



SEANAD ÉIREANN

AN BILLE UM CHLÚMHILLEADH 2006 DEFAMATION BILL 2006

LEASUITHE A RINNE AN DÁIL AMENDMENTS MADE BY THE DÁIL

*The page and line references in this list of amendments are to the
text of the Bill as passed by Seanad Éireann*

SEANAD ÉIREANN

AN BILLE UM CHLÚMHILLEADH 2006
—ROGHCHOISTE
[BILLE SEANAID ARNA LEASÚ AG AN DÁIL]

DEFAMATION BILL 2006
[SEANAD BILL AMENDED BY THE DÁIL]

*Leasuithe a rinne an Dáil
Amendments made by the Dáil*

SECTION 3

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

“(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).”

SECTION 5

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

“Review of
operation of Act.

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

(2) A review under *subsection (1)* shall be completed not later than one year after its commencement.”

SECTION 7

3. In page 8, subsection (1), lines 5 to 8 deleted and the following substituted:

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

4. In page 8, subsection (1), lines 12 and 13, “, or that further information” deleted.

5. In page 8, lines 14 to 19, subsection (2) deleted and the following substituted:

“(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.”

6. In page 8, subsection (3), lines 23 and 24, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.

7. In page 8, subsection (3), line 26, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.

[SECTION 7]

8. In page 8, subsection (4), line 30, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.
9. In page 8, subsection (4), line 32, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.
10. In page 8, subsection (5), lines 36 and 37, all words from and including “or” in line 36 down to and including “be,” in line 37 deleted.

SECTION 14

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

“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
- (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.”.

SECTION 15

12. In page 11, subsection (1), line 30, “Act in accordance with *section 1(2)*” deleted and “section” substituted.

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

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

14. In page 13, lines 17 to 20, subsection (4) deleted.

SECTION 16

15. In page 13, subsection (1), lines 26 and 27, “Act in accordance with *section 1(2)*” deleted and “section” substituted.

[SECTION 16]

16. In page 13, lines 42 to 48 and in page 14, lines 1 to 4, subsection (3) deleted and the following substituted:

“(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.

(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.”.

SECTION 17

17. In page 14, lines 17 to 27, subsection (1) deleted and the following substituted:

“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.”.

SECTION 22

18. In page 18, subsection (1), lines 25 to 27 deleted and the following substituted:

“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.”.

SECTION 24

19. In page 19, lines 1 to 11, subsection (1) deleted and the following substituted:

“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,

[SECTION 24]

(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.”.

20. In page 19, subsection (2), lines 26 to 32, paragraph (f) deleted and the following substituted:

“(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)*.”.

21. In page 19, subsection (2), lines 41 and 42, paragraph (i) deleted and the following substituted:

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

22. In page 20, lines 4 to 15, subsection (4) deleted.

SECTION 26

23. In page 21, line 14, “High Court” deleted and “Circuit Court” substituted.

24. In page 21, between lines 28 and 29, the following subsection inserted:

“(3) For the avoidance of doubt, an applicant for a declaratory order shall not be required to prove that the statement to which the application concerned relates is false.”.

25. In page 21, lines 33 and 34, subsection (4) deleted.

26. In page 22, between lines 2 and 3, the following subsection inserted:

“(9) An application under this section shall be made to the Circuit Court sitting in the circuit where—

(a) the statement to which the application relates was published, or

(b) the defendant or one of the defendants, as the case may be, resides.”.

SECTION 31

27. In page 25, lines 4 to 12, section 31 deleted.

SECTION 34

28. In page 26, line 3, “criminal” deleted and “defamatory” substituted.

[SECTION 35]

SECTION 35

29. In page 26, before section 35, but in Part 5, the following new section inserted:

“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 €25,000.

(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.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.

(4) In this section “religion” does not include an organisation or cult—

- (a) the principal object of which is the making of profit, or
- (b) that employs oppressive psychological manipulation—
 - (i) of its followers, or
 - (ii) for the purpose of gaining new followers.”.

30. In page 26, before section 35, but in Part 5, the following new section inserted:

“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 the 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,

[*SECTION 35*]

(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)*.

(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.”.

[**Note: This is a reference to the section inserted by amendment No. 28.*]

SCHEDULE 1

31. In page 31, between lines 30 and 31, the following inserted:

“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.”.