

Defamation Bill

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B I L L

TO

Amend the law of defamation

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Requirement of substantial harm

1 Substantial harm

A statement is not defamatory unless its publication has caused or is likely to cause substantial harm to the reputation of the claimant.

Defences

2 Responsible publication on matter of public interest

- (1) It is a defence to an action for defamation for the defendant to show that—
 - (a) the statement complained of is, or forms part of, a statement on a matter of public interest; and
 - (b) the defendant acted responsibly in publishing the statement complained of.
- (2) In determining whether a defendant acted responsibly in publishing a statement, the matters to which the court may have regard include (amongst other matters)—
 - (a) the nature of the publication and its context;
 - (b) the seriousness of any imputation about the claimant that is conveyed by the statement;
 - (c) the extent to which the subject matter of the statement is of public interest;
 - (d) the information the defendant had **before** publishing the statement and what the defendant knew about the reliability of that information;
 - (e) whether the defendant sought the claimant's views on the statement before publishing it and whether the publication included an account of any views the claimant expressed;

- (f) whether the defendant took any other steps to verify the accuracy of the statement;
 - (g) the timing of the publication and whether there was reason to think it was in the public interest for the statement to be published urgently;
 - (h) the tone of the statement (including whether it draws appropriate distinctions between suspicions, opinions, allegations and proven facts).
- (3) A defendant is to be treated as having acted responsibly in publishing a statement if the statement was published as part of an accurate and impartial account of a dispute between the claimant and another person.

3 Truth

- (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.
- (2) Subsection (3) applies in an action for defamation in relation to a statement which 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 substantially true do not materially injure the claimant's reputation.
- (4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed.
- (5) In section 8 of the Rehabilitation of Offenders Act 1974 (defamation actions) –
 - (a) in subsection (3) for “any defence of justification or” substitute “a defence under section 3 of the Defamation Act 2011 (truth) which is available to him or any defence of”;
 - (b) in subsection (5) for “the defence of justification” substitute “a defence under section 3 of the Defamation Act 2011 (truth)”;
 - (c) in subsection (8)(c) for “the defence of justification” substitute “a defence under section 3 of the Defamation Act 2011”.

4 Honest opinion

- (1) It is a defence to an action for defamation for the defendant to show that Conditions 1, 2 and 3 are met.
- (2) Condition 1 is that the statement complained of is a statement of opinion.
- (3) Condition 2 is that the opinion is on a matter of public interest.
- (4) Condition 3 is that an honest person could have held the opinion on the basis of –
 - (a) a fact which existed at the time the statement complained of was published;
 - (b) a privileged statement which was published before the statement complained of.
- (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) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed.

5 Privilege

- (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.”
- (2) Schedule 1 to that Act (qualified privilege) is amended as follows.
- (3) For paragraphs 9 and 10 substitute—
 - “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;
 - (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.
- 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.”
- (4) In paragraph 12(1) (report of proceedings at public meetings) for “in a member State” substitute “anywhere in the world”.
- (5) In paragraph 13 (report of proceedings at meetings of public company)—
 - (a) in sub-paragraph (1), for “UK public company” substitute “company which is a quoted company within the meaning of section 385(2) of the Companies Act 2006 (a “quoted company”)”;
 - (b) for sub-paragraphs (2) to (5) substitute—
 - “(2) A fair and accurate copy of, extract from or summary of any document circulated to members of a quoted 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.
- (3) A fair and accurate copy of, extract from or summary of any document circulated to members of a quoted company which relates to the appointment, resignation, retirement or dismissal of directors of the company.”
- (6) 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”.
- (7) After paragraph 14 insert—
- “14A A fair and accurate—
- (a) report of proceedings of a scientific or academic conference, or
- (b) copy of, extract from or summary of matter published by such a conference.”
- (8) For paragraph 15 (report of statements etc by a person designated by the Lord Chancellor for the purposes of the paragraph) substitute—
- “15 (1) A fair and accurate report or summary of, copy of or extract from, any adjudication, report, statement or notice issued by a body, officer or other person designated for the purposes of this paragraph by order of the Lord Chancellor.
- (2) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (9) For paragraphs 16 and 17 (general provision) substitute—
- “16 In this Schedule—
- “court” includes any tribunal or body exercising the judicial power of the State;
- “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.”

Single publication rule

6 Single publication rule

- (1) This section applies if a person—
- (a) publishes a statement to the public (“the first publication”), and
- (b) subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same.

- (2) In subsection (1) “publication to the public” includes publication to a section of the public.
- (3) For the purposes of section 4A of the Limitation Act 1980 (time limit for actions for defamation etc) any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.
- (4) This section does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication.
- (5) In determining whether the manner of a subsequent publication is materially different from the manner of the first publication, the matters to which the court may have regard include (amongst other matters)—
 - (a) the level of prominence that a statement is given;
 - (b) the extent of the subsequent publication.
- (6) Where this section applies—
 - (a) it does not affect the court’s discretion under section 32A of the Limitation Act 1980 (discretionary exclusion of time limit for actions for defamation etc), and
 - (b) the reference in subsection (1)(a) of that section to the operation of section 4A of that Act is a reference to the operation of section 4A together with this section.

Jurisdiction

7 Action against a person not domiciled in the UK or a Member State etc

- (1) This section applies to an action for defamation against a person who is not domiciled—
 - (a) in the United Kingdom;
 - (b) in another Member State; or
 - (c) in a state which is for the time being a contracting party to the Lugano Convention.
- (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, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.
- (3) For the purposes of this section—
 - (a) a person is domiciled in the United Kingdom or in another Member State if the person is domiciled there for the purposes of the Brussels Regulation;
 - (b) a person is domiciled in a state which is a contracting party to the Lugano Convention if the person is domiciled in the state for the purposes of that Convention.
- (4) In this section—

“the Brussels Regulation” means Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended

from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ No L229 16.11.2005 at p 62);

“the Lugano Convention” means the Convention on judgments and the recognition and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Ireland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30th October 2007.

Trial by jury

8 Trial to be without a jury unless the court orders otherwise

- (1) In section 69(1) of the Senior Courts Act 1981 (certain actions in the Queen’s Bench Division to be tried with a jury unless the trial requires prolonged examination of documents etc) in paragraph (b) omit “libel, slander,”.
- (2) In section 66(3) of the County Courts Act 1984 (certain actions in the county court to be tried with a jury unless the trial requires prolonged examination of documents etc) in paragraph (b) omit “libel, slander,”.

General provisions

9 Meaning of “publish” and “statement”

In this Act—

“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.

10 Short title, commencement and extent

- (1) This Act may be cited as the Defamation Act 2011.
- (2) The provisions of this Act, apart from this section, come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales only.