



# DÁIL ÉIREANN

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

**LEASUITHE TUARASCÁLA  
REPORT AMENDMENTS**

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# DÁIL ÉIREANN

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

### ARBITRATION (AMENDMENT) BILL 2025 —REPORT

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#### *Leasuithe Amendments*

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

—Duncan Smith.
2. In page 3, line 6, after “investment” to insert “and exposure of the State”.  

—Duncan Smith.
3. In page 3, to delete lines 11 to 13.  

—Duncan Smith.
4. In page 3, to delete lines 14 to 18.  

—Duncan Smith.
5. In page 3, to delete lines 19 to 27, and in page 4, to delete lines 1 to 38.  

—Duncan Smith.
6. 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.
7. 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, Sinéad Gibney.
8. In page 3, line 21, before “This” to insert “Subject to section 25B”.  

—Sinéad Gibney.
9. 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, Sinéad Gibney.

10. In page 4, to delete lines 1 and 2 and substitute the following:

“(1A) This section shall not apply to any international agreement other than those specified in subsection (1).”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

—Duncan Smith, Sinéad Gibney.

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

—Duncan Smith, Sinéad Gibney.

13. 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 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.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

14. In page 4, between lines 18 and 19, to insert the following:

“(b) the State's obligations under the Climate Action and Low Carbon Development Acts 2015 to 2021 and the Paris Agreement, and”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

15. 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,

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.

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

“(3A) For the avoidance of doubt, the High Court shall not enforce an award made pursuant to an international agreement to which this section applies where the determination of such an award has been sought in a foreign jurisdiction.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

—Duncan Smith, Sinéad Gibney.

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

—Duncan Smith, Sinéad Gibney.

19. 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, The Minister for Finance and the Minister 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, 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, Sinéad Gibney.

**20.** In page 4, between lines 31 and 32, to insert the following:

“(5A) Prior to making an order under subsection (5), the Minister for Foreign Affairs and Trade shall cause a public consultation to be held on the draft order and such public consultation shall last for a minimum of 4 weeks and shall inform the Minister for Foreign Affairs and Trade in respect of a decision to proceed with making such an order.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

**21.** In page 4, to delete lines 32 to 38.

—Duncan Smith, Sinéad Gibney.

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

“(6) An order made by the Minister for Foreign Affairs and Trade under subsection (5) shall only have legal effect once approved by resolutions of both Houses of the Oireachtas and either House of the Oireachtas may move a resolution to revoke such an order and such revocation shall take a place upon agreement of the other House of the Oireachtas by resolution.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

**23.** 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, Cathy Bennett.

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

“**25B.** (1) Notwithstanding any commencement of section 25A, section 25A shall not apply to any agreement listed in subsection (1)(a) or (b) of section 25A, or prescribed by order under subsection (5) of section 25A, unless both Houses of the Oireachtas have followed the procedure specified in subsection (2), and considered of the assurances and responses secured under subsection (3), and consideration of any report and recommendation provided under subsection (4), have approved a resolution indicating each such house is satisfied that section 25A should apply to such an agreement.

- (2) Where the Minister wishes to have section 25A apply to an agreement, the Minister shall following the consideration of Joint Oireachtas Committees specified in subsection (4), lay the written report and recommendations required under subsection (3), together with any report and recommendations arising from the Joint Oireachtas Committees arising from their considerations under subsection (4), before both Houses of the Oireachtas.
- (3) (a) The Minister shall seek a written report and recommendations from the UN Special Rapporteurs and from the organisations listed in paragraph (b) in respect of their concerns on the Human Rights record of EU based companies in the countries party to the agreement the Minister is proposing have section 25A apply to, together with their concerns on the risks that Investor State Dispute provisions in such an agreement presents to the matters under their remit in the jurisdictions pertaining under such agreements.
- (b) The Special Rapporteurs and Organisations for the purposes of paragraph (a) shall include at least the following:
- (i) the UN Special Rapporteur for Environmental Defenders under the Aarhus Convention;
  - (ii) the UN Special Rapporteur for Human Rights Defenders;
  - (iii) the UN Special Rapporteur for the Right to a Healthy Environment;
  - (iv) the UN Special Rapporteur for indigenous peoples;
  - (v) Frontline Defenders;
  - (vi) the European Network of Human Rights Organisations;
  - (vii) the European Environmental Bureau;
  - (viii) any such other Special Rapporteur as the Minister shall see fit to seek such report and recommendations from;
  - (ix) any such other party recommended by a Joint Oireachtas Committee, further to the Minister's request under paragraph (c).
- (c) Prior to seeking the information specified in paragraph (a), the Minister shall request the Joint Oireachtas Committees specified in subsection (4) for recommendations of other parties whose assurances or responses shall be requested.
- (4) The report and recommendations secured under subsection (3) shall be subject to consideration by the Joint Oireachtas Committees with responsibility for—
- (a) Trade,

- (b) European Affairs,
- (c) Energy, Environment and Climate,
- (d) Finance, and
- (e) Joint Oireachtas Committee with a remit on Human Rights.

including the hearing of evidence from expert witnesses, and shall not be limited to hearing evidence from Government Departments, and each of those Joint Oireachtas Committees, shall make a report and recommendations in respect of the assurance or response provided under subsection (3) and as to whether it should be accepted or not, and what further action is recommended prior to any application of section 25A to that agreement.”.”

—Sinéad Gibney.

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

“**25B.** (1) Notwithstanding any commencement of section 25A, section 25A shall not apply to any agreement listed in subsection (1) of section 25A, or prescribed by order under subsection (5) of section 25A, unless both Houses of the Oireachtas have—

- (a) followed the procedure in subsection (2),
- (b) considered the assurances and responses secured under subsection (3), and
- (c) considered any report and recommendation provided under subsection (4) and (5),

approved a resolution indicating each such house is satisfied that section 25A should apply to the agreement.

(2) The Minister shall, following the consideration of the Joint Oireachtas Committees specified in subsection (4), lay the assurances and responses required under subsection (3), together with any report and recommendations arising from the Joint Oireachtas Committees considerations under subsection (4) before both Houses of the Oireachtas.

(3) (a) The Minister shall seek written assurance that the awards to which section 25A apply cannot be enforced in another state and thus bypass or evade the oversight of the Irish Courts proposed in section 25A, or in the alternate, whether the party requested is not of the view that such an assurance would be correct, a response from them clarifying the extent to which any such award may be able to evade the scrutiny of the Irish Courts and enforced in another jurisdiction, and such assurances or responses shall be sought from the—

- (i) the Commissioner with responsibility for Trade in the European Union,
  - (ii) the Attorney General,
  - (iii) the Secretary General for the International Centre for Settlement of Investment Disputes,
  - (iv) any such other party as the Minister shall see fit to seek such assurances from, and
  - (v) any such other party recommended by a Joint Oireachtas Committee under paragraph (b).
- (b) Prior to seeking assurances and responses specified in paragraph (a), the Minister shall request the Joint Oireachtas Committees specified in subsection (4) for recommendations of other parties whose assurances or responses shall be requested.
- (4) The assurance and responses secured under subsection (3) shall be subject to consideration by the Joint Oireachtas Committees with responsibility for—
- (a) Trade,
  - (b) European Affairs,
  - (c) Energy, Environment and Climate, and
  - (d) Finance,

including the hearing of evidence from expert witnesses, and shall not be limited to hearing evidence from Government Departments, and each of those Joint Oireachtas Committees, shall make a report and recommendations in respect of the assurance or response provided under subsection (3) and as to whether it should be accepted or not, and what further action is recommended prior to any application of section 25A to the agreement which has been the subject of the assurances and responses sought under subsection (3).”.”.

—Sinéad Gibney.

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

**“Report on compliance with EU law and CETA**

5. The Minister shall, within 12 months of the passing of this Act and in consultation with the Minister for Foreign Affairs and Trade, lay a report before both Houses of the Oireachtas evaluating this Act’s compliance with the Treaties of the European Union and CETA itself, and in particular shall examine:

- (a) whether the provisions of section 25A of the Principal Act conflict with the duty of sincere cooperation in Article 4(3) of the Treaty on European Union; and

- (b) whether the provisions of section 25A of the Principal Act conflict with CETA itself.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

**“Report on ICSID Convention**

5. The Minister shall, within 12 months of the passing of this Act and in consultation with the Minister for Foreign Affairs and Trade, lay a report before both Houses of the Oireachtas evaluating this Act’s implications on the enforcement of awards in line with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) and in particular shall examine the cost implications of the enforcement of awards under international agreements referred to in this Act in foreign jurisdictions.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

**“Report on awards made or sought against State**

5. The Minister shall, within 12 months of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas outlining:
- (a) all awards made against the State under international agreements referred to in section 25A of the Principal Act;
  - (b) any ongoing proceedings against the State brought under the investment-protection provisions of international agreements referred to in section 25A of the Principal Act; and
  - (c) the total expenditure by the State in participating in proceedings referred to in paragraphs (a) and (b).”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

**“Report on effect of legislation on socioeconomic wellbeing**

5. The Minister shall, within 12 months of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas outlining the impact of this Act on socioeconomic wellbeing in the State and in particular shall examine such impact in the context of:
- (a) access to affordable housing;
  - (b) the provision of public services;
  - (c) the ability of the State to regulate in the public interest; and

(d) workers' rights.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

**“Report on effect of legislation on climate action**

5. The Minister shall, in consultation with the Minister for Climate, Energy and the Environment and within 12 months of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas outlining the impact of this Act on climate action and the protection of the environment and in particular shall examine these issues with regard to the State’s obligations under:
- (a) the Climate Action and Low Carbon Development Acts 2015 to 2021;
  - (b) the Agreement done at Paris on 12 December 2015;
  - (c) the 2030 Agenda for Sustainable Development;
  - (d) the Convention on Biological Diversity; and
  - (e) the Aarhus Convention.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

**“Report on ratification of CETA**

5. The Minister for Foreign Affairs and Trade shall, within 12 months of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas outlining the ratification status of CETA in each European Union Member State and the implications for the continuing provisional application.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

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

**“Report on operation of Act**

5. The Minister shall, prior to seeking a ratification vote pursuant to Article 29.5 of the Constitution on any international agreement falling within the scope of section 25A of the Principal Act, lay a report before both Houses of the Oireachtas outlining:
- (a) the mechanism and timeframe for withdrawal from an international agreement falling within the scope of section 25A of the Principal Act;
  - (b) the expected period of time in which the High Court shall be expected to continue performing functions under section 25A of the Principal Act in respect of that international agreement; and
  - (c) the period of time for which the State may be liable for awards under such an

international agreement following a notification of withdrawal.”.

—Donnchadh Ó Laoghaire, Cathy Bennett.

33. 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 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, Sinéad Gibney.

34. In page 5, line 3, before “This” to insert “Subject to *subsections (3) and (4)*”.

—Sinéad Gibney.

35. In page 5, line 3, before “This” to insert “Subject to *subsection (3)*”.

—Sinéad Gibney.

36. In page 5, line 3, before “This” to insert “Subject to *subsection (3) and (6)*”.

—Sinéad Gibney.

37. In page 5, after line 7, to insert the following:

“(3) The Minister shall not commence *section 4* until each of the other Member States of the European Union has ratified the agreements referred to in *paragraphs (a) and (b) of subsection (1)*.

(4) The Minister shall not commence *section 4* until the Minister has, following the consideration of Joint Oireachtas Committees specified in *subsection (6)*, laid—

(a) the assurances and responses required under *subsection (5)*, and

(b) any report and recommendations arising from the Joint Oireachtas Committees considerations under *subsection (6)*,

and a resolution approving the Commencement of *section 4* further to such assurance and reports has been approved by both Houses of the Oireachtas.

(5) (a) The Minister shall seek written assurance that the awards to which the new section 25A, inserted by *section 4*, apply, cannot be enforced in another State and thus bypass or evade the oversight of the Irish Courts proposed in that section 25A, or in the alternate, whether the party requested is not of the view that such an assurance would be correct, a response clarifying the extent to which any such award may be able to evade the scrutiny of the Irish Courts proposed under section 25A by seeking to enforce the awards outside of the State, and such assurances or responses shall be sought from—

- (i) the Commissioner with responsibility for Trade in the European Union,
  - (ii) the Attorney General,
  - (iii) the Secretary General for the International Centre for Settlement of Investment Disputes,
  - (iv) any such other party as the Minister shall see fit to seek such assurances from, and
  - (v) any such other party recommended by a Joint Oireachtas Committee.
- (b) Prior to seeking assurances and responses specified in *paragraph (a)* above, the Minister shall request the Joint Oireachtas Committees specified in *subsection (6)* for recommendations of other parties whose assurances or responses shall be requested.
- (6) The assurance and responses secured under *subsection (5)* shall be subject to consideration by the Joint Oireachtas Committees with responsibility for—
- (a) Trade,
  - (b) European Affairs,
  - (c) Energy, Environment and Climate, and
  - (d) Finance,

and shall include the hearing of evidence from expert witnesses, and shall not be limited to hearing of evidence from Government Departments, and each of those Joint Oireachtas Committees, shall make a report and recommendations in respect of the assurance or response provided under *subsection (5)* and as to whether it should be accepted or not, and what further action is recommended prior to any commencement of *subsection (4)*.”.

—Sinéad Gibney.

**38.** In page 5, after line 7, to insert the following:

“(3) The Minister shall not commence *section 4* until each of the other Member States of the European Union has ratified the agreements referred to in *paragraphs (a)* and *(b)* of *subsection (1)* of that section.”.

—Sinéad Gibney.

**39.** In page 5, after line 7, to insert the following:

“(3) The Minister shall not commence *section 4* for the purposes of any agreement, nor make any order under subsection (5) of section 25A, until a resolution following the procedure in *subsection (4)* and *(5)* approving the commencement has been passed by both Houses of the Oireachtas.

(4) The Minister shall seek written clarification from the State of any agreement to be considered for the purposes of section 25A(1)(a) and (b) as inserted by *section 4*, as to whether the State is party to the agreement, being the other part to the European Union and its Member States, and would be open to the exclusion of any Investor

State Dispute settlement provisions from the agreement.

- (5) The written clarification referred to in *subsection (4)* shall be considered by the Joint Oireachtas Committee for—
- (a) Trade,
  - (b) European Affairs,
  - (c) Energy, Environment and Climate, and
  - (d) Finance,

and they shall make recommendation accordingly as to whether section 25A, as inserted by *section 4*, should be commenced for the purposes of any such agreement the subject of such clarification, or stayed pending further decision on the format of the agreement.”.

—Sinéad Gibney.