



# **DÁIL ÉIREANN**

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## **AN BILLE EADRÁNA (LEASÚ), 2025 ARBITRATION (AMENDMENT) BILL 2025**

### **LEASUITHE COISTE COMMITTEE AMENDMENTS**

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# DÁIL ÉIREANN

## AN BILLE EADRÁNA (LEASÚ), 2025 —ROGHCHOISTE

### ARBITRATION (AMENDMENT) BILL 2025 —SELECT COMMITTEE

#### *Leasuithe Amendments*

SECTION 2  
*Section opposed.*

—Duncan Smith.

SECTION 3  
*Section opposed.*

—Duncan Smith.

SECTION 4

1. In page 3, to delete all words from and including “(1) This” in line 21 down to and including line 27, and in page 4 to delete lines 1 and 2.

—Duncan Smith.

2. In page 3, to delete all words from and including “(1) This” in line 21 down to and including line 27, and in page 4 to delete lines 1 and 2, and substitute the following:

“(1) This section applies to an international agreement prescribed by order under subsection (5).”.

—Duncan Smith.

3. In page 3, to delete lines 22 to 24.

—Donnchadh Ó Laoghaire.

4. In page 3, to delete lines 25 to 27.

—Donnchadh Ó Laoghaire.

5. In page 3, to delete all words from and including “part” in line 27, and in page 4, to delete lines 1 and 2 and substitute “part.”.

—Duncan Smith.

6. In page 4, to delete lines 1 and 2.

—Donnchadh Ó Laoghaire.

[SECTION 4]

7. In page 4, to delete lines 3 to 13.

—Duncan Smith.

8. In page 4, line 10, after “Court” to insert the following:

“, and only after the High Court has determined the application in accordance with subsections (3) to (3C),”.

—Donnchadh Ó Laoghaire.

9. In page 4, to delete lines 14 to 19.

—Duncan Smith.

10. In page 4, to delete lines 14 to 19 and substitute the following:

“(3) The High Court shall refuse leave under subsection (2)(i) where, having considered the matters in subsections (3A) and (3B), it considers that enforcement of the award would—

(a) materially compromise the constitutional identity of the State,

(b) materially compromise fundamental principles of the constitutional order of the State, or

(c) materially compromise the State’s obligation (reflected in Article 29.4.4 of the Constitution) to give effect to European Union law (including the Charter of Fundamental Rights and Freedoms) and to preserve its coherence and integrity.

(3A) Without prejudice to the generality of subsection (3), enforcement shall be refused where the High Court is satisfied that the award (or the reasons for the award) involves any of the following:

(a) is founded on a determination that an action or decision of the people, at a Referendum in accordance with the provisions of Article 46 or Article 47 of the Constitution, constituted or contributed to a breach of the international treaty in question,

(b) is based upon, or gives effect to, a refusal by the relevant tribunal to follow a material decision of the Court of Justice of the European Union,

(c) is inconsistent with, or would require the State (or any organ of the State) to act inconsistently with, a final and conclusive decision of an Irish court,

(d) is founded on a determination that an Irish court has denied justice or committed a fundamental breach of due process in judicial proceedings, in circumstances where enforcement would amount in substance to a collateral attack on the finality and conclusiveness of such decision,

(e) would impose on the State liability in damages in respect of the

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enactment or maintenance of a legislative measure (or a measure having the force of law) enacted in good faith within the State's constitutional order, or

(f) would otherwise be at odds in a material way with the legislative and juridical autonomy of the State.

(3B) For the avoidance of doubt, the categories in subsections (3) and (3A) are not closed.

(3C) An application for leave under subsection (2)(i) shall be determined on notice to the parties and after hearing such parties as the Court considers appropriate.

(3D) The burden of establishing that leave should be granted and that none of the grounds requiring refusal under subsection (3) to (3B) arises shall rest on the party seeking enforcement.”.

—Donnchadh Ó Laoghaire.

11. In page 4, line 18, to delete “or” and substitute the following:

“(b) international agreements, conventions or treaties which the State is already party to, including but not limited to—

(i) the Paris Agreement,

(ii) the 2030 Agenda for Sustainable Development,

(iii) the Convention on Biological Diversity;

(iv) the Aarhus Convention;

(v) the International Covenant on Economic, Social and Cultural Rights, or

(vi) conventions of the International Labour Organisation,

or”.

—Donnchadh Ó Laoghaire.

12. In page 4, between lines 19 and 20, to insert the following:

“(3A) Without prejudice to the generality of subsection (3) and as non-exhaustive examples of the operation of that subsection, the constitutional order of the State would be compromised if enforcing an award would expose the State—

(a) to an award of damages, on a strict liability basis, arising from the enactment by the Oireachtas of a law—

(i) the validity of which had been upheld in accordance with Article 34 of the Constitution, or

(ii) the Bill for which had been referred to the Supreme Court by the President under Article 26 of the Constitution,

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or

- (b) to an award of damages which in substance amounted to a collateral attack on a decision of the Supreme Court that was, by Article 34.5.6° of the Constitution, made final and conclusive.”.

—Duncan Smith.

13. In page 4, between lines 19 and 20, to insert the following:

“(3A) For the avoidance of doubt, it is hereby declared that an award made by a body empowered to make awards pursuant to an international agreement to which this section applies is not, and never was, enforceable in the State if enforcing the award would compromise the State’s ability to achieve the objectives provided for in the Climate Action and Low Carbon Development Acts 2015 to 2021.”.

—Donnchadh Ó Laoghaire.

14. In page 4, between lines 19 and 20, to insert the following:

“(3A) For the avoidance of doubt, an award made pursuant to an international agreement to which this section applies shall not be enforceable in the State where such an award has been sought or obtained in another jurisdiction.”.

—Donnchadh Ó Laoghaire.

15. In page 4, to delete lines 20 to 23.

—Duncan Smith.

16. In page 4, to delete lines 24 to 31.

—Duncan Smith, Donnchadh, Ó Laoghaire.

17. In page 4, to delete lines 24 to 38 and substitute the following:

“(5) Subject to subsection (6) and (8), the Minister for Foreign Affairs and Trade may, after consultation with the Minister for Finance and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, prepare an order to prescribe an international agreement as an agreement to which this section applies where—

- (a) the State is, or intends to become, a party to the agreement,
  - (b) the agreement is wholly or partly concerned with the protection of investment, and
  - (c) the agreement provides for the making of awards pursuant to its investment dispute resolution provisions.
- (6) Before making any order under subsection (5) the Minister for Foreign Affairs and Trade shall—
- (a) after consultation with the Minister for Finance and the Minister

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for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, prepare a detailed estimate of potential claims against the State arising from the agreement proposed to be prescribed, including based on the extent to which the State or public bodies have encouraged investors to invest in the State, and an associated statement,

- (b) provide a copy of the estimate and the statement prepared under paragraph (a) to each of the Oireachtas Committees for each of the Ministers referred to in paragraph (a), and the Committees shall undertake such scrutiny of the proposed order as they shall determine, including hearing evidence directly from each of the Ministers referred to in paragraph (a), and the Committees shall make recommendations on the order and estimates accordingly for each of the Ministers to consider,
  - (c) each of the Ministers shall consider any of the recommendations from Committees arising from the scrutiny performed under paragraph (b), and the Minister for Foreign Affairs and Trade shall again consult the Minister for Finance and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation in light of the recommendations of the Committees,
  - (d) following the further consultation in paragraph (c), maintain the order and associated estimates as prepared under paragraph (a) or amend them accordingly on foot of the recommendations arising from paragraph (b) and the consultations under paragraph (b).
- (7) If the Minister still wishes to proceed with the making of the order, he or she shall lay the order before both Houses of the Oireachtas, as prepared or as amended consequent on subsection (6)(c), together with his or her reasons for accepting or rejecting any recommendations of the Committee under paragraph (b) of that subsection.
- (8) No order shall be made under this subsection, unless a resolution approving the order and the associated estimates has been passed by both Houses of the Oireachtas, further to a debate in each such house of a duration no less than 3 hours.”.”.

—Duncan Smith.

18. In page 4, to delete lines 32 to 38.

—Duncan Smith.

19. In page 4, to delete lines 32 to 38 and substitute the following:

- “(6) Every order made by the Minister for Foreign Affairs and Trade under subsection (5) shall only have legal effect following approval of that order by resolution of both Houses of the Oireachtas.”.

—Donnchadh Ó Laoghaire.

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20. In page 4, lines 35 and 36, to delete “within the next 21 days on which that House sits after the order is laid before it,”.

—Donnchadh Ó Laoghaire.

21. In page 4, lines 37 and 38, to delete “but without prejudice to the validity of anything previously done thereunder” and substitute the following:

“and no step shall be taken to ratify a relevant international agreement until such 21 days have passed”.

—Donnchadh Ó Laoghaire.

22. In page 4, after line 38, to insert the following:

“(7) Notwithstanding subsection (6), an order made under subsection (5) shall cease to have effect if resolutions annulling that order are passed by both Houses of the Oireachtas at any time following the making of that order.”.

—Donnchadh Ó Laoghaire.

23. In page 4, after line 38, to insert the following:

“(7) All documents relating to awards enforced under this section shall be subject to and available to the public the Freedom of Information Act 2014 and Directive 2003/4/EC on public access to environmental information.”.

—Donnchadh Ó Laoghaire.

24. In page 4, after line 38, to insert the following:

“(7) No order may be made by the Minister for Foreign Affairs and Trade under subsection (5) save to the extent that the obligations of Article 29(5) of the Constitution have been fulfilled in respect of the relevant international agreement before the making of such order.”.

—Donnchadh Ó Laoghaire.

*Section opposed.*

—Duncan Smith, Donnchadh Ó Laoghaire.

SECTION 5

25. In page 4, after line 38, to insert the following:

**“Report on awards enforceable outside the State**

5. The Minister for Foreign Affairs and Trade shall, within 6 months of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas outlining:

- (a) the total value of awards made against the State under international agreements which the State is party to in foreign jurisdictions or international forums;

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- (b) the number of cases brought against the State in foreign jurisdictions or international forums under an investor-state dispute settlement mechanism or an investor court system mechanism; and
- (c) the specifics of any such cases brought against the State, in particular the public policy decisions giving rise to such cases.”.

—Donnchadh Ó Laoghaire.

26. In page 4, after line 38, to insert the following:

**“Report on effect of legislation on access to housing**

- 5. The Minister for Foreign Affairs and Trade shall, within 1 year of the passing of this Act and on an annual basis thereafter and in consultation with the Minister for Housing, Local Government and Heritage, lay a report before both Houses of the Oireachtas outlining the impact of the State’s participation in international agreements containing investor court systems or investor-state dispute settlement mechanisms on the housing market and the ability of the Government to enact policies to reduce the cost of housing in the State.”.

—Donnchadh Ó Laoghaire.

27. In page 4, after line 38, to insert the following:

**“Report on constitutional compliance**

- 5. The Minister for Foreign Affairs and Trade shall, within 1 year of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas examining the manner in which the operation of this Act has complied with the Constitution and in particular shall examine its effect on the proper operation of the following—
  - (a) Article 15 of the Constitution,
  - (b) Articles 34 - 37 of the Constitution, and
  - (c) Article 45 of the Constitution.”.

—Donnchadh Ó Laoghaire.

28. In page 5, to delete lines 3 to 7 and substitute the following:

- “(2) Subject to *subsection (3)*, this Act shall come into operation on such day or days as the Minister for Foreign Affairs and Trade may, after consultation with the Minister for Justice, Home Affairs and Migration, by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (3) Any order under *subsection (2)* shall not be made or have effect until a resolution approving the order has been laid before each House of the Oireachtas, and a motion

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approving the making of the order has been approved by each such House, following a debate on the motion in each such House.”.

—Duncan Smith.

TITLE

**29.** In page 3, line 5, after “State” to insert “and beyond the State”.

—Duncan Smith.

**30.** In page 3, line 6, after “investment” to insert “and exposure of the State”.

—Duncan Smith.