

MIKE NESBITT MLA

Peter McCallion

Clerk

Committee for Finance

11 January 2022

By email

Dear Peter,

In response to your letter of 7 January 202, I am considering amendments as follows:

1. A clause placing a duty on the Department of Finance to both review the workings of the Bill and relevant developments in other jurisdictions, producing a Report with recommendations within two years of the Bill receiving Royal Assent
2. Clause 9. Removing all references to "member state"
3. County Court awards. I am supportive of raising the threshold for County Court awards to £30,000 and am liaising with the Bills Office regarding the appropriate form of words.
4. Strategic Lawsuits Against Public Participation (SLAPPS). Again, I am liaising with the Bills Office, however in this case, it may be best to task the Department with consulting on this area as part of the review and report clause referenced at Point 1 above.
5. Clause 3. I am adopting the amendment suggested by Dr / Professor Andrew Scott
6. Clause 10. I am liaising with the Bills Office to see if it is preferable to spell out the definitions of author, editor and publisher on the face of the Bill or to leave the reference to the definitions contained in Section 1 of the Defamation Act 1996
7. Clause 11. I believe the reference that "Trials to be without a jury unless the court orders otherwise" is sufficient to convey judicial discretion in this area. It is not my intention to ban trial by jury, rather to remove the presumption of trial by jury.
8. Alternative Dispute Resolution. I shall bring forward an amendment giving the judge the power to compel plaintiffs and defendants to engage in Alternative Dispute Resolution where the judge deems it appropriate. Again, the Bills Office will advise on the appropriate form of words.

What follows is the draft of amendments for Points 1 and 2 above. I intend to supply all other amendments ahead of the Committee meeting on Wednesday 19 January 2022.

Mike Nesbitt MLA

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After Clause 14 insert-

New Clause 14A

Review of Defamation Law

Review of Defamation Law

14A.—(1) The Department must keep under review all relevant developments pertaining to law on defamation as it considers appropriate.

(2) The Department must prepare a report and recommendations on—

- (a) The findings of the review under subsection (1), and
- (b) The operation of this Act.

(3) The Department must lay and publish the report and recommendations under subsection (2) before the end of the period of 2 years beginning with the day on which this Act receives Royal Assent.’

Leave out Clause 9 and insert-

9. Jurisdiction

10. ‘Action against a person not domiciled in the UK

11. 9.—(1) This section applies to an action for defamation against a person who is not domiciled in the United Kingdom.

12. (2) A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, Northern Ireland is clearly the most appropriate place in which to bring an action in respect of the statement.

13. (3) The references in subsection (2) to the statement complained of include references to any statement which conveys the same, or substantially the same, imputation as the statement complained of.

14. (4) Sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether an individual, corporation or association is regarded as “domiciled in the United Kingdom” for the purposes of this section.’

ENDS

Mike Nesbitt MLA

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Northern Ireland
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Our Reference: 2022.557

7 January 2022

Dear Mike,

Defamation Bill - Amendments

Please accept the Committee's thanks for the oral and written evidence which you provided at the meeting of 5 January 2022 on the Committee Stage of the Defamation Bill.

The Committee has yet to take a formal view on the clauses of the Bill or the potential amendments. However, it would appear likely that the Committee will not be bringing forward amendments although it may yet choose to oppose the inclusion of certain clauses in the Bill. To ensure clarity, the Committee agreed to write to you in order to determine which amendments you intend to bring forward at Consideration Stage.

The Committee agreed to seek clarity in particular in respect of whether or not you are to bring forward amendments, some of which the Committee had written to you previously, relating to:

- a review clause which might require the Department to review the operation of the Bill within a specified period and to take account of the work of the shadow Civil Justice Council and developments in other jurisdictions in the development of further Departmental defamation legislation;
- a typographical correction to Clause 9 in respect of the reference to the UK as a Member State of the European Union;
- enhancements to the jurisdiction of the County Court in order to facilitate defamation actions by individuals with limited resources;
- changes to the Serious Harm provision designed to further discourage Strategic Law Suits Against Public Participation (SLAPPs);
- changes to Clause 2 in order to require an early ruling on meaning;
- changes to Clause 3 in respect of reasonable belief;
- adjustments to Clause 5 in order to reflect the anticipated Westminster legislation;
- changes to Clause 5 in order to ensure a level-playing field for website operators and the use of take-down provisions etc.;



- changes to Clause 10 in order to better define authors etc.; and
- changes to Clause 11 in respect of judicial discretion relating to trial by jury and the use of Alternative Dispute Resolution.

In order to assist your understanding of the above, a copy of the Committee's updated Bill Table is provided, for your information only.

If you require further information or clarification, please do not hesitate to contact me.

A response as soon as possible would be greatly appreciated.

Yours sincerely,

Peter McCallion

Peter McCallion
Clerk to the Committee for Finance