

Strategic Litigation Against Public Participation (Freedom of Expression) Bill [HL]

[AS INTRODUCED]

CONTENTS

- 1 Dismissal of proceedings that limit debate
- 2 No dismissal
- 3 The public interest
- 4 Definition of “expression”
- 5 Stay of proceeding
- 6 No amendment to pleadings
- 7 Costs on dismissal
- 8 Costs if motion to dismiss denied
- 9 Damages
- 10 Legal aid
- 11 Rules
- 12 Commencement, extent and short title

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Make provision about individual expression on matters of public interest; for participation in debates on matters of public interest; and for discouraging the use of litigation as a means of limiting expression on matters of public interest.

BE IT ENACTED by the Queen'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 Dismissal of proceedings that limit debate

- (1) On a motion by a defendant to a proceeding brought in the High Court or the County Court a judge must, subject to section 2, dismiss the proceeding against the defendant if the defendant satisfies the judge on a balance of probabilities that the proceeding arises from an expression made by the defendant that relates to a matter of public interest. 5
- (2) A judge may of his or her own motion dismiss the proceeding at any stage if the judge concludes that the proceeding is abusive and brought with a view unduly to limit an expression on matters of public interest.

2 No dismissal

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A judge must not dismiss a proceeding under section 1 if the claimant satisfies the judge that—

- (a) there are grounds to believe that the proceeding has substantial merit, 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 protecting that expression. 15

3 The public interest

In weighing the public interest the judge must take into account factors including but not limited to—

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- (a) the right of an individual or organisation to vindicate their reputation through litigation;

- (b) the right and value of freedom of expression;
 - (c) the right and value of public participation in democratic discourse;
 - (d) the actual or potential chilling effect of the proceeding on future expression generally on matters of public interest;
 - (e) the history of litigation between the parties, including the choice of jurisdiction, any refusal by the claimant to engage in good faith in negotiations for settlement, or the use of dilatory strategies or intimidatory conduct; 5
 - (f) any disproportion between the resources deployed by the claimant or financed by third parties, and the harm caused or the amount of damages likely to be awarded for that harm, if proved; 10
 - (g) the possibility that the expression might provoke hostility against an identifiably vulnerable group.
- 4 Definition of “expression”**
- In this Act, “expression” means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 15
- 5 Stay of proceeding**
- Upon the filing of a motion, no further step may be taken in the proceeding by any party until the motion, including any appeal against the motion, has been finally disposed of. 20
- 6 No amendment to pleadings**
- Unless a judge orders otherwise, the claimant is not permitted to amend his or her pleadings in the proceeding—
- (a) in order to prevent or avoid an order under this Act dismissing the proceeding; or 25
 - (b) if the proceeding is dismissed under the Act, in order to continue the proceeding.
- 7 Costs on dismissal**
- If a judge dismisses a proceeding under this Act, the defendant is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 30
- 8 Costs if motion to dismiss denied**
- If the judge does not dismiss a proceeding under this Act, the claimant is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 35

9 Damages

If, in dismissing a proceeding under this Act, the judge finds that the claimant brought the proceeding in bad faith or for an improper purpose, the judge may award the defendant such damages as the judge considers appropriate.

10 Legal aid

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(1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.

(2) After Paragraph 20 insert—

“Applications to dismiss gagging proceedings

20A Civil legal services provided in relation to an application to dismiss proceedings, including mediation, advocacy and appeal, under the Strategic Litigation Against Public Participation (Freedom of Expression) Act 2022.

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Exclusions

20B Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.”

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11 Rules

Rules may be made by the Civil Procedure Rules Committee under the Civil Procedure Act 1997 for the purposes of this Act.

12 Commencement, extent and short title

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(1) This Act comes into force on the day on which it is passed.

(2) This Act extends to England and Wales.

(3) This Act may be cited as the Strategic Litigation Against Public Participation (Freedom of Expression) Act 2022.

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Lord Thomas of Gresford

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