



**SEANAD ÉIREANN**

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

**LEASUITHE TUARASCÁLA  
REPORT AMENDMENTS**

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# SEANAD ÉIREANN

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## AN BILLE UM CHLÚMHILLEADH 2006 —AN TUARASCÁIL

### DEFAMATION BILL 2006 —REPORT

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*Leasuithe  
Amendments*

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*\*Government amendments are distinguished by an asterisk.*

1. In page 7, lines 1 and 2, to delete all words from and including “except” in line 1 down to and including “implication” in line 2.  
—*Senators Eugene Regan, Maurice Cummins.*

2. In page 7, 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.*

3. In page 9, to delete lines 43 and 44.

—*Senators Eugene Regan, Maurice Cummins.*

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

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

5. In page 10, to delete lines 17 to 20 and substitute the following:

“(3) In this section “multiple publication” means publication by a person of the same defamatory statement in two or more of his or her media publications whether contemporaneously or not.”.

—*Senators Eugene Regan, Maurice Cummins.*

6. In page 10, to delete lines 21 to 25

—*Senators David Norris, Eugene Regan.*

- \*7. In page 11, line 33, to delete “Without prejudice to the generality of *subsection (1)*” and substitute the following:

“Subject to section 11(2) of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997, and without prejudice to the generality of *subsection (1)*”.

8. In page 12, to delete lines 3 and 4.

—*Senators David Norris, Ronan Mullen.*

9. In page 12, line 3, after “person” to insert “in the course of”.

—*Senators Eugene Regan, Maurice Cummins.*

**\*10.** In page 12, to delete lines 27 and 28 and substitute the following:

“(I) made in proceedings before a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas.”.

**11.** In pages 14, 15 and 16, in page 14 to delete lines 40 to 43, in page 15 to delete lines 1 to 42 and in page 16 to delete lines 1 to 9.

—*Senators David Norris, Ronan Mullen.*

**12.** In page 15, lines 3 and 4, to delete “the defendant believed” and substitute “defendant reasonably believed”.

—*Senators Eugene Regan, Maurice Cummins.*

**13.** In page 15, line 4, after “opinion” to insert “reasonably”.

—*Senators Eugene Regan, Maurice Cummins.*

**14.** In page 15, line 6, after “true” to insert “and”.

—*Senators Eugene Regan, Maurice Cummins.*

**15.** In page 15, line 26 to delete all the words from and including “or” down to and including “proved.” in line 30.

—*Senators Jim Walsh, Lisa McDonald.*

**16.** In page 16, line 42, after “apology” to insert the following:

“of equal prominence in the publication to contain the apology to that of the original statement”.

—*Senators Eugene Regan, Maurice Cummins.*

**17.** In page 16, line 45, after “circumstances” to insert the following:

“within four weeks from the date of the written claim”.

—*Senators Eugene Regan, Maurice Cummins.*

**\*18.** In page 18, to delete lines 10 to 17 and substitute the following:

“22.—(1) In a defamation action the defendant may give evidence in mitigation of damage that he or she—

(a) made or offered an apology to the plaintiff in respect of the statement to which the action relates, and

(b) published the apology in such manner as ensured that the apology was given the same or similar prominence as was given to that statement, or offered to publish an apology in such a manner,

either before the bringing of the action or, where the action was commenced before there was an opportunity to so do, as soon as practicable thereafter.”.

**19.** In page 18, line 11, to delete “offered an apology” and substitute “offered a reasonable and adequate apology”.

—*Senators Eugene Regan, Maurice Cummins.*

**20.** In page 18, lines 13 to 17, to delete all words from and including “, either—” in line 13 down to and including “apology.” in line 17 and substitute the following:

“within 30 days from the date of the written complaint or as soon as practicable thereafter.”.

—*Senators Eugene Regan, Maurice Cummins.*

21. In page 18, between lines 17 and 18, to insert the following:

“(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.*

22. In page 18, line 24, after “not” to insert “automatically”.

—*Senators David Norris, Ronan Mullen.*

23. In page 18, line 26, after “not” to insert “automatically”.

—*Senators David Norris, Ronan Mullen.*

24. In page 18, line 33, after “publication” to insert “in writing or otherwise”.

—*Senators Eugene Regan, Maurice Cummins.*

25. In page 18, to delete lines 35 to 45, to delete page 19 and in page 20, to delete lines 1 to 10.

—*Senators Eugene Regan, Maurice Cummins.*

26. In page 18, to delete lines 35 to 45, to delete page 19 and in page 20, to delete lines 1 to 10 and substitute the following:

“Unavailability of defence of fair and reasonable publication.

24.—It shall not be a defence to a defamation action for a defendant to prove that the statement in respect of which the action was brought was published—

(a) in good faith, or

(b) in the course of, or for the purposes of, the discussion of a subject of public interest, the discussion of which was for the public benefit, or

(c) in circumstances which were fair and reasonable.”

—*Senators Rónán Mullen, Feargal Quinn.*

27. In page 18, to delete line 40.

—*Senators David Norris, Ronan Mullen.*

28. In page 19, line 18 to delete all the words from "or" down to and including "standards" in line 19.

—*Senators David Norris, Ronan Mullen.*

\*29. In page 19, to delete lines 22 to 26 and substitute the following:

“(g) the extent to which the plaintiff’s version of events was represented in the publication concerned and given the same or similar prominence as was given to the statement concerned;

(h) if the plaintiff’s version of events was not so represented, the extent to which a reasonable attempt was made by the publisher to obtain and publish a response from that person; and”.

30. In page 19, line 25, after “publisher” to insert “in advance”.

—*Senators Jim Walsh, Lisa McDonald.*

31. In page 19, line 25, after “obtain” to insert “in advance”.

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

32. In page 19, line 26, 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.*

\*33. In page 19, to delete lines 34 to 39 and substitute the following:

“(b) entitle the court to draw any inference therefrom.”.

34. In page 19, lines 34 to 39, to delete all words from and including “if,” in line 34 down to and including “published” in line 39.

—*Senators Jim Walsh, Lisa McDonald.*

35. In page 20, between lines 2 and 3, 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.*

36. In page 21, line 4, after “the” to insert “District Court, Circuit Court or”.

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

\*37. In page 21, to delete line 14 and substitute the following:

“(c) the respondent failed or refused to accede to that request or, where he or she acceded to that request, failed or refused to give the apology, correction or retraction the same or similar prominence as was given by the respondent to the statement concerned.”.

38. In page 21, line 25, to delete “applicant” and substitute “plaintiff”.

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

39. In page 22, line 4, to delete “not”.

—*Senators Jim Walsh, Lisa McDonald.*

\*40. In page 22, to delete lines 25 to 29 and substitute the following:

“(3) Where a plaintiff intends to make an application under this section, he or she shall so inform—

(a) the defendant by notice in writing, not later than 7 days before the trial of the action, and

(b) the court at the trial of the action.”.

41. In page 22, line 37, to delete “shall give directions ” and substitute “may advise”.

—*Senators David Norris, Joe O’Toole.*

- \*42. In page 23, to delete lines 24 to 28 and substitute the following:
- “(j) if the defence of qualified privilege is pleaded, the extent to which the defendant has acceded to the request of the plaintiff to publish a reasonable statement by way of explanation or contradiction, and”.
43. In page 23, between lines 33 and 34, 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.”.
- Senators David Norris, Joe O’Toole.*
- \*44. In page 23, line 39, to delete “may” and substitute “may,”.
- \*45. In page 23, line 40, to delete “damages” and substitute “damages, give evidence”.
46. In page 23, line 41, before “give” to insert “with the leave of the court,”.
- Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*
- \*47. In page 23, line 41, to delete “give evidence” and substitute “with the leave of the court,”.
- \*48. In page 23, line 45, to delete “give evidence”.
49. In page 24, between lines 3 and 4, 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.”.
- Senators David Norris, Joe O’Toole.*
50. In page 25, line 1, after “The” to insert “Circuit Court or the”.
- Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*
- \*51. In page 25, to delete lines 37 to 40 and in page 26, to delete lines 1 to 43.
52. In page 25, line 37, after “knowingly” to insert “or recklessly”.
- Senators Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Dominic Hannigan, Alan Kelly.*
- \*53. In page 26, to delete lines 44 and 45 and in page 27, to delete lines 1 to 25.
54. In page 28, to delete lines 34 to 47 and in page 29, to delete lines 1 to 12.
- Senators Eugene Regan, Maurice Cummins.*
55. In page 30, between lines 19 and 20, to insert the following:
- “(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.”.
- Senators Jim Walsh, Lisa McDonald.*

56. In page 34, line 16, to delete “shall” and substitute “may”.  
—*Senators David Norris, Ronan Mullen.*
57. In page 34, between lines 27 and 28, to insert the following:  
“(3) The quorum for a meeting of the Press Council shall be 7 directors, a majority of whom shall represent the public interest.”  
—*Senators Rónán Mullen, Feargal Quinn.*
58. In page 35, in line 10 to delete all the words from and including “from” in line 10 down to and including “purpose” in line 12 and substitute “by the Exchequer”.  
—*Senators David Norris, Ronan Mullen.*