

STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Strategic Litigation Against Public Participation Bill as introduced in the House of Commons on 6 December 2023 (Bill 21).

- These Explanatory Notes have been prepared by the Ministry of Justice, with the consent of Wayne David MP, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill aims to tackle the misuse of litigation and threats of litigation that are collectively and commonly known as strategic litigation against public participation (“SLAPPs”).
- 2 This Bill will define a “SLAPP claim” as a claim where the claimant seeks to restrict the defendant exercising their right to freedom of speech on a matter in the public interest and the claimant does this through behaviour intended to cause harm or inconvenience beyond that experienced in ordinary litigation.
- 3 This Bill will introduce an early dismissal mechanism for claims found to be SLAPPs. The test is whether the claimant can show that they are more likely than not to succeed at trial.
- 4 This Bill will require the introduction of Civil Procedure Rules (“CPR”) that create an adverse costs protection regime for defendants in circumstances where a SLAPP claim is permitted to proceed to trial. The Bill will permit the Civil Procedure Rules Committee (“CPRC”) to introduce new CPR on the consideration and testing of evidence as well as presumptions that may be relied upon in the determination of the various matters in the Bill’s provisions.
- 5 The Bill will also permit the Lord Chancellor to require by regulations that the same framework be introduced in the relevant rules for other courts or tribunals where it appears SLAPPs are being brought as a way of circumventing the provisions in this Bill.

Policy background

- 6 In recent years, a distinctive and often procedurally disruptive form of litigant has emerged, using legal action to harass, intimidate and silence those who question their conduct. SLAPPs characteristics can include, but are not limited to, large numbers of aggressive pre-action letters or targeting a financially weak defendant. The result is often the withdrawal of public interest investigations or media reporting to avoid costly legal battles. This in turn prevents proper accountability and fundamentally undermines freedom of speech and the rule of law.
- 7 SLAPPs are typically framed as defamation cases, but they can occur across a broad spectrum of claims including data protection, environmental, and privacy law. SLAPPs present a growing problem as claimants explore new ways to suppress legitimate reporting by abuses of process that are intended to be costly and time-consuming for defendants.
- 8 Following a Ministry of Justice Call for Evidence on SLAPPs, the Government committed in July 2022 to take action to stop litigation pursued for improper reasons from undermining the legal system and suppressing public interest investigations, while at the same time safeguarding access to justice. The key necessary reforms identified were:
 - Introducing a statutory definition of a SLAPP;
 - Introducing an early dismissal mechanism for SLAPPs claims; and
 - Introducing costs protection for defendants where SLAPPs claims proceed to trial.

- 9 These reforms have already been introduced to tackle SLAPPs involving economic crime through sections 194 and 195 of the Economic Crime and Corporate Transparency Act 2023 (“ECCTA 2023”). This received Royal Assent on 26 October 2023.
- 10 Although the ECCTA 2023 provisions went some way to address the harm of SLAPPs, they only do so for cases involving economic crime. This Bill ensures that all SLAPPs, irrespective of their subject matter, can now be protected from improper litigation tactics.
- 11 By strengthening and broadening the legal framework in this way, this Bill will address misconduct effectively by deterring SLAPPs claims being brought and ensuring that, if brought they cannot achieve the harm they intend. This, in turn, will mean that those responsible for any wrongdoing can be held accountable and those reporting on it will be protected against intimidation and the financial burden of costly, inappropriate litigation. While we must protect defendants from abusive litigation, we will also ensure those with legitimate claims have access to justice.

Legal background

- 12 For most litigation in the courts of England and Wales there are written rules that determine how it must be conducted. Those rules are necessary to ensure that parties to claims are able to have their rights vindicated by a court fairly, without unnecessary delay and expense in doing so. Those are fundamental aspects of the rule of law and access to justice and apply irrespective of the law upon which the claim is founded (e.g. whether that is defamation or privacy law).
- 13 For civil litigation, the applicable rules are the CPR 1998. Those rules are made by the CPRC under its authority in the Civil Procedure Act 1997.
- 14 The CPR 1998 currently contain a variety of rules that are intended to limit the ability of claimants to exploit and misuse litigation, including by inappropriately bringing or prosecuting claims to cause as much harm as possible to another party.
- 15 For example, Rule 3.4 permits a court to strike out a claim where it is ill-founded or is an abuse of process or where a party has failed to comply with an obligation of theirs. In addition, Part 24 of the CPR 1998 contains provisions allowing a court to give summary (early) judgment in a case without the need for it to proceed to trial.
- 16 However, claimants in SLAPPs have been able to navigate those rules in such a manner as to evade the restrictions. In so doing they rely, for example, on elevating and complicating the litigation to reach a threat of harm, and actual harm to defendants, far beyond that in properly conducted litigation. Such litigation is intended to discourage the publication of critical reports or for those reports to be defended in court.
- 17 SLAPPs claimants are adept at that misconduct because their lack of concern for the costs, risks of losing, delay and burden of litigation enables them to pursue the most expensive and complicated litigation possible. They know that will most likely only be discovered at trial, by which time the harm will be done. Particularly vulnerable defendants are also chosen as the

targets, irrespective of whether they would ever be able to pay the damages claimed.

- 18 SLAPPs in effect pursue an illegitimate purpose for litigation, namely, to cause as much harm as possible instead of, but under cover of, seeking vindication of rights.
- 19 The current law on what constitutes an illegitimate purpose is ill equipped to treat such cases as SLAPPs (see the case of *Wallace v Valentine* [2002] EWCA 1034). This may be because it predates the rapid growth in the use of such tactics. The new test will be better able to do so, as will the rules which flow from it to give it effect.
- 20 In addition, the courts' current approach to striking out cases requires balancing the implication of doing so against the severity of the misconduct (see for example *Cable v Liverpool Victoria* [2020] EWCA Civ 1015). That balancing exercise favours SLAPPs claimants, whose improper exaggeration of claims often leads to a full trial and thereby maximises the harm caused to defendants. The early dismissal test will limit this risk of harm whilst allowing legitimate claims or parts of claims to proceed. However, in such cases where the claimant chooses to proceed, the provisions in this Bill will grant costs protection to the defendant.
- 21 In response to this Bill preventing SLAPPs in the civil courts, SLAPPs claimants will likely try to bring improper litigation in other courts and tribunals. For example, claimants may bring claims in courts to which the new Online Procedure Rules apply under the Judicial Review and Courts Act 2022 or through appeals to the First-Tier Tribunal from decisions of the Information Commissioner. The Bill therefore allows the Lord Chancellor to require those other courts and tribunals to introduce rules of court using the same approach set out in this primary legislation.

Territorial extent and application

- 22 This Bill applies to England and Wales only.
- 23 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Requirement to make rules of court

- 24 Clause 1 identifies a new early dismissal test for SLAPP claims (as defined in Clause 2) and requires a costs protection regime for defendants in those claims. It also mandates the making of new rules by the Civil Procedure Rules Committee (“CPRC”) to implement those measures and delegates to the Lord Chancellor the power by regulations to require corresponding provisions in other rules of court.
- 25 Clause 1(1) defines the early dismissal test, which is applied after the court has determined the case to be a SLAPP and imposes a duty on the CPRC to make applicable rules to that effect. The test is whether the claimant can show they are likely to succeed at trial. Where they cannot, the court will be able to summarily dismiss the claim.
- 26 Clause 1(2) permits the rules made by the CPRC under Clause 1(1) to include rules on the consideration and testing of evidence and presumptions that may be relied upon in the determination of the various matters in the Bill’s provisions.
- 27 Clause 1(3) imposes a duty on the CPRC to ensure that the rules made include those permitting the court to determine the matter of its own motion.
- 28 Clause 1(4) requires a costs protection regime in rules that will ensure the defendant in a claim found to be a SLAPP will not have to pay any adverse costs of the claimant, even where they lose at trial, unless the defendant has themselves behaved inappropriately.
- 29 Clause 1(5), contains the power of the Lord Chancellor to require corresponding provisions in other rules of court, defined by Clause 1(7) to include tribunals and their rules. Under Clause 1(6), that power is exercised by the Lord Chancellor by making regulations which may be annulled by Parliament.

Clause 2: Meaning of “SLAPP” claim

- 30 Clause 2 of the Bill contains the definition of a “SLAPP claim” for the purposes of Clause 1.
- 31 Clause 2(1) defines a “SLAPP claim”. Clauses 2(1)(a) and (b) require that it be a claim where the claimant’s behaviour has, or is intended to have, the effect of restraining the defendant’s exercise of their right to freedom of speech in disclosing information that relates to a matter of public interest. Clause 2(1)(c) provides that the claimant’s behaviour must be intended to cause the defendant harassment, alarm, distress, expense, or any other harm or inconvenience, beyond that which would ordinarily be encountered in properly conducted litigation.
- 32 Clause 2(2) excludes limitations of law with respect to the exercise of freedom of speech in consideration of the matters in subclauses (1)(a) and (b) so as to avoid inadvertently frustrating the operation of the early dismissal procedure in Clause 1.
- 33 Clause 2(3) expands upon aspects that may be in the public interest and includes matters such as illegality, false statements, public health and safety, the climate or environment or investigations by a public body.
- 34 Clauses 2(4) and (5) set out matters relevant to the consideration of whether the claimant’s behaviour is intended to cause harm or inconvenience to the defendant for the purposes of Clause 2(1)(c).

35 Clauses 2(6) and (7) define the terms “court”, “public body” and “the right to freedom of speech”.

Clause 3: Consequential Amendments

- 36 Clause 3 repeals the provisions of the Economic Crime and Corporate Transparency Act 2023 as they cease to be necessary since those claims are covered by the provisions of this Bill.

Clause 4: Extent, commencement and short title

- 37 Clause 4(1) provides that the Bill will extend to England and Wales only.
- 38 Clause 4(2) provides that the Bill will come into force at the end of a period of two months following Royal Assent.
- 39 Clause 4(3) sets out the short title of the Bill as the Strategic Litigation Against Public Participation Act 2024.

Commencement

- 40 Clause 4(2) provides that the provisions in this Bill will come into force at the end of the period of two months beginning on the day on which it is passed.

Financial implications of the Bill

- 41 There will potentially be minor costs associated with training for the judiciary, conducted by the Judicial Office, in order to ensure that the judiciary understand the changes brought in via this legislation and the rules of court that will be introduced by the CPRC in order to give the law effect.
- 42 There are also likely to be marginal costs to HMCTS incurred in the development and implementation of system and process changes for the early dismissal mechanism, including staff training and modifications to court procedures and documents.
- 43 There may also be a loss of fee income if claimants are dissuaded from lodging SLAPP cases with the courts. The number of claims is, however, relatively low despite their significant societal impact, so this impact will be very small.
- 44 This will be budgeted for as part of Ministry of Justice plans for the next Spending Review period, which is where the costs will fall. Any costs that fall within the current spending period will be absorbed, as they are expected to be very low – c.£100,000.

Parliamentary approval for financial costs or for charges imposed

- 45 No financial resolutions are required for the Bill as the Bill does not authorise significant new charges on public expenditure or impose new taxes or other charges on the public.

Compatibility with the European Convention on Human Rights

- 46 This is a Private Member's Bill and there is no requirement for a statement of compatibility with the European Convention on Human Rights ("ECHR") in accordance with section 19(1)(a) of the Human Rights Act 1998.
- 47 The Ministry of Justice has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the ECHR.

Related documents

- 48 The following documents are relevant to the Bill and can be read at the stated locations:
- Strategic Lawsuits Against Public Participation – A Call for Evidence: e.g. [Strategic Lawsuits Against Public Participation - A Call for Evidence \(justice.gov.uk\)](https://www.justice.gov.uk/strategic-lawsuits-against-public-participation-a-call-for-evidence)

- Government Response to the Call for Evidence:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093987/SLAPPs-call-for-evidence-response.pdf

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	No	No	No	No
Clause 2	Yes	Yes	No	No	No	No	No
Clause 3	Yes	Yes	No	No	No	No	No
Clause 4	Yes	Yes	No	No	No	No	No

Subject matter and legislative competence of devolved legislatures

- 49 The purpose of the provisions in this Bill are considered by the Ministry of Justice to be the regulation of civil proceedings. The regulation of civil proceedings is a reserved matter in Wales that is not within the legislative competence of the Senedd Cymru. On that basis a legislative consent motion is not required for this Bill to apply to Wales.
- 50 The regulation of civil proceedings is not a reserved matter in Scotland, nor a reserved or excepted matter in Northern Ireland. This Bill does not extend to Scotland or Northern Ireland.

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