



Northern Ireland  
Assembly

**Committee for Finance**

# Report on the Committee Stage of the Defamation Bill (25/17-22)

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# Powers and Membership

## Powers

The Committee for Finance is a statutory departmental committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and has a role in the initiation of legislation. The Committee has power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- call for persons and papers;
- initiate enquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance.

## Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

Dr Steve Aiken OBE (Chairperson)

Mr Keith Buchanan (Deputy Chairperson)<sup>1</sup>

Mr Jim Allister

Mr Pat Catney

Ms Jemma Dolan

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<sup>1</sup> Mr Keith Buchanan replaced Mr Paul Frew as Deputy Chairperson with effect from 15 June 2021

Mr Philip McGuigan<sup>2</sup>  
Mr Maoliosa McHugh  
Mr Matthew O'Toole  
Mr Jim Wells

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<sup>2</sup> Mr Philip McGuigan replaced Mr Seán Lynch with effect from 5 October 2020

# List of Abbreviations and Acronyms used in this Report

ADR	Alternative Dispute Resolution
NGO	Non-Governmental Organisation
SLAPPs	Strategic Law Suits Against Public Participation

## Executive Summary

The Committee for Finance undertook the Committee Stage of the Defamation Bill.

The Committee noted with regret the absence of a bespoke formal consultation on the Bill and the lack of co-operation between the Bill Sponsor and the Department prior to and during the Committee Stage. The Committee noted that the Bill appears to entirely replicate the content of the Defamation Act 2013 and that effect to the less controversial provisions might have been made in Northern Ireland some years ago.

The Committee noted with regret that owing to the timescales etc. some highly informed stakeholders felt unable to provide detailed commentary on the provisions and possible amendments to the Bill. In the absence of comprehensive guidance, the Committee felt that it could not readily and authoritatively comment on some of the clauses but would instead recommend that the Department takes forward related issues.

Following divisions, the Committee opposed provisions relating to the serious harm test; protections for website operators; and the removal of the presumption in favour of jury trials.

Following divisions, the Committee did not agree that provisions relating to the single publication rule and actions against a person who is not the author or editor etc. should stand part of the Bill.

The Committee supported amendments relating to: Departmental reviews of the operation of the Bill and related matters including the jurisdiction of the County Court; greater judicial discretion in respect of the use Alternative Dispute Resolution; Commencement; and regulating-making powers.

## Introduction

1. The law of defamation in England and Wales was changed by the Defamation Act 2013 which: replaced certain common law defences with statutory defences; introduced a new defence for website operators; and introduced a requirement to show serious harm, or the likelihood of such harm, when an individual brings an action for defamation.
2. It is also understood that the Defamation and Malicious Publication (Scotland) Act, which received Royal Assent on 21 April 2021, implemented the substantive recommendations made in the Scottish Law Commission's Report on Defamation. In particular, it made provisions in relation to: actionability of defamatory statements and restrictions on bringing proceedings; defences; absolute and qualified privilege; offers to make amends; jurisdiction; and the removal of the presumption that defamation proceedings are to be tried by jury. The Act also replaced some of the common law in this area.
3. Following the England and Wales legislation, the Law Commission of Northern Ireland was commissioned by the then Minister of Finance and Personnel to produce a report on the reform of defamation law in Northern Ireland. A public consultation was undertaken. A further related report was completed in 2016 by Dr Andrew Scott.
4. The Scott report recommended legislative change. The Department appeared to argue in 2016 that there was no absolute requirement, in either international or domestic human rights law, to amend Northern Ireland's law on defamation, thus no legislation was brought forward at that time.
5. The Scott report indicated that "the purpose of defamation law is to promote accuracy in public discourse by providing a means for individuals to vindicate their reputations and obtain an appropriate remedy should they have been sullied by false and defamatory publications." The report argued that it is commonly believed that "defamation law serves to restrain not only

false speech but also meritorious criticism of those in positions of public or economic power. The concern is that it has been used to ‘punish’ those who speak out on matters of public importance, or to impose on public-spirited people the dilemma between speaking out on a matter of public importance and facing costly legal action, or staying quiet and thereby allowing perceived problems to perpetuate.” The report suggested that perhaps 30-40 libel or slander cases were brought to court in Northern Ireland each year. The Scott report discussed a number of options in respect of legislative change which are summarised below.

### *Serious Harm*

6. The report discussed the issue of establishing a serious harm test in respect of defamatory statement which may damage the reputations of individuals but did not come to a firm conclusion. The report appeared to support the application of a serious harm test in respect of bodies that trade for profit.

### *Truth*

7. The report argued that the common law defence of truth i.e. that where allegations are substantially true they are not defamatory, should be replaced with a statutory provision which essentially states this. Additionally, this provision should also allow that where multiple meanings can be imputed to a statement and where one of these is not shown to be true this will not undermine the defence where the not (necessarily) true imputation does not do serious harm to the reputation of the claimant. That is to say, the truth defence would still work even if in certain circumstances some of the reasonable interpretations of the contended statement could not be proved to be true.

### *Single Meaning*

8. The report argued at length about the single meaning rule. It appears that in a defamation case the law requires that a “single meaning” should be



selected by the court from among those meanings that are possible in respect of the “defamatory” statement or publication at issue. The case is then determined on the basis of that interpretation alone. A complex set of rules have been developed in this regard. The report explored the abolition of the single meaning rule in conjunction with the introduction of a jurisdictional bar on claims based on meanings of publications that had been corrected or retracted promptly and prominently - this is sometimes referred to as the bipartite proposal.

### *Honest Opinion*

9. The report indicated that in order to support the publication of statements of opinion which has been constrained by complex case law and legal technicality, the common law defence of honest comment should be replaced by new legislative provision. The new provision would set out a defence based on honest opinion held by the defendant which might relate to a matter of public interest or be based on a publication in a scientific journal or be based on a privileged statement (e.g. court proceedings).

### *Websites*

10. The report discussed at some length issues relating to defamation and operators of websites who “are not the core originators of libels; are unlikely to be in a position to defend a claim using one of the main libel defences, irrespective of the veracity of the allegation levelled, the legitimacy of the opinion expressed, or the degree of public interest in the matter raised. Neither are they likely to be willing to continue publishing material in the face of legal risk.” The report argued that current legislation could lead to “collateral censorship’ that extends far beyond cases in which a complaint is justified.” The report suggested that the definitions of author, editor and publisher be therefore amended in order to protect operators of websites from this.

### *Privileged Reports*

11. The report appeared to recommend the updating of the definitions of privileged reports which previous legislation had defined as court proceedings etc. This appeared to refer to peer-reviewed scientific papers etc..

*Single Publication*

12. The report discussed the principle of multiple publication i.e. where a single slander is published at several points in time and generates multiple defamation actions, as is the case in Northern Ireland. The report recommended changes which would treat multiple publications as one unless they were materially different e.g. in respect of the level of prominence and the extent of publication.

*Libel Tourism*

13. The report recommended that legislation should require the court to consider which jurisdiction was the most appropriate for a defamation proceeding to be considered where the person was not domiciled in the UK or a Member State of the EU. Changes were proposed which would discourage the consideration of proceedings in an inappropriate jurisdiction in order to discourage so-called libel tourism.

*Trial by jury*

14. The report recommended that the presumption in favour of jury trials for defamation be removed in order to limit the length and costs of legal proceedings. This would bring Northern Ireland into line with England and Wales.

*Take Down Orders / Summaries*

15. The report recommended the increased use of take down orders and orders which require a summary of a judgement to be published.

*Slander of Women*

16. The report recommended the repeal of the Slander of Women Act 1891 and the overturning of a common law rule relating to special damage. This referred to where the imputation conveyed by the statement complained of is that the claimant has a contagious or infectious disease. In case law dating from the nineteenth century and earlier, the exemption has been held to apply in the case of imputations of leprosy, venereal disease and the plague.
17. More recently, the Department of Finance argued that legislation relating to the above should be delayed in order to ensure that it is properly informed by: the evaluation of the Defamation Act 2013 in England and Wales; the development of on-line safety legislation at Westminster; the development of a revised defamation protocol by the shadow Civil Justice Council in Northern Ireland; and the consideration of related matters in the Republic of Ireland.
18. The Defamation Bill was introduced on 7 June 2021 and completed its 2<sup>nd</sup> Stage on 14 September 2021.

## Committee Approach

19. The Committee Stage for the Defamation Bill began on 14 September 2021. Around 23 organisations and individuals responded to the Committee's call for evidence.
20. Nine oral evidence sessions were undertaken. The individuals and organisations who provided oral evidence were as follows: Dr Andrew Scott (3 November 2021); Dr Mark Hanna (24 November 2021); Paul Tweed (1 December 2021); Sam McBride and David Attfield, BBC (1 December 2021); National Union of Journalists (8 December 2021); Index on Censorship and English PEN (8 December 2021); Peter Girvan (8 December 2021); the Department of Finance (15 December 2021) and the Bill Sponsor (5 January 2022).
21. Further written submissions were kindly provided by a number of witnesses. Following this, a number of potential amendments were identified. The Committee wrote to the Department and to the Bill Sponsor seeking their views on the potential amendments. The Department and the Bill Sponsor provided helpful written clarifications. The Department indicated that although it had identified deficiencies in the Bill, it would not be bringing forward amendments.
22. The Committee sought the views of the shadow Civil Justice Council on aspects of the Bill including the relevant findings of a recent review of civil justice by Justice Gillen. As the shadow Civil Justice Council was in the process of developing a revised protocol on defamation and owing to the very constrained timescales, it declined to comment. Although the Committee accepted and understood this response, it was felt that this was most regrettable and that if more time had been available, this body could have greatly enhanced Members' understanding of the practicalities of the important provisions of the legislation.

23. The Committee noted with regret the absence of a bespoke formal consultation on the Bill and the lack of co-operation between the Bill Sponsor and the Department prior to and during the Committee Stage. The Committee noted that the Bill appears to entirely replicate the content of the Defamation Act 2013 and that effect to the less controversial provisions might have been made in Northern Ireland by appropriately drafted Westminster legislation supported by a Legislative Consent Motion in 2013. Necessary additions to these provisions could then have been the subject of an amendment Bill at the Assembly. This would have provided a much more efficient vehicle for the reform of defamation law in Northern Ireland.
24. The Committee also noted that the unfortunate timing of the 2<sup>nd</sup> Stage of the Defamation Bill; the reticence of some stakeholders in respect of giving oral evidence in public; and the overlap with another (unexpected) Committee Stage did not allow for the level and quality of scrutiny for this Bill which Members have come to expect for the legislative process at the Northern Ireland Assembly. The Committee endeavoured nonetheless to undertake its consideration of this important legislation with care and alacrity despite the inevitable time pressures associated with the final months of a foreshortened mandate.
25. The Committee deliberated informally on the Bill on 12 January 2022. It undertook formal clause by clause scrutiny of the Bill on 19 and 26 January 2022, at which time it had its first sight of the bulk of the Bill Sponsor's amendments. The Committee considered a draft of this report at its meeting of 26 January 2022 and ordered that this report should be published.
26. Minutes of Proceedings are at Appendix 1. The Minutes of Evidence are included at Appendix 2. Written submissions are included at Appendix 3. Submissions from the Bill Sponsor are at Appendix 4. Departmental papers are at Appendix 5. Relevant research papers are at Appendix 6. A list of witnesses to the Committee Stage is given at Appendix 7.

## Consideration of the Bill

### Clause 1 Serious Harm

27. This clause provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant. In the case of for-profit companies, serious harm is taken to mean serious financial loss. This clause, as drafted, as with all of the clauses of the Bill, appears to exactly replicate the provisions of the Defamation Act 2013.
28. A number of respondents to the call for evidence strongly argued that this provision was absolutely essential. They suggested that the requirement to demonstrate serious harm would dissuade people and organisations, with considerable means at their disposal, from bringing speculative defamation actions against public interest journalism. They contended that this was a largely unreported though surprisingly common practice in Northern Ireland. Examples were provided which appeared to illustrate that those with the wherewithal to access skilful lawyers could exploit existing legal provisions in Northern Ireland in order to intimidate local news outlets into either not publishing damaging material (the content of which, although accurate, was also debatable) or withdrawing such publications and paying excessive, punitive damages.
29. It was argued that as local news outlets have limited financial resources, the payment (or the prospect of the payment) of damages had a significant chilling effect on normal public interest reporting in Northern Ireland. The same was not true of other jurisdictions in the UK, as public interest journalism enjoys the benefits of serious harm protections. It was even suggested that the current legislation in Northern Ireland may have discouraged the satellite television broadcasting, in the whole of the UK, of critical documentary material regarding a litigious organisation.

30. It was also suggested that additional provision might be needed in order to allow the dismissal of trivial cases sometimes brought by individuals or for-profit organisations against NGOs and others. These proposed measures would be designed to further discourage the bringing forward of so-called Strategic Law Suits Against Public Participation (SLAPPs).
31. However, it was contended by other witnesses, that the so-called intimidation of media outlets by wealthy individuals and their lawyers was not at all common and that such interactions were in any case correctly controlled and subject to the proper governance of a published and agreed defamation protocol. It was contended that journalists could always take advantage of the common law rule that truth was a defence against an action for defamation. It was argued that if journalists simply worked to appropriate standards of accuracy and adopted a fair approach to the reporting of public interest matters, there could be no chilling effect for local media.
32. These witnesses also argued against measures designed to limit NGO exposure to SLAPPs indicating that there are existing processes to allow for the dismissal of trivial cases and that it would be difficult or impossible to define the term NGO in such a way as to help the intended beneficiaries of this kind of legislation.
33. The Bill Sponsor and some other respondents to the call for evidence argued that the serious harm test would require an early decision by the court in respect of the merits of a defamation action. It was suggested that the experience in England and Wales of similar provisions was that court time was reduced and court costs were both limited and front-loaded as a consequence. This, it was argued, was beneficial in terms of providing access to the courts for ordinary people with limited means in order to allow them to seek protection for their reputation or to seek appropriate redress.
34. Other respondents to the Committee Stage strongly contested the above. They argued that the serious harm test had not reduced costs in England

and Wales and that the front-loading of costs was of no benefit whatsoever to ordinary people undertaking defamation actions. They contended that the requirement to prove serious harm would actively dissuade ordinary people from protecting their reputations in court from (what might be termed) lesser slanders, particularly if they were faced with media organisations and/or internet providers with considerable financial means.

35. It was also argued that solicitors can appear on behalf of their clients in the County Court, at a much reduced cost compared to representation by barristers in the High Court. It was therefore contended that the extension of the jurisdiction of the County Court, which is understood to be currently limited to £3k, may allow enhanced access to justice in respect of defamation for those of limited means. The Bill Sponsor brought forward a related amendment - new clause 13A - which would require the Department to review the jurisdiction of the County Court in respect of defamation actions.
36. Another respondent to the Committee Stage had suggested that clause 1 might not be effective as the Supreme Court had ruled in respect of similar legislation in England and Wales and this consequently required the serious harm test to be a matter of fact rather than a matter of inference. It was suggested that amendments might be needed in order to allow for the inference of serious harm.
37. The Bill Sponsor indicated that an amendment was not required in this regard as the requirement to establish serious harm, as a matter of fact rather than inference, was appropriate. The Department appeared to support this position and argued that the ramifications of any amendment might be difficult to determine and have unforeseen consequences.
38. As with all of the important clauses of this Bill, the Committee felt that it had only limited time to both consider the ramifications of the provisions and explore the significant differences of opinion in respect of the reported



chilling effect on free speech and the possible limitations on access to justice for the defamed.

39. Some Members contended that the absence of consistency with the rest of the UK in respect of defamation legislation and in particular the serious harm test was difficult to justify. They felt that Northern Ireland's legislative framework in respect of defamation was being exploited by those with means and that reform was urgently required to protect public interest journalism.
40. Others argued that the consequences of the relevant legislation in other jurisdictions of the UK or elsewhere was either not yet fully understood or was subject to a considerable level of debate. Still others argued that the serious harm test may in fact be harmful and would limit, not enhance, access to justice for those with restricted means and who find themselves defamed.
41. Members expressed some support for the principle of extending the jurisdiction of the County Court so as to assist individuals' access to justice in respect of defamation. However, the Committee did not agree to amend the clause specifically in this regard as it was not clear what the full ramifications of such a change might be. Instead the Committee opted to support the Bill Sponsor's amendment to add an additional clause 13A which called for a related Departmental review.
42. The Committee noted the Bill Sponsor's argument in respect of the need to prove serious harm as a matter of fact rather than inference and did not agree to amend the Bill in this regard.
43. The Committee agreed that all of the matters discussed above might be usefully further explored by the Department in its ongoing consideration of defamation legislation.
44. Members generally agreed that the serious harm provision was important to the operation of the legislation but they disagreed strongly as to whether

the clause should stand part of the Bill. Consequently, the Committee divided and agreed that the clause should not stand part of the Bill. Details of the division and the wording of the new clause 13A are given in the next section of this report.

#### Clause 2 Truth

45. This clause replaces the common law defence of justification with a new statutory defence of truth. The clause is described as being intended to broadly reflect the current law while simplifying and clarifying certain elements.
46. Mediahuis suggested that the clause should be amended in order to include a requirement for pre-trial hearings which would amend (Order 82 Rule 3A of) the Rules of the Court of Judicature. These presently allow for either party to make an application to determine whether the words complained of are capable of bearing the meanings pleaded. However, in contrast to the position in England and Wales, it understood that current arrangements do not allow for a judge to determine a single meaning at that stage, with the result that parties are required to prepare for trial on the basis of multiple potential meanings.
47. The respondents argued that the possibility of an application for a determination of meaning at an early stage would save litigants both time and cost as the parties will have a clear indication at that stage on the potential defamatory nature of the words complained of.
48. The Department declined to comment on this possible amendment indicating that it was a procedural matter for the courts. The Committee sought the views of the shadow Civil Justice Council on other aspects of the Bill. This body regrettably found itself unable to comment in detail as it was in the process of devising a revised defamation protocol etc..
49. The Committee noted the absence of adverse commentary on the clause from any of the stakeholders including those that expressed concerns

about the Bill. The Committee noted that the provision has apparently operated without issue in England and Wales.

50. The Committee felt that in the absence of guidance from informed sources in respect of the suggested amendment relating to the early ruling on meanings and owing to the constrained timescales which precluded further related study, it would be prudent to not pursue the related amendment.
51. The Committee agreed to support a typographical correction amendment from the Bill Sponsor, the detail of which can be seen in the next section. The Committee agreed that the clause should stand part of the Bill, as amended.

### Clause 3 Honest Opinion

52. This clause replaces the common law defence of fair comment with a new defence of honest opinion. The clause is again described as broadly reflecting the current law while simplifying and clarifying certain elements, but does not include the current requirement for the opinion to be on a matter of public interest.
53. Dr Andrew Scott proposed an amendment clarifying reasonable belief. It is understood that that this expanded defence was aimed at the needs of the mass of social media commentators who might reasonably rely on statements of supposed fact made by professional journalists and broadcasters in making their own comments. The Bill Sponsor put down related amendments.
54. The Committee again noted the absence of adverse commentary on the clause from any of the stakeholders including those that expressed concerns about the Bill. The Committee noted also that the provision has apparently operated without issue in England and Wales.
55. Most Members felt that the suggested amendments were straightforward and provided additional and necessary clarity in respect of determining a

reasonable belief that might underpin an honest opinion. Other Members were less sure about the interpretation of the wording which referred to “facts” that might reasonably be believed to exist at the time of publication.

56. The Committee therefore divided on the amendment and agreed that it should stand part of the Bill. The Committee then agreed that the clause, as amended, should stand part of the Bill. The wording of the amendments and details of the division are included in the next section of this report.

#### Clause 4 Publication on a matter of public interest

57. This clause creates a new defence to an action for defamation of publication on a matter of public interest. It is based on the existing common law defence established in *Reynolds v Times Newspapers* and is intended to reflect the principles established in that case and in subsequent case law.
58. The Committee again noted the absence of adverse commentary on the clause from any of the stakeholders including those that expressed concerns about the Bill. The Committee noted also that the provision has apparently operated without issue in England and Wales.
59. As no amendments were proposed, the Committee agreed that the clause, as drafted, should stand part of the Bill.

#### Clause 5 Operators of websites

60. This clause creates a new defence for the operators of websites where a defamation action is brought against them in respect of a statement posted on the website. The defence applies if the operator can show that they did not post the statement on the website but this is defeated if the claimant can show that it was not possible for him or her to identify the person who posted the statement; that they gave the operator a notice of complaint in relation to the statement; and that the operator failed to respond to that notice in accordance with provisions contained in regulations to be made

by the Department of Finance. The Committee understood that these regulations would require the operator to identify the poster.

61. The Bill Sponsor contended that the clause was designed to support locally managed websites such as the online versions of the Belfast Telegraph, News Letter, Irish News, Belfast Live and the many online editions of the sub-regional weekly newspapers. He argued that moderating all user-generated content would require resources and funding of a scale that would discourage opening these platforms to the public, thus curtailing free speech. He contended that the clause would ensure that anyone who was defamed by user-generated content in this way would have the opportunity to identify the source of the defamation so that legal action could be initiated.
62. A number of respondents expressed considerable opposition to the intent of this clause. They argued that, as drafted, it would provide an exemption (or very significant limitation) of liability to internet intermediaries or “operators of websites”. It was contended that it was not at all clear how “operators of websites” is to be defined and this defence would be used by social networks who not only host content but also control/influence content alongside providing the platform/network which permits mass publication. The exemption/limitation provided in the clause was described as being unjustifiable and far beyond the defences under European Union e-commerce regulations.
63. It was further argued that the notion that the claimant has to bear the burden of establishing that the identity of the person who posted the content cannot be established is extremely unfair, particularly in circumstances in which website operators located outside the jurisdiction do not willingly provide information from which the person can be identified but are supposedly the secondary defendant insofar as an individual cannot be identified. It was strongly argued that the equivalent regulations in the England and Wales legislation are not workable and have not worked in practice.

64. Other stakeholders referred to a significant increase in actions against social media platforms for defamation in the last number of years, which was described as a testament to the lack of regulation in this area. These stakeholders called for legislation to regulate media operations which should apply to all forms of media including social media and not just mainstream outlets.
65. The Department indicated that it had “reservations regarding moves that might exempt or significantly limit the liability of website operators based on one particular idea of what a website operator is (e.g. that a website operator is a neutral facilitator of online comment).” It indicated that it believed that “some, perhaps many, website operators have a more hands on role with regard to online content they host than facilitation.” The Department advised that it is awaiting the findings of a related review in the Republic of Ireland and believed that any amendments around social media regulation would be beyond the scope of the Bill and the competence of the Assembly.
66. The Bill Sponsor also proposed an uncontroversial amendment which would move details of the regulation-making powers from clause 5 to clause 17. The Committee indicated that it had no difficulty with this amendment.
67. The Committee expressed considerable reservations about this clause. Members referred to multiple examples of very serious defamations on social media sites which were promulgated by anonymous individuals or so-called ‘straw men’ who would often easily evade court action. Members indicated significant dissatisfaction at the inability or unwillingness of large-scale social media operators to address this grave problem.
68. The Committee recognised that extensive reform was required of these matters and that this would be better undertaken at national level through the new Westminster on-line safety legislation or even at pan-national level through international agreements. The Committee also felt that these

matters might be usefully further explored by the Department in its ongoing consideration of defamation legislation.

69. The Committee recognised the sincerity of the Bill Sponsor's wish to provide access to free speech media for local news outlets and agreed that action would be needed in order to protect local newspapers from unfair competition from other providers who do not face the same legal exposure in respect of defamation and have access to much greater web management resources. However, the majority of Members did not feel that this Bill was the appropriate vehicle for such measures.
70. Further to the above, the Committee also noted the very real possibility of conflict between the clause and anticipated Westminster legislation on on-line safety. The Committee noted also the possibility of conflict between the regulation-making power in sub-clause 5(5) which would require the identification of the posters of allegedly defamatory material and Article 8 of the European Convention on Human Rights which refers to the right to a private life.
71. Given that the clause may have the unintended consequence of further reducing the liability of social media operators and the urgent need for a better and more robust vehicle for reform in this area, the Committee divided and agreed that the clause as amended should not stand part of the Bill.

Clause 6 Peer reviewed statement in scientific or academic journals etc.

72. This clause creates a new defence of qualified privilege relating to peer-reviewed material in scientific or academic journals (whether published in electronic form or otherwise). The term "scientific journal" is to include medical and engineering journals.
73. The Committee again noted the absence of adverse commentary on the clause from any of the stakeholders including those that expressed

concerns about the Bill. The Committee noted also that the provision has apparently operated without issue in England and Wales.

74. As no amendments were proposed, the Committee agreed that the clause, as drafted, should stand part of the Bill.

#### Clause 7 Reports etc. protected by privilege

75. This clause amends the provisions contained in the 1996 Defamation Act relating to the defences of absolute and qualified privilege to extend the circumstances in which these defences can be used. This clause extends the scope of the defence so that it also covers proceedings in any court established under the law of a country or territory outside the United Kingdom, and any international court or tribunal established by the Security Council of the United Nations or by an international agreement. As is the case with the England and Wales legislation, the clause also appears to extend aspects of privilege to the fair and accurate reporting, in a matter of public interest, of a news conference.
76. Mr Allister recorded reservations in respect of sub-clause 7(5) which would amend the Defamation Act 1996 in respect of the application of aspects of privilege to the fair and accurate reporting in a matter of public interest of a news conference.
77. Notwithstanding the above, the Committee again noted the general absence of adverse commentary on the clause from most of the stakeholders including those that expressed concerns about the Bill. The Committee noted also that the provision has apparently operated without issue in England and Wales.
78. As no amendments were proposed, the Committee agreed that the clause, as drafted, should stand part of the Bill.

#### Clause 8 Single Publication Rule



79. The clause introduces a single publication rule to prevent an action being brought in relation to publication of the same material by the same publisher after a one year limitation period from the date of the first publication. This replaces the longstanding principle that each publication of defamatory material gives rise to a separate cause of action which is subject to its own limitation period (the “multiple publication rule”). Subsection (3) has the effect of ensuring that the limitation period is treated as having started to run on the date of the first publication unless the form of the publication is materially different. The clause retains some discretion for the court in respect of the above.
80. The Bill Sponsor also proposed an uncontroversial amendment designed to correct a typographical error. The Committee indicated that it had not difficulty with this amendment.
81. The Committee noted that the effect of the current arrangements in Northern Ireland is that claimants could make repeated claims for defamation for libels which are e.g. re-published on the internet perhaps years after the original publication. On the one hand, it appeared that such a provision which seems to be unique in the UK might be an inducement for libel tourism. It should be noted however that no evidence that Northern Ireland is a centre for libel tourism was provided during the Committee Stage.
82. On the other hand, it seemed that the existing provision could motivate website operators to remove current and historic libellous material from their platforms more regularly and with greater diligence. The Committee also noted that it might be argued that, in the absence of effective international agreements on removing historic material from the internet, the current local legislation could have an equivalent positive effect. That said, this seemed to also engage the Bill Sponsor’s argument in clause 5 in respect of a need to limit the web management resource requirement for local newspapers so that they may operate websites which encourage public comment.

83. The Committee felt that, as with clause 5, issues in respect of the retention and re-publication of libels on the internet might be usefully further explored by the Department in its ongoing consideration of defamation legislation and related developments in the Republic of Ireland.
84. The Committee divided but could not agree that the clause as amended should stand part of the Bill. Details of the division and the amendment are given in the next section of this report.

Clause 9 Action against a person not domiciled in the UK or a Member State etc.

85. The clause aims to address the issue of “libel tourism” (a term which is used to apply where cases with a tenuous link to Northern Ireland are brought in this jurisdiction). Subsection (2) provides that a court does not have jurisdiction to hear and determine an action to which the clause applies unless it 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.
86. A respondent to the Committee Stage suggested that the clause might act as an additional burden on a plaintiff seeking to claim against a website operator who operates outside the UK or a Member State. He contended that the test in the legislation is higher than that applied at common law.
87. The Department indicated that clause 9 if passed will be construed in such a way that jurisdiction in Northern Ireland will only be established where it can be demonstrated that this is clearly the most appropriate place in which to bring an action. The Department contended that this will clearly present an additional hurdle for someone to take an action against a person not domiciled in the UK, and although the courts here will not necessarily have to follow the jurisprudence in England and Wales it is likely that the Court of Appeal judgment in the Wright case will be the starting point. This would mean that in order to meet the test in clause 9, factors will include the number of times the libel has been published in this jurisdiction compared

to others; the amount of reputational damage which ensues; as well as the availability of fair judicial process and remedies in other jurisdictions.

88. The Bill Sponsor indicated that although he could provide no evidence of libel tourism, he felt that the clause was necessary in order to provide protections for individuals who are subject to slanders etc. which were published about them in this jurisdiction but originate elsewhere.
89. The Bill Sponsor brought forward an amendment relating to a typographical error in the Bill which wrongly identified the UK as another Member State of the EU. The amendment also limited the application of the provision to the UK rather than to Member States of the European Union and states which are a contracting party to the Lugano Convention. The Committee indicated that it had no difficulty with this amendment.
90. Mr Allister indicated his opposition to the clause on the basis that it is ill-considered and unintentionally provides an additional barrier to prosecution for those in Northern Ireland who find themselves defamed.
91. The Committee divided and agreed that the clause as amended should stand part of the Bill. The details of the relevant amendment and the division are given in the next section of the report.

Clause 10 Action against a person who was not the author, editor etc.

92. The clause is described as limiting the circumstances in which an action for defamation can be brought against someone who is not the primary publisher of an allegedly defamatory statement unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.
93. Dr Andrew Scott proposed amendments which were put down by the Bill Sponsor which offered a clear definition of the author, editor and publisher.
94. The Committee noted evidence which suggested that under current legislation and certain circumstances, it is possible for e.g. bookshops who

sell defamatory material in Northern Ireland to be prosecuted for defamation even though this is not the case in the other jurisdictions of the UK.

95. Members expressed differing views on the clause. Some felt that the existing provisions of the Defamation Act 1996 - which require defendants who are not the author, editor or publisher to take reasonable care in relation to the publication and to have reason to believe that it didn't contain defamatory material - are sufficient existing protection for and place a reasonable onus on defendants. These Members argued that the clause and an amendment were therefore not required.
96. Other Members contended that the clause and the amendment clarified the legislation; brought it into line with the rest of the UK and would serve to support publication on public interest matters.
97. The Committee divided on the amendment and supported its addition to the clause. The Committee then divided on the amended clause and could not agree that it should stand part of the Bill. Details of the amendments and the divisions are given in the next section of this report.

#### Clause 11 Trial to be without a jury

98. The clause removes the presumption in favour of jury trial in defamation cases. Currently section 62(1) of the Judicature (Northern Ireland) Act 1978 provides for a right to trial with a jury in certain civil proceedings (namely libel, slander, malicious prosecution, and false imprisonment) on the application of any party, unless the court considers that the trial requires any "protracted examination of documents or accounts or any technical, scientific or local investigation which cannot conveniently be made with a jury". Clause 11 removes libel and slander from the list of proceedings where a right to jury trial exists. The result of the clause would be that defamation cases will be tried without a jury unless a court orders otherwise. It is understood that the judge would retain discretion to order a jury trial if it is considered to be appropriate.

99. The Bill Sponsor argued that no other UK jurisdiction has a presumption in favour of trial by jury for defamation cases. He accepted that there is a particular resonance for non-jury trials in this jurisdiction, based on legacy issues, but that is with regard to criminal cases. He contended that the clause does not put any bar on trial by jury, rather it removes the presumption. He argued that a judge-only trial will allow for an early definition of a single meaning to the words under dispute and consequently an opportunity for earlier resolution. He indicated that this provision was central to the intent of the Bill which was to reduce the costs and the level of jeopardy associated with defamation actions and thus eliminate the chilling effect on free speech and public interest journalism in this jurisdiction.
100. Index on Censorship and English PEN suggested a further amendment arguing that presently there is very little incentive for a claimant to seek mediation. Consequently, mandatory mediation services should therefore be considered, it was argued, so that the vast majority of cases could be dealt with quickly and effectively. Indeed, the Committee noted that the Gillen Review of Civil Justice (2017) considered matters relating to defamation and suggested that judges might be given discretionary powers to compel parties to undertake Alternative Dispute Resolution (ADR) or face possible financial penalties in the event that formal proceedings go against them. The argument from Index on Censorship and English PEN appeared to be that a presumption in favour of the use of ADR (with associated penalties) would limit costs and jeopardy and thus have a similar positive effect to judge-only trials in respect of public interest journalism. The Bill Sponsor put down a related amendment - clause 10A - which would permit a judge to order the use of ADR.
101. Some Members strongly felt that clause 11 tended to undermine the important principle that jury trials are the reliable foundation of the UK justice system. They felt that if public interest journalists adhered to good standards and crucially, ensured accuracy in their reporting, there would

be limited danger of speculative defamation actions. The reported chilling effect was in respect of poor quality journalism and these basic measures would thus nullify any such supposed effect.

102. Other Members argued that the clause brings this jurisdiction into line with the rest of the UK and thus certainly does not undermine the general principle of jury trials. They contended that the clause was an important element in the range of measures covered by the Bill which would protect free speech and public interest journalism from speculative defamation actions.

103. The Committee noted that if the intention of the Bill was to reduce the length of legal proceedings and thereby costs and jeopardy, much of this might be achieved by:

- including a requirement for pre-trial hearing at which the meaning of the words disputed may be determined;
- enhancing the jurisdiction of the County Court in respect of defamation; and
- enhancing judicial discretion in respect of a requirement for parties to use ADR or face financial penalties, if the judgement goes against them.

104. The Committee noted with regret that for the reasons' set out above, the shadow Civil Justice Council was unable to comment on any of the provisions or suggested amendments to the Bill. Consequently, the Committee felt that it could not comment authoritatively on these suggested amendments. The Committee did agree that the Department should take forward the above as part of its consideration of related matters. The Committee also agreed to support the Bill Sponsor's amendment which would add a new clause 10A in respect of judicial discretion on the use of ADR.

105. As a consequence, the Committee divided and agreed that clause 11 should not stand part of the Bill. Details of the division and the wording of the new clause 10A are given in the next section of this report.

Clause 12 Power of court to order a summary of its judgement to be published

106. The clause refers to summary disposal proceedings under section 8 of the Defamation Act 1996 Act. Under the clause, the court has power to order an unsuccessful defendant to publish a summary of its judgment where the parties cannot agree the content of any correction or apology. The clause gives the court power to order a summary of its judgment to be published in defamation proceedings more generally.

107. The Committee again noted the absence of adverse commentary on the clause from any of the stakeholders including those that expressed concerns about the Bill. The Committee noted also that the provision has apparently operated without issue in England and Wales.

108. As no amendments were proposed, the Committee agreed that the clause, as drafted, should stand part of the Bill.

Clause 13 Order to remove statement or cease distribution

109. The clause refers to situations where an author may not always be in a position to remove or prevent further dissemination of material which has been found to be defamatory. The court can order the operator of a website to remove the statement, or require any person to cease disseminating it.

110. The Committee again noted the absence of adverse commentary on the clause from any of the stakeholders including those that expressed concerns about the Bill. The Committee noted also that the provision has apparently operated without issue in England and Wales.

111. As no amendments were proposed, the Committee agreed that the clause, as drafted, should stand part of the Bill.

#### Clause 14 Actions for slander: Special damage

112. The clause repeals the Slander of Women Act 1891 and overturns a common law rule relating to special damage where the imputation conveyed by the statement complained of is that the claimant has a contagious or infectious disease. In case law dating from the nineteenth century and earlier, the exemption has been held to apply in the case of imputations of leprosy, venereal disease and the plague.
113. Members expressed considerable surprise that the existing provisions had not been subject to previous correction. The Committee agreed that the clause, as drafted, should stand part of the Bill.

#### Clause 15 Meaning of “publish” and “statement”

114. The clause sets out definitions of the terms “publish”, “publication” and “statement” for the purposes of the Act.
115. The Bill Sponsor put down uncontroversial typographical amendments. The Committee agreed that the clause, as amended, should stand part of the Bill. The wording of the amendments is included in the next section.

#### Clause 16 Consequential amendments and savings etc.

116. The clause makes consequential amendments to Article 9 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 to reflect the new defences of truth and honest opinion. Article 9 of the 1978 Order applies to actions for libel or slander brought by a rehabilitated person based on statements made about offences which were the subject of a spent conviction. Subsections (4) to (8) contain savings and interpretative provisions.
117. The Bill Sponsor put down uncontroversial typographical amendments. The Committee agreed that the clause, as amended, should stand part of the Bill. The wording of the amendments is included in the next section.



### Clause 17 Regulations and orders

118. The Committee noted that a delegated powers memorandum had not been produced for the Bill. The Committee noted advice from the Examiner of Statutory Rules in respect of the delegated powers.
119. The Bill Sponsor put down amendments which would make the delegated powers subject to draft affirmative resolution. The Committee found these amendments to be uncontroversial.
120. The Committee agreed that the clause, as amended, should stand part of the Bill. The wording of the amendments is included in the next section.

### Clause 18 Commencement

121. The clause as drafted indicates that most of the provisions of the Bill will be commenced at the discretion of the Department. The Committee accepted a minor amendment which was put down by the Bill Sponsor.
122. The Committee also felt that leaving the commencement of all of the provisions of the Bill to the Department's discretion might lead to the Department not commencing those provisions which it found to be unacceptable, for a very considerable period of time.
123. The Committee recommended to the Bill Sponsor that he should bring forward an amendment which might require the Department to commence all provisions within a reasonable timeframe. The Bill Sponsor subsequently brought forward such an amendment.
124. The Committee agreed that the clause, as amended, should stand part of the Bill. The details of the amendment are provided in the next section of this report.

### Other Amendments

125. The Committee noted suggested amendments relating to discursive remedies and the so-called bipartite proposal. To explain: it is understood

that in a defamation case, the law requires that a “single meaning” should be selected by the court from among those meanings that are possible in respect of the “defamatory” statement or publication at issue. The case is then determined on the basis of that interpretation alone. A complex set of rules have been developed in this regard. Dr Andrew Scott’s report suggested the abolition of the single meaning rule in conjunction with the introduction of a jurisdictional bar on claims based on meanings of publications that had been settled by discursive remedies and thus corrected or retracted promptly and prominently - the report calls this the bipartite proposal.

126. The Department and the Bill Sponsor argued that such an approach might allow an author to rely on an inoffensive meaning where an offensive meaning was in fact intended and that the approach would encourage a less rigorous approach to fact checking and open the door to those who want to deliberately make inaccurate, salacious and defamatory statements, knowing that an early clarification absolves them of any subsequent culpability.
127. The Committee accepted these arguments and agreed that it would not support any related amendments.
128. The Bill Sponsor brought forward an amendment to introduce a new clause 14A which would require the Department to undertake a review of the operation of the legislation and related matters within 2 years of Royal Assent.
129. The Department suggested that the amendments should require a review to be undertaken after commencement and including a bedding-in period of 3-5 years during which the Department could devise the regulations in the Bill and determine the overall effectiveness of the Bill’s provisions.
130. Mr Allister indicated concern in respect of the principle of approving a defective Bill about which Members had expressed concerns and then seeking to repair it and limit the damage caused by including a review

provision. He argued that if Members were concerned about aspects of the Bill, they should vote against them or seek to amend them rather than relying on a subsequent review.

131. The Committee agreed that the Department should undertake a review of defamation and this should include the matters set out above, including serious harm, County Court jurisdiction, the use of ADR etc.. Notwithstanding the above, the Committee agreed that the new clause 14A should stand part of the Bill. The details of the new clause are included in the next section.

## Clause by Clause Scrutiny of the Bill

### Clause 1 - Serious Harm

133. The Committee considered Clause 1 as drafted.

The question was put that the Committee was content that Clause 1 as drafted should stand as part of the bill.

The Committee divided: Ayes 4; Noes 5; Abstain 0.

#### AYES

Mr Steve Aiken

Mr Pat Catney

Mr Matthew O'Toole

Mr Jim Wells

#### NOES

Mr Jim Allister

Mr Keith Buchanan

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

The motion was negatived.

### Clause 2 - Truth

134. The Committee considered Clause 2 and a proposed amendment which included a typographical correction:

#### *Amendment 1*

*Clause 2, Page 1, Line 19 -*

*Leave out 'Defamation (Northern Ireland) Act' and insert 'Defamation Act (Northern Ireland)'*

Agreed: The Committee agreed that it was content that to amend Clause 2 as indicated in Amendment 1.

Agreed: The Committee agreed that it was content that Clause 2 as amended should stand part of the Bill.

### Clause 3 - Honest Opinion

135. The Committee considered Clause 3 and proposed Amendments 2, 3 and 4.

*Amendment 2*

*Clause 3, Page 2, Line 12 -*

*After 'before' insert 'or at the same time as'*

*Amendment 4*

*Clause 3, Page 2, Line 31*

*Leave out 'Defamation (Northern Ireland) Act' and insert 'Defamation Act (Northern Ireland)'*

Agreed: The Committee agreed to it was content to amend Clause 3 as indicated in Amendment 2 and Amendment 4.

*Amendment 3*

*Clause 3, Page 2, Line 13, -*

*at end insert- '(c) any fact that the defendant reasonably believed to exist at the time the statement complained of was published.'*

The question was put that the Committee was content to amend Clause 3 as amended as indicated in Amendment 3.

The Committee divided: Ayes 7; Noes 2; Abstain 0.

**AYES**

Mr Steve Aiken

Mr Pat Catney

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

Mr Matthew O'Toole

Mr Jim Wells

**NOES**

Mr Jim Allister

Mr Keith Buchanan

Agreed: The Committee agreed that it was content that Clause 3 as amended should stand part of the Bill.

**Clause 4 - Public Interest**

136. The Committee considered Clause 4.

Agreed: The Committee agreed that it was content that Clause 4 as drafted should stand as part of the Bill.

### **Clause 5 - Website Operators**

137. The Committee considered Clause 5 and a proposed amendment:

*Amendment 5*

*Clause 5, Page 4, Line 4*

*Leave out subsections (8), (9) and (10)*

Agreed: The Committee agreed that it was to amend Clause 5 as indicated in Amendment 5.

The question was put that the Committee was content that Clause 5 as amended should stand part of the Bill.

The Committee divided: Ayes 1: Noes 6: Abstain 2.

#### **AYES**

Mr Steve Aiken

#### **NOES**

Mr Jim Allister

Mr Keith Buchanan

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

Mr Jim Wells

#### **ABSTAIN**

Mr Matthew O'Toole

Mr Pat Catney

The motion was negatived.

### **Clause 6 - Scientific Journals**

138. The Committee considered Clause 6 as drafted.

Agreed: The Committee agreed it was content that Clause 6 as drafted should stand part of the Bill.

### **Clause 7 - Privileged Reports**

139. The Committee considered Clause 7 as drafted.

Agreed: The Committee agreed it was content that Clause 7 as drafted should stand part of the Bill.

### **Clause 8 - Single Publication Rule**

140. The Committee considered Clause 8 and a proposed amendment:

*Amendment 6*

*Clause 8, Page 7, Line 22*

*Leave out 'Act' and insert 'Order'*

Agreed: The Committee agreed it was content to amend Clause 8 as indicated in Amendment 6.

The question was put that the Committee was content that Clause 8 as amended. should stand part of the bill

The Committee divided: Ayes 3; Noes 3; Abstain 3.

#### **AYES**

Mr Steve Aiken

Mr Pat Catney

Mr Matthew O'Toole

#### **NOES**

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

#### **ABSTAIN**

Mr Jim Allister

Mr Keith Buchanan

Mr Jim Wells

The motion fell.

### **Clause 9 - Actions Against Those Not Domiciled in the UK etc.**

141. The Committee considered Clause 9 and a proposed amendment:

*Amendment 7*

*Leave out Clause 9 and insert-*

*Jurisdiction*

***'Action against a person not domiciled in the UK***

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

*(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.*

*(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.*

*(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.’*

Agreed: The Committee agreed that it was content to amend Clause 9 as indicated in Amendment 7.

The question was put that the Committee was content that Clause 9 as amended should stand part of the Bill.

The Committee divided: Ayes 5; Noes 4; Abstain 0.

**AYES**

Mr Steve Aiken

Mr Keith Buchanan

Mr Pat Catney

Mr Matthew O’Toole

Mr Jim Wells

**NOES**

Mr Jim Allister

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

The motion was carried.

**Clause 10 - Actions Against Those Who Are Not The Author Etc.**

142. The Committee considered Clause 10 and a tabled amendment which set out definitions of author, editor etc. This is shown in full at Appendix 4.

The question was put that the Committee was content to amend Clause 10 as indicated in the tabled amendment.



The Committee divided: Ayes 5; Noes 3; Abstain 1.

**AYES**

Mr Steve Aiken

Mr Jim Allister

Mr Pat Catney

Mr Matthew O'Toole

Mr Jim Wells

**NOES**

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

**ABSTAIN**

Mr Keith Buchanan

The motion was carried.

The question was put that the Committee was content that Clause 10 as amended should stand part of the Bill.

The Committee divided: Ayes 4; Noes 4; Abstain 1.

**AYES**

Mr Steve Aiken

Mr Pat Catney

Mr Matthew O'Toole

Jim Wells

**NOES**

Mr Jim Allister

Ms Jemma Dolan

Mr Philip McGuigan

Maoliosa McHugh

**ABSTAIN**

Mr Keith Buchanan

The motion fell.

**New Clause 10A - Alternative Dispute Resolution (ADR)**

143. The Committee considered Amendment 8 which includes a new Clause 10A which allows judicial discretion to require the use of ADR.

*Amendment 8*

*After Clause 10 insert-*

*New Clause 10A*

*'Alternative Dispute Resolution*

*10A.—A judge may order plaintiffs and defendants to engage in Alternative Dispute Resolution before commencement of a trial.'*

Agreed: The Committee agreed that it was content that new Clause 10A as indicated in Amendment 8 should stand part of the Bill.

### **Clause 11 Trial without jury**

144. The Committee considered Clause 11 as drafted.

The question was put that that the Committee was content that Clause 11 as drafted should stand part of the Bill.

The Committee divided: Ayes 3; Noes 4; Abstain 2.

#### **AYES**

Mr Steve Aiken

Mr Pat Catney

Mr Matthew O'Toole

#### **NOES**

Mr Jim Allister

Ms Jemma Dolan

Mr Philip McGuigan

Mr Maolíosa McHugh

#### **ABSTAIN**

Mr Keith Buchanan

Mr Jim Wells

The motion was negatived.

### **Clause 12 - Summary Judgement**

145. The Committee considered Clause 12.

Agreed: The Committee agreed it was content that Clause 12 as drafted should stand part of the Bill.

### **Clause 13 - Order to Remove and Cease**

146. The Committee considered Clause 13.

Agreed: The Committee agreed it was content that Clause 13 as drafted should stand part of the Bill.

### **Clause 13A - County Court Jurisdiction**

147. The Committee considered Amendment 9 which includes a new clause 13A.

*Amendment 9*

*After Clause 13 insert-*

*New Clause 13A 'Financial limits of county courts*

*Increase of financial limits of civil jurisdiction of county courts*

*13A.— The Department of Justice must carry out a review of the financial limits of civil jurisdiction of county courts in respect of libel and slander before the end of the period of 2 years beginning with the day on which this Act receives Royal Assent.'*

Agreed: The Committee agreed it was content that the new Clause 13A as indicated in Amendment 9 should stand part of the Bill.

**Clause 14 - Action For Slander**

148. The Committee considered Clause 14.

Agreed: The Committee agreed it was content that Clause 14 as drafted should stand part of the Bill.

**Clause 14A - Review**

149. The Committee considered Amendment 10 which includes a new clause 14A:

*Amendment 10*

*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.'*

Agreed: The Committee agreed it was content that the new Clause 14A as indicated in Amendment 10 should stand part of the bill.

### **Clause 15 - Meanings**

150. The Committee considered Clause 15 and proposed amendments:

*Amendment 11*

*Clause 15, Page 9, Line 21*

*Leave out 'Meaning of "publish" and "statement"' and insert 'Interpretation'*

*Amendment 12*

*Clause 15, Page 9, Line 26,*

*at end insert-"the Department" means The Department of Finance.*

*"Regulations" means regulations made by the Department.'*

Agreed: The Committee agreed that it was content to amend Clause 15 as indicated in Amendments 11 and 12.

Agreed: The Committee agreed that it was content that Clause 15 as amended should stand part of the Bill.

### **Clause 16 - Consequential Amendments**

151. The Committee considered Clause 16 and proposed amendment:

*Amendment 13*

*Clause 16, Page 9, Line 34*

*Leave out 'Defamation (Northern Ireland) Act' and insert 'Defamation Act (Northern Ireland)'*

Agreed: The Committee agreed that it was content to amend Clause 16 as indicated in Amendment 13.

Agreed: The Committee agreed that it was content that Clause 16 as amended should stand part of the Bill.

## Clause 17 - Regulations

152. The Committee considered Clause 17 and proposed amendments:

*Amendment 14*

*Clause 17, Page 10, Line 9*

*Leave out subsection (1) and insert- '(1) Subject to subsection (2), regulations under this Act may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.'*

*Amendment 15*

*Clause 17, Page 10, Line 16*

*Leave out subsection (4)*

Agreed: The Committee agreed that it was content to amend Clause 17 as indicated in Amendments 14 and 15.

Agreed: The Committee agreed that it was content that Clause 17 as amended should stand part of the Bill.

## Clause 18 Commencement

153. The Committee considered Clause 18 and a proposed amendment:

*Amendment 16*

*Clause 18, Page 10, Line 19-*

*at end insert- '(1A) Section 17 and section 19 come into operation immediately.'*

Agreed: The Committee agreed that it was content to amend Clause 18 as indicated in Amendment 16.

The Committee considered a further proposed amendment in respect of Commencement discretion: Clause 18, Page 10, Line 18

*Leave out subsection 1 and insert-*

*'(1) Section 5 comes into operation within 6 months of the day after the day on which this Act receives Royal Assent.'*

*Clause 18, Page 10, Line 19, at end insert-*

*'(1A) Sections 17 and 19 come into operation on the day on which this Act receives Royal Assent.'*

*Clause 18, Page 10, Line 20*

*Leave out 'such day or days as the Department may by order appoint' and insert 'the day after the day on which this Act receives Royal Assent.'*

Agreed: The Committee agreed that it was content to amend Clause 18 as amended and as indicated above.

### **Clause 19 - Short Title**

154. The Committee considered Clause 19.

Agreed: The Committee agreed it was content that Clause 19 - the short title of the Bill - as drafted should stand part of the Bill.

### **Long Title**

155. The Committee agreed that it was content with the Long Title, as drafted.

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[08 December 2021 - Index on Censorship & English PEN](#)

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## **Appendix 3: Written submissions**

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[Committee for Agriculture, Environment and Rural Affairs](#)

[Department for Agriculture, Environment and Rural Affairs](#)

[Department of Justice](#)

[Dr Andrew Scott](#)

[Equality Commission for Northern Ireland](#)

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[Mediahuis](#)

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[News Media Association](#)

[Northern Ireland Human Rights Commission](#)

[Ofcom](#)

[Olivia O'Kane](#)

[Paul Tweed](#)

[Peter M Girvan Esq](#)

[Publishers Association](#)

[Shadow Civil Justice Council](#)

[The Law Society of Northern Ireland](#)

[UTV](#)

## **Appendix 4: Memoranda from the Bill Sponsor**

[Defamation Bill as Introduced.](#)

[Defamation Bill Explanatory and Financial Memorandum](#)

[Bill Sponsor response to questions from Committee meeting of 26 November 2021](#)

[Bill Sponsor response regarding possible amendments from Committee meeting of 5 January 2022](#)

[Bill Sponsor alternative definition of author editor publisher](#)

[Bill Sponsor additional amendments 17 January 2022](#)

[Bill Sponsor additional amendments 25 January 2022](#)

## **Appendix 5: Memoranda from the Department**

[Minister of Finance response to Call for Evidence.](#)

[Minister of Finance letter to Business Committee regarding 2<sup>nd</sup> Stage of Bill.](#)

[The Speaker's response to Minister of Finance regarding 2<sup>nd</sup> Stage of Bill.](#)

[Department of Finance response following Departmental evidence to Committee of 10 November 2021.](#)

[Department of Finance response regarding possible amendments](#)

[Minister of Finance commentary following Bill Sponsor evidence of 5 January 2022.](#)

## **Appendix 6: Research Papers**

[NIAR 50-2021 - Defamation Bill – September 2021](#)

[Northern Ireland Law Commission Consultation Paper – Defamation Law in Northern Ireland – NILC 19 \(2014\)](#)

[Reform of Defamation Law in Northern Ireland – Dr Andrew Scott – June 2016](#)

## **Appendix 7: List of Witnesses that gave evidence to the Committee**

- Dr Andrew Scott
- Dr Mark Hanna, Queen's University Belfast
- Mr Paul Tweed
- Mr Sam McBride
- Mr David Atfield, BBC
- Professor Chris Frost, National Union of Journalists
- Mr Peter Girvan
- Mr Charlie Holt, English PEN
- Ms Jessica Ní Mhainín, Index on Censorship
- Michael Foster, Department of Finance
- Martin Tyrell, Department of Finance
- Mike Nesbitt MLA

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