

*Leave out Clause 10 and insert-*

**‘Action against a person who was not the author, editor etc**

10.— (1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of.

(2) For the purposes of this section, “author”, “editor” and “publisher” have the following meanings, which are further explained in subsection (3)—

“author” means the originator of the statement, but does not include a person who did not intend that his statement be published at all;

“editor” means a person having editorial or equivalent responsibility for the content of the statement or the decision to publish it; and

“publisher” means a commercial publisher, that is, a person whose business is issuing material to the public, or a section of the public, who issues material containing the statement in the course of that business.

(3) A person shall not be considered the author, editor or publisher of a statement if he is only involved—

(a) in printing, producing, distributing or selling printed material containing the statement;

(b) in processing, making copies of, distributing, exhibiting or selling a film or sound recording (as defined in Part I of the Copyright, Designs and Patents Act 1988) containing the statement;

(c) in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or in operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form;

(d) as the broadcaster of a live programme containing the statement in circumstances in which he has no effective control over the maker of the statement;

(e) as the operator of or provider of access to a communications system by means of which the statement is transmitted, or made available, by a person over whom he has no effective control.

(f) in the moderation of statements posted on a website by others.

In a case not within paragraphs (a) to (f) the court may have regard to those provisions by way of analogy in deciding whether a person is to be considered the author, editor or publisher of a

statement.

(4) Employees or agents of an author, editor or publisher are in the same position as their employer or principal to the extent that they are responsible for the content of the statement or the decision to publish it.

(5) Regulations may—

(a) define a category of persons who, while not being an author, editor or publisher as defined in subsections (2) and (3), will nonetheless be treated as a publisher for the purposes of defamation law generally.

(b) make provision for an appropriate defence of innocent dissemination applicable to any person who is treated as a publisher in accordance with Regulations made under this subsection.

(6) Section 1 of the Defamation Act 1996 is repealed insofar as it applies in Northern Ireland.

(7) The common law defence of innocent dissemination is abolished.’