



**SEANAD ÉIREANN**

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

**LEASUITHE COISTE  
COMMITTEE AMENDMENTS**

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# SEANAD ÉIREANN

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## AN BILLE UM CHLÚMHILLEADH 2006 —AN CHOISTE

### DEFAMATION BILL 2006 —COMMITTEE STAGE

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*Leasuithe  
Amendments*

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*\*Government amendments are distinguished by an asterisk*

#### SECTION 5

1. In page 7, subsection (4)(b), line 24, 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”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

#### SECTION 9

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

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

#### SECTION 11

*Section opposed.*

—*Senator David Norris.*

#### SECTION 15

3. In page 12, subsection (2), lines 3 and 4, to delete paragraph (f).

—*Senator David Norris.*

- \*4. In page 12, subsection (2), between lines 15 and 16, to insert the following:

“(j) a fair and accurate report of proceedings to which a relevant enactment referred to in section 40 of the Civil Liability and Courts Act 2004 applies;”.

- \*5. In page 12, subsection (2)(r), line 44, to delete “under the Constitution” and substitute “by law in the State”.

#### SECTION 18

- \*6. In page 14, subsection (1), line 37, to delete “Act” and substitute “section”.

- \*7. In page 15, subsection (2)(b)(ii), to delete lines 14 and 15 and substitute the following:

[No. 43 of 2006]

[04 December, 2007]

[ SECTION 18 ]

“(II) the defence of qualified privilege.”.

\*8. In page 15, subsection (2)(c), line 19, to delete “public importance” and substitute “public interest”.

\*9. In page 15, lines 20 to 38, to delete subsection (3) and substitute the following:

“(3) (a) The defence of honest opinion shall fail, if the opinion concerned is based on allegations of fact to which *subsection (2)(b)(i)* applies, unless—

(i) the defendant proves the truth of those allegations, or

(ii) where the defendant does not prove the truth of all of those allegations, the opinion is honestly held having regard to the allegations of fact the truth of which are proved.

(b) The defence of honest opinion shall fail, if the opinion concerned is based on allegations of fact to which *subsection (2)(b)(ii)* applies, unless—

(i) the defendant proves the truth of those allegations, or

(ii) where the defendant does not prove the truth of those allegations—

(I) the opinion could not reasonably be understood as implying that those allegations were true, and

(II) at the time of the publication of the opinion, the defendant did not know or could not reasonably have been expected to know that those allegations were untrue.”.

10. In page 15, subsection (3)(a), lines 24 to 27, to delete all words from and including “, but” in line 24 down to and including “proved” in line 27.

—*Senator Jim Walsh.*

*Section opposed.*

—*Senator David Norris.*

SECTION 19

\*11. In page 16, line 4, to delete “shall”.

SECTION 21

\*12. In page 17, subsection (2), line 35, to delete “making” and substitute “the publication of”.

SECTION 22

13. In page 18, between lines 8 and 9, to insert the following subsection:

“(2) The court may regard an apology as effecting a substantial mitigation of damage if, but only if, it is made within 14 days of complaint being made in respect of the utterance to which the apology relates, and if the defendant’s proposals for publication of the apology are reasonable.”.

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

[ SECTION 22 ]

14. In page 18, subsection (3)(a), line 15, after “not” to insert “automatically”.  
—*Senator David Norris.*
15. In page 18, subsection (3)(b), line 17, after “not” to insert “automatically”.  
—*Senator David Norris.*

SECTION 24

16. In page 18, lines 26 to 36, to delete subsection (1) and substitute the following:

“24.—(1) Subject to *subsection (4)*, 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 the statement in respect of which the action was brought was published in good faith and in all the circumstances of the case, it was fair and reasonable to publish the statement.”.

—*Senator Eugene Regan.*

- \*17. In page 18, subsection (1), line 27, to delete “as “the defence” and substitute “as the “defence”.
18. In page 18, subsection (1), line 31, to delete paragraph (a).  
—*Senator David Norris.*
- \*19. In page 18, subsection (1)(b), line 33, to delete “public importance” and substitute “public interest”.
20. In page 19, subsection (2)(f)(i), lines 9 and 10, to delete all words from and including “or” in line 9 down to and including “standards” in line 10.  
—*Senator David Norris.*
- \*21. In page 19, subsection (2)(f), to delete lines 11 and 12 and substitute the following:
- “(ii) abided by determinations of the Press Ombudsman and determinations of the Press Council;”.
22. In page 19, subsection (2), lines 13 to 17, to delete paragraph (g).  
—*Senator Eugene Regan.*
23. In page 19, subsection (2)(g), lines 15 and 16, to delete “a reasonable attempt was” and substitute “reasonable attempts were”.  
—*Senator Jim Walsh.*
24. In page 19, subsection (2)(g), line 16, after “publisher” to insert “in advance”.  
—*Senator Jim Walsh.*
25. In page 19, subsection (2)(g), line 16, after “obtain” to insert “in advance”.  
—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*
26. In page 19, subsection (2)(g), line 17, after “person” to insert the following:
- “and the extent to which the prominence and extent of the representation of that person’s response compares with the prominence and extent of the suspicion, allegation or fact concerned”.
- Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

[ SECTION 24 ]

27. In page 19, subsection (3)(b), lines 25 to 30, to delete all words from and including “if,” in line 25 down to and including “published” in line 30.  
—*Senator Jim Walsh.*
28. In page 19, subsection (4)(b), line 36, to delete “out of spite, ill will or”.  
—*Senator Eugene Regan.*
29. In page 19, subsection (4), between lines 39 and 40, 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”.  
—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

SECTION 26

30. In page 20, subsection (1), line 41, after “the” to insert “District Court, Circuit Court or”.  
—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*
- \*31. In page 21, subsection (2)(b), line 5, to delete “make” and substitute “make and publish”.
32. In page 21, subsection (6), line 19, to delete “applicant” and substitute “plaintiff”.  
—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

SECTION 27

33. In page 21, subsection (4), line 41, to delete “not”.  
—*Senator Jim Walsh.*

SECTION 28

- \*34. In page 22, subsection (2), line 6, to delete “specify”.
- \*35. In page 22, subsection (2), lines 7 and 8, to delete paragraph (a) and substitute the following:  
“(a) specify—  
(i) the date and time upon which, or  
(ii) the period not later than the expiration of which,  
the correction order shall be published, and”.
- \*36. In page 22, subsection (2)(b), line 9, to delete “the form” and substitute “specify the form”.

SECTION 29

37. In page 22, subsection (2), line 27, to delete “shall give directions” and substitute “may advise”.  
—*Senator David Norris.*

[ SECTION 29 ]

**38.** In page 23, subsection (4), between lines 21 and 22, to insert the following:

“(I) the extent to which it was fair and reasonable to publish the statement having regard to matters specified in *section 24 subsection (2)*.”

—*Senator Jim Walsh.*

**39.** In page 23, between lines 21 and 22, to insert the following subsection:

“(5) In the case of a successful defamation action, the Editor and Proprietor of the newspaper which published the defamatory statement shall be liable for damages.”

—*Senator David Norris.*

**40.** In page 23, subsection (6)(a), line 29, before “give” to insert “with the leave of the court,”

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

**41.** In page 23, between lines 38 and 39, to insert the following subsection:

“(7) In a defamation action the Press Council may make a recommendation regarding the reasonable parameters of damages and limitation thereto to be awarded in any case where the newspaper apologises in advance of the hearing. The court must take such a recommendation into consideration in assessing damages.”

—*Senator David Norris.*

SECTION 32

**42.** In page 24, subsection (1), line 34, after “The” to insert “Circuit Court or the”

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

SECTION 35

**43.** In page 25, subsection (1), line 24, after “knowingly” to insert “or recklessly”

—*Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*

SECTION 43

**44.** In page 30, between lines 4 and 5, to insert the following subsections:

“(2) Any such order made under this section shall be for a period not to exceed five years.

(3) After the expiry period for each order the Minister shall conduct a review which will be laid before the Houses of the Oireachtas, together with a copy of any new or renewal order.”

—*Senator Jim Walsh.*

SCHEDULE 1

**\*45.** In page 31, paragraph 5, line 1, to delete “under the Constitution” and substitute “by law in the State”.

SCHEDULE 2

**46.** In page 33, paragraph 4, line 8, to delete “shall” and substitute “may”.

—*Senator David Norris.*

[ *SCHEDULE 2* ]

47. In page 33, paragraph 7(1), lines 38 to 40, to delete all words from and including “from” in line 38 down to and including “purpose” in line 40 and substitute “by the Exchequer”.

—*Senator David Norris.*