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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
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Our Ref : CFP 236/11-15

30 May 2013

Dear Shane,

Thank you for your letter of 9 May 2013 which invited the Department to comment on the points which had been raised by the Libel Reform Campaign ("LRC") in its letter to the Committee of 2 May 2015. Departmental officials have considered the points raised by the LRC and taking each of those points in the order in which they arise have provided the following comments.

- The LRC queries why Defamation Act 2013 ("the Act") was not "adopted by the Assembly".

The Department wrote to the Committee on 14 June of last year (MISC59/11-15) setting out why a legislative consent motion in respect of Clause 7 of the then Bill could not be pursued.

- The LRC suggests that the failure to adopt the Act will have a "significant effect in chilling the freedom of expression".

The UK Government has never suggested that the Act was required in order to comply with human rights obligations, including freedom of expression. Indeed, the Impact Assessment which accompanied the then Bill says that the Bill "represents one of a number of strands of work that the Government is taking forward to improve the clarity and the certainty of the law on defamation and to reduce costs and reform procedures to enable cases to be dealt with more quickly and effectively". It is also stated that the procedural reforms are intended to "reduce delay and encourage early resolution". It is worth noting that the issue of early resolution has already been addressed in Northern Ireland. On 14 April 2011, the Honourable Mr Justice Gillen introduced the "Pre-Action Protocol in Defamation". The Protocol sets out a code of good practice which the parties should follow when litigation is being considered and, in particular, encourages the parties to consider whether alternative dispute resolution would be more suitable than litigation.

- The LRC states that the Act strengthens the public interest defences, requires proof of financial loss by corporations, takes account of internet publications and deals with libel tourism.

It is often difficult to predict how new legislation will operate and the impact of the Defamation Act 2013 will, no doubt, fall to be assessed by policy makers in England and Wales in due course.

- The LRC notes the 2008 observations of the United Nations Human Rights Committee (“the UNHRC”).

It is assumed that this is a reference to the 2008 concluding observations of the UNHRC in respect of the International Covenant on Civil and Political Rights. It is worth noting that the Committee focused on “public officials and prominent public figures” and suggested that conditional fee arrangements and “so-called success fees” may have forced defendant publications “to settle without airing valid defences”. Lawyers in Northern Ireland cannot take cases on a no win, no fee basis and it would, therefore, appear that the Committee’s criticisms relate to the “practical application of the law on libel” in England and Wales. The UK Government has, of course, taken steps to reform the civil litigation costs regime in that jurisdiction.

- The LRC refers to libel cases which had no connection with the UK.

So far as the Department is aware, the concerns with regard to the choice of jurisdiction have arisen in relation to cases which went before the High Court in England and Wales, rather than Northern Ireland.

- The LRC suggests that “corrupt business men, powerful vested interests and global corporations” may use the High Court in Belfast to “silence their critics”.

The counter-argument, which is presented by those who are opposed to a change in the law, is that powerful lobby groups have secured the change to protect their own vested interests. There is no empirical research on this issue. However, by and large, it would appear that, in Northern Ireland, the law on defamation is used by ordinary people who are endeavouring to protect their personal reputation.

- The LRC suggests that it is to the detriment of citizens if the libel law in Northern Ireland remains unreformed.

It would appear that, in Northern Ireland, the law on defamation operates in a different way to that in England and Wales and there are no plans to review that law.

Yours sincerely,

JUDITH FINLAY