

Defamation Bill

[AS AMENDED AT FURTHER CONSIDERATION STAGE]

LEGISLATIVE COMPETENCE

At Introduction the Member in charge of the Bill, Mr Mike Nesbitt, had made the following statement under Standing Order 30:

“In my view the Defamation Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE’S CONSENT

The Secretary of State had consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.

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Defamation

A

BILL

TO

Amend the law of defamation.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Defences

Truth

1.—(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.

5 (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.

(3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be
10 substantially true do not seriously harm the claimant's reputation.

(4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act (Northern Ireland) 1955 (justification) is repealed.

Honest opinion

15 2.—(1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

(2) The first condition is that the statement complained of was a statement of opinion.

(3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.

20 (4) The third condition is that an honest person could have held the opinion on the basis of—

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(a) any fact which existed at the time the statement complained of was published;

(b) anything asserted to be a fact in a privileged statement published before, or at the same time as, the statement complained of.

5 (5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

(6) Subsection (5) does not apply in a case where the statement complained of was published by the defendant but made by another person (“the author”); and in such a case the defence is defeated if the claimant shows that the defendant knew or ought to have known that the author did not hold the opinion.

(7) For the purposes of subsection (4)(b) a statement is a “privileged statement” if the person responsible for its publication would have one or more of the following defences if an action for defamation were brought in respect of it—

(a) a defence under section 3 (publication on matter of public interest);

15 (b) a defence under section 4 (peer-reviewed statement in scientific or academic journal);

(c) a defence under section 14 of the Defamation Act 1996 (reports of court proceedings absolutely privileged);

20 (d) a defence under section 15 of that Act (other reports protected by qualified privilege).

(8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act (Northern Ireland) 1955 (fair comment) is repealed.

Publication on matter of public interest

25 **3.—**(1) It is a defence to an action for defamation for the defendant to show that—

(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and

30 (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

35 (3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.

40 (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgment as it considers appropriate.

(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

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(6) The common law defence known as the Reynolds defence is abolished.

Peer-reviewed statement in scientific or academic journal etc

4.—(1) The publication of a statement in a scientific or academic journal (whether published in electronic form or otherwise) is privileged if the following conditions are met.

(2) The first condition is that the statement relates to a scientific or academic matter.

(3) The second condition is that before the statement was published in the journal an independent review of the statement's scientific or academic merit was carried out by—

- (a) the editor of the journal, and
- (b) one or more persons with expertise in the scientific or academic matter concerned.

(4) Where the publication of a statement in a scientific or academic journal is privileged by virtue of subsection (1), the publication in the same journal of any assessment of the statement's scientific or academic merit is also privileged if—

- (a) the assessment was written by one or more of the persons who carried out the independent review of the statement; and
- (b) the assessment was written in the course of that review.

(5) Where the publication of a statement or assessment is privileged by virtue of this section, the publication of a fair and accurate copy of, extract from or summary of the statement or assessment is also privileged.

(6) A publication is not privileged by virtue of this section if it is shown to be made with malice.

(7) Nothing in this section is to be construed—

- (a) as protecting the publication of matter the publication of which is prohibited by law;
- (b) as limiting any privilege subsisting apart from this section.

(8) The reference in subsection (3)(a) to "the editor of the journal" is to be read, in the case of a journal with more than one editor, as a reference to the editor or editors who were responsible for deciding to publish the statement concerned.

Reports etc protected by privilege

5.—(1) For subsection (3) of section 14 of the Defamation Act 1996 (reports of court proceedings absolutely privileged) substitute—

"(3) This section applies to—

- (a) any court in the United Kingdom;
- (b) any court established under the law of a country or territory outside the United Kingdom;
- (c) any international court or tribunal established by the Security Council of the United Nations or by an international agreement;

and in paragraphs (a) and (b) "court" includes any tribunal or body exercising the judicial power of the State."

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(2) In subsection (3) of section 15 of that Act (qualified privilege) for “public concern” substitute “public interest”.

(3) Schedule 1 to that Act (qualified privilege) is amended as follows.

(4) For paragraphs 9 and 10 substitute—

5 “9.—(1) A fair and accurate copy of, extract from or summary of a notice or other matter issued for the information of the public by or on behalf of—

(a) a legislature or government anywhere in the world;

10 (b) an authority anywhere in the world performing governmental functions;

(c) an international organisation or international conference.

(2) In this paragraph “governmental functions” includes police functions.

15 10. A fair and accurate copy of, extract from or summary of a document made available by a court anywhere in the world, or by a judge or officer of such a court.”.

(5) After paragraph 11 insert—

20 “11A. A fair and accurate report of proceedings at a press conference held anywhere in the world for the discussion of a matter of public interest.”.

(6) In paragraph 12 (report of proceedings at public meetings)—

(a) in sub-paragraph (1), for “in a member State” substitute “anywhere in the world”;

(b) in sub-paragraph (2), for “public concern” substitute “public interest”.

25 (7) In paragraph 13 (report of proceedings at meetings of public company)—

(a) in sub-paragraph (1), for “UK public company” substitute “listed company”;

(b) for sub-paragraphs (2) to (5) substitute—

30 “(2) A fair and accurate copy of, extract from or summary of any document circulated to members of a listed company—

(a) by or with the authority of the board of directors of the company,

(b) by the auditors of the company, or

(c) by any member of the company in pursuance of a right conferred by any statutory provision.

35 (3) A fair and accurate copy of, extract from or summary of any document circulated to members of a listed company which relates to the appointment, resignation, retirement or dismissal of directors of the company or its auditors.

40 (4) In this paragraph “listed company” has the same meaning as in Part 12 of the Corporation Tax Act 2009 (see section 1005 of that Act).”.

(8) In paragraph 14 (report of finding or decision of certain kinds of associations), in the words before paragraph (a), for “in the United Kingdom or another member State” substitute “anywhere in the world”.

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(9) After paragraph 14 insert—

“14A. A fair and accurate—

(a) report of proceedings of a scientific or academic conference held anywhere in the world, or

(b) copy of, extract from or summary of matter published by such a conference.”.

(10) For paragraphs 16 and 17 (general provision) substitute—

“16. In this Schedule—

“court” includes—

(a) any tribunal or body established under the law of any country or territory exercising the judicial power of the State;

(b) any international tribunal established by the Security Council of the United Nations or by an international agreement;

(c) any international tribunal deciding matters in dispute between States;

“international conference” means a conference attended by representatives of two or more governments;

“international organisation” means an organisation of which two or more governments are members, and includes any committee or other subordinate body of such an organisation;

“legislature” includes a local legislature; and

“member State” includes any European dependent territory of a member State.”.

Jurisdiction

25 Action against a person not domiciled in the UK

6.—(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.

Trial by jury

Trial to be without a jury unless the court orders otherwise

7. In section 62(1) of the Judicature (Northern Ireland) Act 1978 (trial with and without jury), omit subsections (a) and (b).

Defamation

Summary of court judgment

Power of court to order a summary of its judgment to be published

8.—(1) Where a court gives judgment for the claimant in an action for
defamation the court may order the defendant to publish a summary of the
5 judgment.

(2) The wording of any summary and the time, manner, form and place of its
publication are to be for the parties to agree.

(3) If the parties cannot agree on the wording, the wording is to be settled by the
court.

10 (4) If the parties cannot agree on the time, manner, form or place of publication,
the court may give such directions as to those matters as it considers reasonable
and practicable in the circumstances.

(5) This section does not apply where the court gives judgment for the claimant
under section 8(3) of the Defamation Act 1996 (summary disposal of claim).

15 *Powers of the court*

Powers of the court

9. This Act does not affect any power of a court that exists apart from this Act.

Slander

Special damage

20 10.—(1) The Slander of Women Act 1891 is repealed.

(2) The publication of a statement that conveys the imputation that a person has
a contagious or infectious disease does not give rise to a cause of action for slander
unless the publication causes the person special damage.

Review of defamation law

25 **Review of defamation law**

11.—(1) The Department must keep under review all relevant developments
pertaining to the law of defamation as it considers appropriate.

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

30 (a) the findings of the review under subsection (1), and

(b) the operation of this Act.

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

General provisions

35 **Interpretation**

12. In this Act—

“the Department” means the Department of Finance;

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“publish” and “publication”, in relation to a statement, have the meaning they have for the purposes of the law of defamation generally;

“statement” means words, pictures, visual images, gestures or any other method of signifying meaning.

5 **Consequential amendments and savings etc**

13.—(1) Article 9 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 is amended in accordance with subsections (2) and (3).

10 (2) In paragraph (3) for “of justification or fair comment or” substitute “under section 1 or 2 of the Defamation Act (Northern Ireland) 2022 which is available to him or any defence”.

(3) In paragraph (5) for “the defence of justification” substitute “a defence under section 1 of the Defamation Act (Northern Ireland) 2022”.

(4) Nothing in section 10 affects any cause of action accrued before the commencement of the section in question.

15 (5) Nothing in sections 1 to 5 has effect in relation to an action for defamation if the cause of action accrued before the commencement of the section in question.

(6) Nothing in section 6 or 7 has effect in relation to an action for defamation begun before the commencement of the section in question.

20 (7) In determining for the purposes of subsection (7)(a) of section 2 whether a person would have a defence under section 3 to any action for defamation, the operation of subsection (5) of this section is to be ignored.

Commencement

14. This Act comes into operation on the day after the day on which this Act receives Royal Assent.

25 **Short title**

15. This Act may be cited as the Defamation Act (Northern Ireland) 2022.

Defamation Bill

[AS AMENDED AT FURTHER CONSIDERATION STAGE]

A Bill to amend the law of defamation

Introduced by: Mr Mike Nesbitt

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As amended at Further
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ACCOMPANYING DOCUMENTS

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For more information please contact:

Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 521137
Textphone: 028 90 521209

E-mail: info@niassembly.gov.uk

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