

Strategic Litigation Against Public Participation Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice with the consent of Wayne David, the Member in charge of the Bill, are published separately as Bill 21—EN.

Strategic Litigation Against Public Participation Bill

[AS INTRODUCED]

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[AS INTRODUCED]

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Make provision about the misuse of litigation to suppress freedom of speech.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Requirement to make rules of court

- (1) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for ensuring that a claim may be struck out before trial where the court determines—
 - (a) that the claim is a SLAPP claim (see section 2), and 5
 - (b) that the claimant has failed to show that it is more likely than not that the claim would succeed at trial.
- (2) Rules made in compliance with subsection (1) may include rules about how a determination under that subsection is to be made, including (in particular)—
 - (a) rules for determining the nature and extent of the evidence that may or must be considered; 10
 - (b) rules about the extent to which evidence may or must be tested;
 - (c) rules permitting or requiring the court to determine matters of fact by way of presumptions.
- (3) Rules made in compliance with subsection (1) must include rules under which the court may make a determination under that subsection of its own motion. 15
- (4) The power to make Civil Procedure Rules must be exercised so as to secure that Civil Procedure Rules include provision for ensuring that, in respect of a SLAPP claim, a court may not order a defendant to pay the claimant's costs except where, in the court's view, misconduct of the defendant in relation to the claim justifies such an order. 20
- (5) The Lord Chancellor may by regulations made by statutory instrument provide for subsections (1) to (4) to apply in relation to any rules of court that may be specified in the regulations as those subsections apply in relation to Civil Procedure Rules. 25
- (6) A statutory instrument containing regulations under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) In this section—
 “court” includes a tribunal;
 “rules of court” means rules relating to the practice and procedure of a court or tribunal.

2 Meaning of “SLAPP” claim 5

- (1) For the purposes of section 1 a claim is a “SLAPP claim” if—
- (a) the claimant’s behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant’s exercise of the right to freedom of speech,
 - (b) the information that is or would be disclosed by the exercise of that right relates to a matter of public interest, and 10
 - (c) any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
 - (i) harassment, alarm or distress,
 - (ii) expense, or 15
 - (iii) any other harm or inconvenience,
 beyond that ordinarily encountered in the course of properly conducted litigation.
- (2) For the purposes of determining whether a claim meets the condition in subsection (1)(a) or (b), any limitation prescribed by law on the exercise of the right to freedom of speech (for example in relation to the making of defamatory statements) is to be ignored. 20
- (3) For the purposes of subsection (1)(b) the following matters, in particular, are of “public interest”—
- (a) behaviour of the claimant or any other person that is, or is alleged to be, unlawful; 25
 - (b) statements made by the claimant or any other person that are, or are alleged to be, false;
 - (c) public health and safety, the climate or the environment;
 - (d) an investigation or review being undertaken by a public body. 30
- (4) In determining whether any behaviour of the claimant falls within subsection (1)(c), the court may, in particular, take into account—
- (a) whether the behaviour is a disproportionate reaction to the matters complained of in the claim, including whether the costs incurred by the claimant are out of proportion to the remedy sought; 35
 - (b) whether the defendant has access to fewer resources with which to defend the claim than another person against whom the claimant could have brought (but did not bring) proceedings in relation to the matters complained of in the claim;
 - (c) any relevant failure, or anticipated failure, by the claimant (or a person acting on behalf of a claimant) to comply with a pre-action protocol, rule of court or practice direction, or to comply with or follow a rule or recommendation of a professional regulatory body. 40

- (5) For the purposes of subsection (4)(c) a failure, or anticipated failure, is “relevant” so far as it relates to—
- (a) the choice of jurisdiction,
 - (b) the use of dilatory strategies,
 - (c) the nature or amount of material sought on disclosure, 5
 - (d) responses to requests for comment or clarification,
 - (e) the use of correspondence,
 - (f) making or responding to offers to settle, or
 - (g) the use of alternative dispute resolution procedures.
- (6) In this section— 10
- “court” has the same meaning as in section 1;
 - “public body” means any person certain of whose functions are of a public nature;
 - “the right to freedom of speech” means the right set out in Article 10 of the European Convention on Human Rights (freedom of expression) 15
so far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).
- (7) In the definition of “the right to freedom of speech” in subsection (6) “the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom. 20

3 Consequential amendments

- (1) The Economic Crime and Corporate Transparency Act 2023 is amended as follows. 25
- (2) Omit sections 194 and 195 (power to strike out certain claims) and the italic heading before section 194.
- (3) In section 218 (extent)—
- (a) omit subsection (2), and
 - (b) in subsection (1), for “subsections (2) and” substitute “subsection”. 30

4 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act may be cited as the Strategic Litigation Against Public Participation Act 2024. 35

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Presented by Wayne David

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