



SEANAD ÉIREANN

AN BILLE UM CHLÚMHILLEADH (LEASÚ), 2024 DEFAMATION (AMENDMENT) BILL 2024

LEASUITHE COISTE COMMITTEE AMENDMENTS

SEANAD ÉIREANN

AN BILLE UM CHLÚMHILLEADH (LEASÚ), 2024 —AN COISTE

DEFAMATION (AMENDMENT) BILL 2024 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 4

1. In page 6, lines 26 to 28, to delete all words from and including “a” in line 26 down to and including line 28 and substitute the following:

“the court may, on the application of any party to a defamation action in the High Court, or a question of fact or an issue arising in such an action, order that the action or any issue of fact in the action shall be tried without a jury if it is of opinion that such trial—

- (a) will require any protracted examination of documents or accounts or any technical, scientific or local investigation which cannot conveniently be made with a jury,
 - (b) is for any special reason (to be mentioned in the order) unsuitable to be tried with a jury.
- (2) The court may, on the application of any party to a defamation action in the High Court, order that in matters which may involve substantial damages—
- (a) issues of fact shall be tried with a jury, and
 - (b) the quantum of any damages which may arise be adjudicated by the presiding judge.”.

—*Senators Nicole Ryan, Patricia Stephenson.*

2. In page 6, lines 27 and 28, to delete all words from and including “or” where it firstly occurs in line 27 down to and including line 28 and substitute the following:

“or any question of fact or any issue arising in such action shall not be tried with a jury unless otherwise ordered. A court may order for trial with a jury where, having regard to the circumstances of the case, it is in the interest of justice to make such order.”.

—*Senator Patricia Stephenson.*

3. In page 6, line 28, after “jury” to insert the following:

“, unless it is ordered by the High Court that, having regard to the nature of the claim on which the particular action is based, both the public interest and the interests of

[SECTION 4]

justice would be better served by its trial with a jury.”.

—*Senators Michael McDowell, Victor Boyhan, Tom Clonan, Joe Conway, Sharon Keogan, Aubrey McCarthy.*

Section opposed.

—*Senators Patricia Stephenson, Lynn Ruane, Nicole Ryan.*

SECTION 5

Section opposed.

—*Senators Patricia Stephenson, Nicole Ryan, Michael McDowell, Victor Boyhan, Tom Clonan, Joe Conway, Sharon Keogan, Aubrey McCarthy.*

SECTION 6

4. In page 7, between lines 14 and 15, to insert the following:

“6. Nothing in this Part prohibits the trial in the High Court with a jury of a claim in defamation in conjunction with any related claim arising substantially out of the same alleged facts and circumstances which would otherwise be triable by the High Court with a jury.”.

—*Senators Michael McDowell, Victor Boyhan, Tom Clonan, Joe Conway, Sharon Keogan, Aubrey McCarthy.*

5. In page 7, between lines 14 and 15, to insert the following:

“PART 4

DEFAMATORY STATEMENT

6. Section 2 of the principal Act is hereby amended by the substitution of the following for the definition of “defamatory statement” appearing in that section:

“ ‘defamatory statement’ means a statement that tends to cause harm both to a serious and to a lasting extent in the eyes of reasonable members of society, and ‘defamatory’ and ‘serious harm’ shall be construed accordingly.”.

—*Senators Michael McDowell, Victor Boyhan, Tom Clonan, Joe Conway, Sharon Keogan, Aubrey McCarthy.*

6. In page 7, line 27, to delete “, or is likely to cause,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

7. In page 7, line 31, to delete “, or is likely to cause,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

[SECTION 7]

SECTION 7

8. In page 7, after line 32, to insert the following:

“Serious harm threshold for natural persons

7. (1) The Principal Act is amended by the insertion of the following section after section 12:

“12A. A statement concerning a natural person shall not be considered defamatory unless its publication has caused, or is likely to cause, serious harm to the reputation of that person.”.

- (2) The amendment effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.”.

—*Senator Sharon Keogan.*

SECTION 8

9. In page 8, lines 22 and 23, to delete “it shall be a defence to a defamation action for the defendant to” and substitute “no cause of action shall lie where the defendant can”.

—*Senator Mary Fitzpatrick.*

SECTION 13

10. In page 12, between lines 7 and 8, to insert the following:

“ ‘live broadcast’ includes a broadcast where a short time delay between the utterance of any spoken matter and its broadcast is created for editorial purposes or control;”.

—*Senators Michael McDowell, Victor Boyhan, Tom Clonan, Joe Conway, Sharon Keogan, Aubrey McCarthy.*

SECTION 19

11. In page 14, to delete lines 6 to 22 and substitute the following:

“ ‘abusive court proceedings against public participation’ means defamation proceedings or part thereof that pursue unfounded claims and that are not brought to genuinely assert or exercise a right, and have the effect of preventing, restricting or penalising public participation, frequently exploiting an imbalance of power between the parties, including but not limited to—

- (a) where a claim is of a disproportionate, excessive or unreasonable nature,
- (b) the existence of multiple proceedings initiated by the plaintiff or associated parties in relation to similar matters,
- (c) intimidation, harassment or threats on the part of the plaintiff or his or her representatives, or
- (d) the use in bad faith of procedural tactics;”.

—*Senator Sharon Keogan.*

[SECTION 19]

12. In page 14, lines 8 and 9, to delete “but that have as their main purpose the prevention, restriction or penalisation of” and substitute “have the effect of preventing, restricting or penalising”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

13. In page 15, lines 40 and 41, to delete “manifestly unfounded” and substitute “an abusive lawsuit against public participation”.

—*Senator Patricia Stephenson, Alice-Mary Higgins, Lynn Ruane..*

14. In page 15, lines 40 and 41, to delete “manifestly unfounded” and substitute “an abusive lawsuit against public participation, the court shall determine the application as expeditiously as possible consistent with the administration of justice”.

—*Senator Sharon Keogan.*

15. In page 16, to delete lines 5 to 20.

—*Senator Sharon Keogan.*

16. In page 16, between lines 20 and 21, to insert the following:

“Stay of proceedings upon SLAPP application

- 34EA.** (1) Upon an application made under section 34E by a defendant, no further step may be taken in the proceeding by any party until the application, including any appeal against the application, has been finally disposed of.
- (2) Unless the court orders otherwise, the claimant shall not amend his or her pleadings—
- (a) to avoid dismissal under this Part, or
- (b) to continue the proceeding after dismissal.”.

—*Senator Sharon Keogan.*

17. In page 16, between lines 20 and 21, to insert the following:

“Onus on claimant to justify continuation of proceedings

- 34EA.** Where an application under section 34E has been made, the court shall not strike out the claim if the claimant satisfies the court that—
- (a) the claim is likely to prevail at trial, and
- (b) the harm suffered or likely to be suffered by the claimant as a result of the defendant’s expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in dismissing the case before trial.”.

—*Senator Sharon Keogan.*

18. In page 16, between lines 20 and 21, to insert the following:

- “34EA.** (1) Where a defendant in defamation proceedings relating to his or her engagement in public participation makes an application referred to in

[SECTION 19]

section 34E(1), he or she may also make an application, on notice to the plaintiff in those proceedings, for a declaration by the court that the proceedings or part thereof amount to abusive court proceedings against public participation.

- (2) Unless a judge orders otherwise, the claimant is not permitted to amend his or her pleadings in the proceeding—
 - (a) in order to prevent an order under this Act dismissing the proceeding, or
 - (b) if the proceeding is dismissed under the Act, in order to continue the proceeding.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

19. In page 17, between lines 13 and 14, to insert the following:

- “(3) Where an application for declaration has been made before or during a trial of action and costs, a judge must not strike out a claim and appeal under section 34E if the claimant satisfies the judge that—
 - (a) the claim is likely to prevail at trial, and
 - (b) the harm suffered or likely to be suffered by the claimant as a result of the defendant’s expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in dismissing the case before trial.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*