with the offence of intimidation in section 41 of the Criminal Justice Act 1999 should be incorporated into a single offence that deals with all forms of jury tampering. The single offence should include any attempt to corrupt or influence or instruct a jury, or any attempt to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats or persuasions, with an intent to obstruct, pervert, or interfere with, the course of justice.<sup>57</sup>

### Access to jury lists

#### Current position:

*“(1) Every person shall be entitled to reasonable facilities to inspect a panel of jurors free of charge and a party to any proceedings, civil or criminal, to be tried with a jury shall be entitled to a copy free of charge on application to the county registrar.*

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<sup>57</sup> Law Reform Commission Report on Jury Service; paragraph 7.49

(2) *The rights under subsection (1) shall be exercisable at any time between the issue of the summonses and the close of the trial or the time when it is no longer possible to have a trial with a jury.*

(3) *The panel referred to in subsection (1) is the panel as prepared for and in advance of the sittings, including any supplemental panel so prepared, and it shall not be necessary to indicate in it that any of the persons in it have been excused in the meantime, or to include any persons summoned under section 14.*

(4) *The right to inspect the panel shall, however, include a right to be shown, on request, all alterations to the panel and the names of any persons summoned under section 14 and, on request, to be told of any excusals.*” – Section 16 of the 1976 Act

### **LRC Recommendations:**

6.2. The Commission recommends that, in order to ensure that the accused may exercise a right to challenge effectively while at the same time protecting as far as practicable the security and privacy of jurors, access to jury lists should be possible only by the parties’ legal advisers (or the parties if they are not legally represented) and only for a period of four days prior to the trial in which the parties have an interest.<sup>58</sup>

6.3. The Commission also recommends that access to the jury list should not be permitted once the jury has been sworn, except for some exceptional reason and only with the sanction of the court on application; and that, where a party is legally represented he or she may be provided with the information in the jury list but not a copy of the list.<sup>59</sup>

## **Juror daily roll call**

### **Current position:**

*Each judge has their own approach to jurors, however the usual approach taken is that the registrar will ask the judge if they wish to have a roll call of jurors. The judge in turn will then ask the parties if they require a roll call or not.*

### **LRC Recommendation:**

6.4. The Commission recommends that, in order to protect juror privacy and assist in preventing potential intimidation, the daily roll call of the jury after empanelment should be abolished.<sup>60</sup>

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<sup>58</sup> Law Reform Commission Report on Jury Service; paragraph 7.51

<sup>59</sup> Law Reform Commission Report on Jury Service; paragraph 7.51

<sup>60</sup> Law Reform Commission Report on Jury Service; paragraph 7.52

## Juror identification requirements

### Current position:

*There is no provision requiring jurors to provide identification in the 1976 Act.*

### LRC Recommendations:

6.5. The Commission recommends that the juries legislation should expressly provide that prospective jurors be required to bring a valid form of personal identification when attending for jury selection, and that this should take the same form as the prescribed personal identification required under section 111 of the Electoral Act 1992.<sup>61 62</sup>

6.6. The Commission also recommends that the failure to produce suitable identification should not, in itself, prevent a juror from serving and in such a case the juror should be required to confirm their identity by oath or affirmation.<sup>63</sup>

6.7. The Commission also recommends that the form or notice accompanying the jury summons (as currently required by section 12 of the Juries Act 1976) should include a statement referring to the benefits of bringing such personal identification, including that the person may positively identify themselves in court and that this may limit the extent to which the person's name is called out in public.<sup>64</sup>

## Chapter Six: Consultation questions

Q.1. What is your opinion on incorporating the common law offence of embracery and the offence of intimidation in section 41 of the Criminal Justice Act 1999 into a single offence that deals with all forms of jury tampering?

Q.2. Should parties' access to jury lists be retained, modified or removed? Please discuss.

Q.3. Should parties maintain the right to access jury lists once a jury has been sworn? Why/why not?

Q.4. Should the daily roll call be abolished? Why/why not?

Q.5. Should jurors be required to provide identification? Why/why not?

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<sup>61</sup> S.I. No. 407/1992 lists the prescribed personal identification for the purpose of section 111 of the Electoral Act 1992 as a passport; a driving licence; an employee or student identity card; a book for payment of Social Welfare allowances, benefits or pensions; a medical card; a free travel card issued by the Department of Social Welfare; a travel document containing the name and photograph of the holder; a signing-on card (UB 15 or UA 22) issued by the Department of Social Welfare; a Social Services Card issued by the Department of Social Welfare; a Bank or Savings Bank book; a cheque book; a cheque card; a credit card; a credit union membership card; a birth certificate; a marriage certificate.

<sup>62</sup> Law Reform Commission Report on Jury Service; paragraph 7.53

<sup>63</sup> Law Reform Commission Report on Jury Service; paragraph 7.53

<sup>64</sup> Law Reform Commission Report on Jury Service; paragraph 7.53

## Chapter Seven: Juror misconduct: independent investigations and internet searches

### Judge's direction to juries on searches and misconduct

#### Current position:

*There is currently no fixed script with regards a judges direction to the jury, however the judge will generally address the issues outlined in the LRC's recommendation so as to ensure the jury is aware of their obligations. The exception to this is the reporting of misbehaviour, which may be mentioned by some judges but is not universal.*

#### LRC Recommendation:

7.1. The Commission recommends that the judge's direction to a jury should inform jurors clearly of the type of conduct that is inconsistent with the juror oath to arrive at a verdict "according to the evidence"; that specific mention ought to be made of the use of phone or internet sources to either seek or disseminate information about the case in which they are involved; that the judge should state that jurors should not expect that misconduct is likely to happen, but that they should also be informed clearly as to how to go about reporting misbehaviour if it occurs, in particular to avoid the situation in which this is reported after the verdict.<sup>65</sup>

### Juror misconduct offences

#### Current position:

*The offences suggested by the LRC below are not currently provided for under the Juries Act 1976.*

#### LRC Recommendation:

7.2. The Commission recommends that possible juror misconduct should also be addressed by providing for two specific offences. The first should be an offence for a juror wilfully to disclose to any person during the trial information about the deliberations of the jury or how a juror or jury formed any opinion or conclusion in relation to an issue arising in the trial; this offence would not apply where a juror discloses information to another juror, or where the trial judge consents to a disclosure.

The second offence should prohibit jurors from making inquiries about the accused, or any other matters relevant to the trial, but would not prohibit a juror from making an inquiry of the court, or of another member of the jury, in the proper exercise of his or her

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<sup>65</sup> Law Reform Commission Report on Jury Service; paragraph 8.28

functions as a juror nor would it prevent a juror from making an inquiry authorised by the court. It would also provide that anything done by a juror in contravention of a direction given to the jury by the judge would not be a proper exercise by the juror of his or her functions as a juror. In this offence, “making an inquiry” would be defined to include: asking a question of any person, conducting any research, for example, by searching an electronic database for information (such as by using the internet), viewing or inspecting any place or object, conducting an experiment or causing someone else to make an inquiry.

These offences would be without prejudice to other offences involving the administration of justice, notably contempt of court and perverting the course of justice, and without prejudice to the recommendation in the Report<sup>66</sup> concerning jury research.<sup>67</sup>

## Protocol on prosecutions for offences

### Current position:

*There is currently no protocol on prosecutions for offences under the Juries Act 1976. The Commission notes that “prosecutions for existing offences under the Juries Act 1976 have in the past been brought in rare cases only and that, in recent years, there is no clear evidence that any prosecutions have been brought. The Commission is conscious that prosecution of jurors should not always occur as an automatic response to non-appearance to a jury summons but it is equally important to recognise that the complete absence of prosecutions is likely to lead to a greater level of non-appearance and, ultimately, disrespect for the rule of law. It also signals an official indifference to those who are prepared to attend for jury service and recognise its value as a civic duty.”<sup>68</sup>*

### LRC Recommendations:

7.3. The Commission recommends the development of an agreed protocol on prosecutions for the various offences provided for in the legislation on jury service.<sup>69</sup>

7.4. The Commission also recommends that, to complement this, the legislation on jury service should provide that a fixed charge notice may also be issued in respect of any offence provided for under that legislation.<sup>70</sup>

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<sup>66</sup> Law Reform Commission Report on Jury Service; paragraph 11.18

<sup>67</sup> Law Reform Commission Report on Jury Service; paragraph 8.29

<sup>68</sup> Law Reform Commission Report on Jury Service; paragraph 8.27

<sup>69</sup> Law Reform Commission Report on Jury Service; paragraph 8.30

<sup>70</sup> Law Reform Commission Report on Jury Service; paragraph 8.30

## Chapter Seven: Consultation questions

Q.1. Should the judge's charge to a jury regarding juror misconduct be laid out in guidelines or legislation?

Q.2. What is your opinion on including that a juror cannot use phone or internet sources in the juror oath?

Q.3. Do you agree with the LRC's recommendation (7.2 above) on creating two new offences for juror misconduct, namely

- an offence for a juror wilfully to disclose to any person during the trial information about the deliberations of the jury or how a juror or jury formed any opinion or conclusion in relation to an issue arising in the trial (this offence would not apply where a juror discloses information to another juror, or where the trial judge consents to a disclosure); and
- a second offence which would prohibit jurors from making inquiries about the accused, or any other matters relevant to the trial, but would not prohibit a juror from making an inquiry of the court, or of another member of the jury, in the proper exercise of his or her functions as a juror nor would it prevent a juror from making an inquiry authorised by the court. It would also provide that anything done by a juror in contravention of a direction given to the jury by the judge would not be a proper exercise by the juror of his or her functions as a juror. In this offence, "making an inquiry" would be defined to include: asking a question of any person, conducting any research, for example, by searching an electronic database for information (such as by using the internet), viewing or inspecting any place or object, conducting an experiment or causing someone else to make an inquiry.

Why do you agree/disagree?

Q.4. Should there be an agreed protocol on prosecutions for the various offences provided for in the legislation on jury service? Why/why not?

## Chapter Eight: Juror compensation and expenses

### Juror compensation

#### Current position:

*At present, jurors are not compensated for taking part in jury service. Lunch and refreshments are provided for those who ultimately serve on a jury.*

#### LRC Recommendation:

8.1. The Commission recommends the introduction of a modest flat rate daily payment to cover the cost of transport and other incidentals involved in jury service.<sup>71</sup>

### Provisions for small business and self-employed persons

#### Current position:

*There are no special provisions to alleviate the financial burden of jury service for small businesses or self-employed persons.*

#### LRC Recommendation:

8.2. The Commission also recommends that consideration be given by the Government (notably, the Department of Finance, the Department of Jobs, Enterprise and Innovation, and the Department of Justice and Equality) as to what other means could be used to alleviate the financial burden that jury service involves for small businesses and self-employed persons, including the use of tax credits and insurance.<sup>72</sup>

## Chapter Eight: Consultation questions

Q.1. Should a flat rate daily payment for jurors be introduced? If so, how much? If not, why not?

Q.2. What measures could be introduced to alleviate the financial burden that jury service places upon small businesses and self-employed persons?

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<sup>71</sup> Law Reform Commission Report on Jury Service; paragraph 9.18

<sup>72</sup> Law Reform Commission Report on Jury Service; paragraph 9.18



## Chapter Nine: Lengthy trials and juror comprehension

### Court appointed assessor

#### Current position:

*There is no provision for judges to appoint an assessor in the Juries Act 1976.*

#### LRC Recommendation:

9.1. The Commission recommends that in a jury trial in criminal proceedings, the trial judge should be empowered to appoint an assessor to assist the court, including the jury, to address any difficulties associated with juror comprehension of complex evidence.<sup>73</sup>

### Chapter Nine: Consultation questions

Q.1. What would be the benefits of appointing an assessor?

Q.2. What would be the risks of appointing an assessor?

Q.3. Would appointing an assessor usurp the role of the expert witness?

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<sup>73</sup> Law Reform Commission Report on Jury Service; paragraph 10.31

## Chapter Ten: General Questions on Jury Reform

Q.1. Are there other aspects of jury reform not covered in this paper that you think should be addressed? Please discuss.

# Chapter Eleven: Full List of Consultation Questions

## Chapter One: Consultation questions

- Q.1. What would be the benefits of extending juror eligibility beyond citizenship?
- Q.2. What would be the risks of extending juror eligibility beyond citizenship?
- Q.3. Should jury duty be linked to citizenship? Why do you think so?
- Q.4. Should long-term residents be eligible for jury service? If so, how long should someone be a resident to be considered a long-term resident?

## Chapter Two: Consultation questions

- Q.1. What are the benefits and risks of peremptory challenges?
- Q.2. What would be the effect of reducing peremptory challenges?
- Q.3. What would be the effect of abolishing peremptory challenges?
- Q.4. Would guidelines on the use of and process of peremptory challenges be useful? Why do you think so?
- Q.5. Should there be some level of judicial oversight over the use of peremptory challenges? Please discuss.
- Q.6. What would be the pros and cons of reducing the number of challenges for cause shown?
- Q.7. What impact would the introduction of pre-trial juror questionnaires have on jury selection? Would this impact be a net positive or negative? Why?

## Chapter Three: Consultation questions

- Q.1. What do reasonably practicable supports and accommodation look like to you?
- Q.2. What would be the benefits of individual assessments of capacity for jurors?
- Q.3. What would be the disadvantages/risks of individual assessments of capacity for jurors?
- Q.4. If required, how could individual assessments of capacity be formulated?
- Q.5. Should jurors sign a declaration of capacity when they return their summons?

Q.6. Is the current guidance on the requirements of eligibility for jury service sufficient?

Q.7. Should jurors have a responsibility to inform the court of any question of capacity regarding another juror?

Q.8. Should there be guidelines on what constitutes 'good cause' for the purposes of an application for 'excusal for cause' in relation to accommodation or supports for persons with capacity issues?

Q.9. Should juror eligibility include the ability to read, write, speak and understand English and/or Irish?

## Chapter Four: Consultation questions

Q.1. Should all citizens be eligible for jury duty regardless of the position or office they hold?

Q.2. Is there a risk that people in certain positions or offices could have undue influence over other lay jury members? If so, would a period of ineligibility post-employment serve to minimise the risk? If so, what should that period be?

Q.3. Should solicitors' apprentices, clerks and other persons employed on work of a legal character in solicitors' offices continue to be ineligible for jury service?

Q.4. Should officers attached to a court (which, having regard to the establishment of the Courts Service under the Courts Service Act 1998, should also include employees of the Courts Service) continue to be ineligible for jury service?

Q.5. Should persons employed to take court records (stenographers) continue to be ineligible for jury service?

Q.6. Should civilians employed by An Garda Síochána who perform entirely administrative functions be eligible for jury service?

Q.7. Should Commissioners and staff of the Garda Síochána Ombudsman Commission be ineligible for jury service?

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Q.9. Should section 9(1) and Schedule 1, Part 2, of the Juries Act 1976, which provide for a list of persons excusable from jury service as of right, be repealed and replaced with a general right of excusal for good cause?

Q.10. Should Members of either House of the Oireachtas; Members of the Council of State; The Comptroller and Auditor General; The Clerk of Dáil Éireann; and, The Clerk of Seanad Éireann be deemed ineligible for jury service?

Q.11. Should a deferral system be introduced for jury service, where, if a person provides excusal from service for cause shown, his or her jury service should be deferred for a defined period? If so, why and what should that period be?

## Chapter Five: Consultation questions

Q.1. Should disqualification from jury service be based on the type of crime committed, the sentence received or the time since the offending occurred?

Q.2. Do you agree with the LRC's recommendations (5.1, 5.2, 5.3 above) on disqualification, namely:

- a person shall be disqualified from jury service for life where he or she has been sentenced to imprisonment (including where the sentence is suspended) on conviction for any offence for which the person may be sentenced to life imprisonment (whether as a mandatory sentence or otherwise),
- that, without prejudice to the immediately preceding recommendation, a person shall be disqualified from jury service for life where he or she has been convicted of: (a) an offence that is reserved by law to be tried by the Central Criminal Court; (b) a terrorist offence (within the meaning of the Criminal Justice (Terrorist Offences) Act 2005); or (c) an offence against the administration of justice (namely, contempt of court, perverting the course of justice or perjury), and
- that, in respect of an offence other than those encompassed by the two immediately preceding recommendations, a person shall be disqualified from jury service: (a) for a period of 10 years where he or she has been convicted of such an offence and has been sentenced to imprisonment for a term greater than 12 months (including a suspended sentence); and (b) for the same periods as the "relevant periods" in the Criminal Justice (Spent Convictions) Bill 2012 both in relation to custodial and non-custodial sentences within the meaning of the 2012 Bill.

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Vulnerable Persons) Act 2012), and that where the Garda Síochána Central Vetting Unit communicates with the Courts Service that a named person on the jury list is disqualified from jury service the Courts Service shall not summon that person for jury service? If not, how should juror vetting be undertaken? Are there particular organisations or bodies which should be responsible?

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Q.2. Should parties' access to jury lists be retained, modified or removed? Please discuss.

Q.3. Should parties maintain the right to access jury lists once a jury has been sworn? Why/why not?

Q.4. Should the daily roll call be abolished? Why/why not?

Q.5. Should jurors be required to provide identification? Why/why not?

## Chapter Seven: Consultation questions

Q.1. Should the judge's charge to a jury regarding juror misconduct be laid out in guidelines or legislation?

Q.2. What is your opinion on including that a juror cannot use phone or internet sources in the juror oath?

Q.3. Do you agree with the LRC's recommendation (7.2 above) on creating two new offences for juror misconduct, namely

- an offence for a juror wilfully to disclose to any person during the trial information about the deliberations of the jury or how a juror or jury formed any opinion or conclusion in relation to an issue arising in the trial (this offence would not apply where a juror discloses information to another juror, or where the trial judge consents to a disclosure); and
- a second offence which would prohibit jurors from making inquiries about the accused, or any other matters relevant to the trial, but would not prohibit a juror from making an inquiry of the court, or of another member of the jury, in the proper exercise of his or her functions as a juror nor would it prevent a juror from making an inquiry authorised by the court. It would also provide that anything

done by a juror in contravention of a direction given to the jury by the judge would not be a proper exercise by the juror of his or her functions as a juror. In this offence, “making an inquiry” would be defined to include: asking a question of any person, conducting any research, for example, by searching an electronic database for information (such as by using the internet), viewing or inspecting any place or object, conducting an experiment or causing someone else to make an inquiry.

Why do you agree/disagree?

Q.4. Should there be an agreed protocol on prosecutions for the various offences provided for in the legislation on jury service? Why/why not?

## **Chapter Eight: Consultation questions**

Q.1. Should a flat rate daily payment for jurors be introduced? If so, how much? If not, why not?

Q.2. What measures could be introduced to alleviate the financial burden that jury service places upon small businesses and self-employed persons?

## **Chapter Nine: Consultation questions**

Q.1. What would be the benefits of appointing an assessor?

Q.2. What would be the risks of appointing an assessor?

Q.3. Would appointing an assessor usurp the role of the expert witness?

## **Chapter Ten: Consultation questions**

Q.1. Are there other aspects of jury reform not covered in this paper that you think should be addressed? Please elaborate.

## Appendix A: Research Recommendations

The LRC have included several recommendations, listed below, which are aimed at furthering the quality and quantity of research and data which surrounds juries as well as research aimed at examining the impact some of the aforementioned proposed reforms may have.

The Department will be seeking further engagement with relevant bodies to ascertain whether there is value in the proposed research being carried out.

- 1. The Commission recommends that, without prejudice to the offences recommended concerning disclosure of matters discussed during jury deliberation<sup>74</sup>, provision should be made in legislation for empirical research into matters such as jury representativeness, juror comprehension, juror management and juror capacity and competence, and that such research would be subject to appropriate safeguards to prevent disclosure of the deliberative process of a specific juror or jury and which would be subject to confidentiality requirements comparable to those in section 40(3) of the Civil Liability and Courts Act 2004.<sup>75</sup>**
- 2. The Commission recommends that it would be appropriate that, as to physical disability, the research on jury service recommended in the Report<sup>76</sup> should include research into permissible and practicable supports and accommodation for this purpose, based on international best practice and experience.<sup>77</sup>**
- 3. The Commission also recommends that, in the specific context of potential jurors with hearing or sight difficulties, a dedicated research project should be developed that takes full account of the ongoing development of best practice codes of conduct and standards for Irish sign language interpreters and CART operators, and that also has regard, where relevant, to the potential that the presence of a 13th person (or more) in the jury room may have an impact on the fairness of a trial. This research project would take into account developing codes, standards and practical experience from other jurisdictions, and would then determine whether it would be feasible to apply these in the context of the jury system in Ireland.<sup>78</sup>**

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<sup>74</sup> Law Reform Commission Report on Jury Service; paragraph 8.29

<sup>75</sup> Law Reform Commission Report on Jury Service; paragraph 11.18

<sup>76</sup> Law Reform Commission Report on Jury Service; paragraph 11.18

<sup>77</sup> Law Reform Commission Report on Jury Service; paragraph 4.44

<sup>78</sup> Law Reform Commission Report on Jury Service; paragraph 4.44



- 4. The Commission recommends that it would be appropriate that the research on jury service recommended in the Report<sup>79</sup> should include research into permissible and practicable supports and accommodation in connection with decision-making capacity, based on international best practice and experience.<sup>80</sup>**
  
- 5. The Commission also recommends that it would be appropriate that the research on jury service recommended in the Report<sup>81</sup> should include research into permissible and practicable supports and accommodation for this purpose, based on international best practice and experience.<sup>82</sup>**

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<sup>79</sup> Law Reform Commission Report on Jury Service; paragraph 11.18

<sup>80</sup> Law Reform Commission Report on Jury Service; paragraph 4.61

<sup>81</sup> Law Reform Commission Report on Jury Service; paragraph 11.18

<sup>82</sup> Law Reform Commission Report on Jury Service; paragraph 4.89

## Appendix B: Previously Implemented Recommendations

Some recommendations which were made by the LRC in 2013 have since been implemented. These recommendations, as well as how they have been implemented, are listed below.

- 1. The Commission recommends that the register of electors should continue to be the source from which jury panels are drawn. The Commission notes that the proposed establishment of an Electoral Commission could further facilitate steps to ensure the accuracy of the register of electors.<sup>83</sup>**

The Electoral Commission was successfully established in 2023 as per the Electoral Reform Act 2022.

- 2. The Commission commends the ongoing commitment of the Courts Service to enhance the efficiency of jury selection procedures through the use of ICT resources and through its proposal to establish a central Jury Management system, which has the potential of leading to a higher proportion of those summoned for jury service actually serving on a jury, to enhancing further the efficient and effective running of jury trials and to reducing the administrative costs of the jury selection process.<sup>84</sup>**

The Courts Service have continued working towards enhancing the efficiency of jury selection procedures through a multitude of different methods, including Jury Summonses now being issued from a central office, the introduction of a nationwide online jury 10s response system and updated explanatory notes now being issued to all potential jurors.

- 3. The Commission recommends that the Disability Act 2005 should include express recognition for the provision of physical accessibility, such as wheelchair ramps and other reasonable accommodation such as induction loops, that make participation by persons with disabilities in a jury practicable and achievable.<sup>85</sup>**

Section 25 of the Disability Act 2005 states that, in so far as is practicable, public bodies shall ensure that public buildings are accessible to persons with disabilities.

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<sup>83</sup> Law Reform Commission Report on Jury Service; paragraph 2.18

<sup>84</sup> Law Reform Commission Report on Jury Service; paragraph 2.40

<sup>85</sup> Law Reform Commission Report on Jury Service; paragraph 4.43

Additionally, the Court Service state that their “aim is to provide top class facilities for all users of the courts, including judges, staff, legal practitioners, victims, witnesses, accused persons, media and members of the public.”<sup>86</sup>

In pursuing this, the Court Service have adopted the following measures:

- Members of the public and those with cases before the court can adapt hearing aids to make use of induction loops which form part of our public address system in the courtrooms of refurbished buildings
- All refurbished courthouses have signage and directions at doorways and entrances and exits
- Signage and contact details for court offices are in Braille
- Wheelchair ramps are provided in many courthouses
- Wheelchair users can give evidence in many courthouses at the front of the court beside the witness box<sup>87</sup>

- 4. The Commission considers that there is a strong argument, as described in the 2002 Report of the Committee to Review the Offences Against the State Acts 1939-1998, in favour of a re-examination of whether the use of scheduling of offences for the purposes of the Offences Against the State Act 1939 complies with the State’s obligations under international law and whether a more individualised case-by-case approach may be justified.**<sup>88</sup>

This recommendation has been addressed by the Minister for Justice in setting up the Offences Against the State Act Independent Review Group. The Group’s reports have been published and the Minister is currently considering her response to the Review following a period of consultation on its recommendations.<sup>89</sup>

- 5. The Commission recommends that a court should be empowered to empanel up to three additional jurors where the judge estimates that the trial will take in excess of three months. The Commission also recommends that, where additional jurors have been empanelled and more than 12 jurors remain when the jury is about to retire to consider its verdict, the additional jurors shall be balloted out and then discharged from jury service.**<sup>90</sup>

This recommendation has been implemented through the Courts and Civil Law (Misc. Prov.) Act 2013.

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<sup>86</sup> [Accessibility | The Courts Service of Ireland](#), accessed 10/07/2024

<sup>87</sup> [Accessibility | The Courts Service of Ireland](#), accessed 10/07/2024

<sup>88</sup> Law Reform Commission Report on Jury Service; paragraph 7.50

<sup>89</sup> [gov - Offences Against the State Act - Independent Review Group's Reports \(www.gov.ie\)](#)

<sup>90</sup> Law Reform Commission Report on Jury Service; paragraph 10.17

- 6. The Commission recommends that, before considering the use of non-jury trials or trials by special juries in lengthy or complex trials which would involve creating another exception to the general right in Article 38.5 of the Constitution to jury trial based on a pool that is broadly representative of the community, other procedural solutions to assist jury trials in such cases should first be considered.<sup>91</sup>**

Article 38.3 of the Constitution provides for the establishment of special courts by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. Part V of the Offences Against the State 1939 Act provides for the operation of the non-jury Special Criminal Court on the basis of this constitutional standard.

The Department is not considering creating further exceptions to the right of a trial by jury under Article 38.5 of the Constitution at this time.

During consultations on the Offences Against the State Act Independent Review Group's Report and recommendations, the DPP suggested that consideration be given to providing for an accused to be allowed to request a non-jury trial for a serious offence (e.g. in cases of prejudicial pre-trial coverage). It is proposed to consider this as part of any legislative reform undertaken, and is included in a submission which is awaiting Ministerial decision.<sup>92</sup>

- 7. The Commission recommends that section 57 of the Criminal Justice (Theft and Fraud Offences) Act 2001, which concerns the provision of specified documentation to juries, should be extended to all trials on indictment.<sup>93</sup>**

This recommendation has been implemented through Section 12 of the Criminal Procedure Act 2021.<sup>94</sup>

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<sup>91</sup> Law Reform Commission Report on Jury Service; paragraph 10.09

<sup>92</sup> [gov - Offences Against the State Act - Independent Review Group's Reports \(www.gov.ie\)](http://www.gov.ie)

<sup>93</sup> Law Reform Commission Report on Jury Service; paragraph 10.27

<sup>94</sup> [Section 12 of the Criminal Procedure Act 2021](#)