



# **DÁIL ÉIREANN**

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## **AN BILLE UM CHLÚMHILLEADH 2006 DEFAMATION BILL 2006**

### **LEASUITHE COISTE COMMITTEE AMENDMENTS**

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# DÁIL ÉIREANN

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## AN BILLE UM CHLÚMHILLEADH 2006 —ROGHCHOISTE

### DEFAMATION BILL 2006 —SELECT COMMITTEE

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#### *Leasuithe Amendments*

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#### SECTION 3

1. In page 7, lines 1 to 4, to delete subsection (2) and substitute the following:

“(2) This Act shall not affect the operation of the general law in relation to defamation except to the extent that it provides otherwise (either expressly or by necessary implication).”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

#### SECTION 5

2. In page 7, before section 5, but in Part 1, to insert the following new section:

“Review of  
operation of Act.

5.—The Minister shall, not later than 5 years after the passing of this Act, commence a review of its operation.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

#### *Amendment to Amendment No. 2*

1. In the second line, after the word “operation” to insert “to conclude within 3 months”.

—Charles Flanagan.

3. In page 7, subsection (4)(b), line 26, after “person” to insert the following:

“or the publication to the second-mentioned person was in the course of the performance of duties of a secretarial nature by the second-mentioned person (being a person whose relationship if any to the first-mentioned person is primarily based on contract) and there were no reasonable grounds to believe that the first-mentioned person would suffer any significant injury by reason only of such publication”.

—Pat Rabbitte.

#### SECTION 7

4. In page 8, subsection (1), to delete lines 5 to 8 and substitute the following:

“7.—(1) Where the plaintiff in a defamation action serves on the defendant any pleading containing assertions or allegations of fact,”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

5. In page 8, subsection (1), lines 12 and 13, to delete “, or that further information”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[ SECTION 7 ]

6. In page 8, lines 14 to 19, to delete subsection (2) and substitute the following:

“(2) Where the defendant in a defamation action serves on the plaintiff any pleading containing assertions or allegations of fact, the defendant shall swear an affidavit verifying those assertions or allegations.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

7. In page 8, subsection (3), lines 23 and 24, to delete “assertions, allegations or further information” and substitute “assertions or allegations”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

8. In page 8, subsection (3), line 26, to delete “assertions, allegations or further information” and substitute “assertions or allegations”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

9. In page 8, subsection (4), line 30, to delete “assertions, allegations or further information” and substitute “assertions or allegations”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

10. In page 8, subsection (4), line 32, to delete “assertions, allegations or further information” and substitute “assertions or allegations”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

11. In page 8, subsection (5), lines 36 and 37, to delete all words from and including “or” in line 36 down to and including “be,” in line 37.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 9

12. In page 10, line 12, to delete “, in particular,”.

—Pat Rabbitte.

SECTION 14

13. In page 11, before section 14, but in Part 3, to insert the following new section:

“Abolition of certain defences.

14.—(1) Subject to *sections 15(1) and 16(1)*, any defence that, immediately before the commencement of this Part, could have been pleaded as a defence in an action for libel or slander is abolished.

(2) In this section—

“defence” shall not include a defence under—

(a) statute,

(b) an act of the institutions of the European Communities, or

(c) regulations made for the purpose of giving effect to an act of the institutions of the European Communities;

“European Communities” has the same meaning as it has in the European Communities Act 1972;

“statute” means—

(a) an Act of the Oireachtas, or

[ SECTION 14 ]

- (b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues to be of full force and effect by virtue of Article 50 of the Constitution.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

*Amendment to Amendment No. 13*

1. To delete the fourth to sixteenth line and substitute the following subsection:

“(2) In this section—

“defence” shall not include a defence under—

(a) an enactment, or

(b) an act of the institutions of the European Communities;

“enactment” has the meaning assigned by section 2(1) of the Interpretation Act 2005;

“European Communities” has the same meaning as it has in the European Communities Act 1972.”.

—Pat Rabbitte.

SECTION 15

14. In page 11, subsection (1), line 30, to delete “Act in accordance with *section 1(2)*” and substitute “section”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

15. In page 13, subsection (2), between lines 9 and 10, to insert the following:

“(v) made in the course of proceedings before an arbitral tribunal where the statement is connected with those proceedings,”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

16. In page 13, lines 17 to 20, to delete subsection (4).

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 16

17. In page 13, subsection (1), lines 26 and 27, to delete “Act in accordance with *section 1(2)*” and substitute “section”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

18. In page 13, lines 42 to 48 and in page 14, lines 1 to 4, to delete subsection (3) and substitute the following:

“(3) Without prejudice to the generality of *subsection (1)*, it shall be a defence to a defamation action for the defendant to prove that the statement to which the action relates is—

(a) a statement to which *Part 1 of Schedule 1* applies,

(b) contained in a report, copy, extract or summary referred to in that Part, or

(c) contained in a determination referred to in that Part.

[ SECTION 16 ]

(4) Without prejudice to the generality of *subsection (1)*, it shall be a defence to a defamation action for the defendant to prove that the statement to which the action relates is contained in a report, copy or summary referred to in *Part 2 of Schedule 1*, unless it is proved that the defendant was requested by the plaintiff to publish in the same medium of communication in which he or she published the statement concerned, a reasonable statement by way of explanation or a contradiction, and has refused or failed to do so or has done so in a manner that is not adequate or reasonable having regard to all of the circumstances.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 17

- 19.** In page 14, lines 17 to 27, to delete subsection (1) and substitute the following:

“17.—(1) In a defamation action, the defence of qualified privilege shall fail if, in relation to the publication of the statement in respect of which the action was brought, the plaintiff proves that the defendant acted with malice.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 18

- 20.** In page 15, subsection (2)(a), line 8, after “believed” to insert “with objective reason”.

—Charles Flanagan.

- 21.** In page 15, subsection (2)(a), line 9, after “believed” to insert “with objective reason”.

—Charles Flanagan.

- 22.** In page 15, subsection (2)(a), line 10, after “author” to insert “reasonably”.

—Charles Flanagan.

- 23.** In page 15, subsection (2)(b), to delete lines 11 to 17.

—Charles Flanagan.

SECTION 21

- 24.** In page 17, subsection (2), line 44, to delete “a defence to” and substitute the following:

“an admissible plea in mitigation of any award of damages in”.

—Charles Flanagan.

- 25.** In page 18, lines 10 to 16, to delete subsection (5).

—Charles Flanagan.

SECTION 22

- 26.** In page 18, subsection (1), to delete lines 25 to 27 and substitute the following:

“as soon as practicable after the plaintiff makes complaint to the defendant concerning the utterance to which the apology relates, or after the bringing of the action, whichever is earlier.”.

—Pat Rabbitte.

[ SECTION 24 ]

SECTION 24

27. In page 19, lines 1 to 11, to delete subsection (1) and substitute the following:

“24.—(1) It shall be a defence (to be known, and in this section referred to, as the “defence of fair and reasonable publication”) to a defamation action for the defendant to prove that—

- (a) the statement in respect of which the action was brought was published—
  - (i) in good faith, and
  - (ii) in the course of, or for the purpose of, the discussion of a subject of public interest, the discussion of which was for the public benefit,
- (b) in all of the circumstances of the case, the manner and extent of publication of the statement did not exceed that which was reasonably sufficient, and
- (c) in all of the circumstances of the case, it was fair and reasonable to publish the statement.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

28. In page 19, subsection (2), lines 26 to 32, to delete paragraph (f) and substitute the following:

“(f) in the case of a statement published in a periodical by a person who, at the time of publication, was a member of the Press Council, the extent to which the person adhered to the code of standards of the Press Council and abided by determinations of the Press Ombudsman and determinations of the Press Council;

(g) in the case of a statement published in a periodical by a person who, at the time of publication, was not a member of the Press Council, the extent to which the publisher of the periodical adhered to standards equivalent to the standards specified in *paragraph (f)*.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

29. In page 19, subsection (2)(h), line 39, after “obtain” to insert “in advance”.

—Pat Rabbitte.

30. In page 19, subsection (2), lines 41 and 42, to delete paragraph (i) and substitute the following:

“(i) the attempts made, and the means used, by the defendant to verify the assertions and allegations concerning the plaintiff in the statement.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

31. In page 20, lines 4 to 15, to delete subsection (4).

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

32. In page 20, subsection (4)(b), line 9, to delete “out of spite, ill will or”.

—Charles Flanagan.

33. In page 20, subsection (4), between lines 12 and 13, to insert the following:

“(d) as far as practicable, he or she made a reasonable attempt to obtain in advance and publish a response from the person to whom the publication related and”.

—Pat Rabbitte.

[ SECTION 26 ]

SECTION 26

**34.** In page 21, subsection (1), line 14, after “the” to insert “District Court, Circuit Court or”.

—Pat Rabbitte.

**35.** In page 21, subsection (6), line 39, to delete “applicant” and substitute “plaintiff”.

—Pat Rabbitte.

SECTION 27

**36.** In page 22, between lines 19 and 20, to insert the following subsection:

“(5) Where a payment to which this section applies is made, the court before which the defamation action is brought may make such order in relation to costs as it considers appropriate having regard to the manner in which the action has been defended by the defendant, and this subsection shall apply notwithstanding any provision in relation to the payment of costs in a defamation action contained in rules of court.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 31

*Section proposed to be deleted.*

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 32

**37.** In page 25, subsection (1), line 13, after “The” to insert “Circuit Court or the”.

—Pat Rabbitte.

SECTION 34

**38.** In page 26, before section 34, but in Part 5, to insert the following new section:

“Abolition of  
offence of  
defamatory libel.

34.—The offence of defamatory libel is abolished.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 34 of the Bill.]

*Amendment to Amendment No. 38*

1. To delete “offence of defamatory libel” and substitute “common law offence of blasphemous libel”.

—Pat Rabbitte.

**39.** In page 26, line 3, to delete “criminal libel”.

—Pat Rabbitte.

SECTION 35

**40.** In page 26, before section 35, but in Part 5, to insert the following new section:

“Publication or  
utterance of  
blasphemous matter.

35.—(1) A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €100,000.



[ SECTION 35 ]

(2) For the purposes of this section, a person publishes or utters blasphemous matter if—

- (a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and
- (b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

*Amendments to Amendment No. 40*

1. In subsection (1), in the second and third line, to delete “upon conviction on indictment to a fine not exceeding €100,000.” and substitute the following:

“upon summary conviction to a fine not exceeding €1,000.”.

—Pat Rabbitte.

2. In subsection (2), between the eighth and ninth line, to insert the following:

“(b) the matter published lacks any literary, artistic, social or academic merit, and”.

—Pat Rabbitte.

41. In page 26, before section 35, but in Part 5, to insert the following new section:

“Seizure of copies of blasphemous statements.

36.—(1) Where a person is convicted of an offence under *section 35\**, the court may issue a warrant—

- (a) authorising any member of the Garda Síochána to enter (if necessary by the use of reasonable force) at all reasonable times any premises (including a dwelling) at which he or she has reasonable grounds for believing that copies of the statement to which offence related are to be found, and to search those premises and seize and remove all copies of the statement found therein,
- (b) directing the seizure and removal by any member of the Garda Síochána of all copies of the statement to which the offence related that are in the possession of any person,
- (c) specifying the manner in which copies so seized and removed shall be detained and stored by the Garda Síochána.

(2) A member of the Garda Síochána may—

- (a) enter and search any premises,
- (b) seize, remove and detain any copy of a statement to which an offence under *section 35\** relates found therein or in the possession of any person,

in accordance with a warrant under *subsection (1)*.

[ SECTION 35 ]

(3) Upon final judgment being given in proceedings for an offence under *section 35\**, anything seized and removed under *subsection (2)* shall be disposed of in accordance with such directions as the court may give upon an application by a member of the Garda Síochána in that behalf.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[\*Note: This is the appropriate reference if amendment No. 40 is accepted]

SCHEDULE 1

**42.** In page 31, between lines 30 and 31, to insert the following:

“19. Any statement published by a person in accordance with a requirement under an Act of the Oireachtas whether or not that person is the author of the statement.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.