



House of Commons

NOTICES OF AMENDMENTS

given on

Thursday 14 June 2012

For other Amendment(s) see the following page(s):
Defamation Bill Committee 1

PUBLIC BILL COMMITTEE

DEFAMATION BILL

RESOLUTION OF THE PROGRAMMING SUB-COMMITTEE

The Programming Sub-Committee appointed by the Speaker in respect of the Bill agreed the following Resolution at its meeting on Thursday 14 June (Standing Order No. 83C):—

That—

- (1) the Committee shall (in addition to its first meeting at 10.30 am on Tuesday 19 June) meet—
 - (a) at 4.00 pm on Tuesday 19 June;
 - (b) at 9.00 am and 1.00 pm on Thursday 21 June;
 - (c) at 10.30 am and 4.00 pm on Tuesday 26 June;
- (2) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 7.00 pm on Tuesday 26 June.

Mr Jonathan Djanogly has given notice of his intention to move a motion in the terms of the Resolution of the Programming Sub-Committee [Standing Order No. 83C].

Mr Jonathan Djanogly

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.

Mr Jonathan Djanogly

Clause 16, page 10, line 3, leave out subsections (2) and (3).

Defamation Bill, *continued*

- Mr Jonathan Djanogly 2
 Clause 16, page 10, line 7, at beginning insert ‘Subject to subsection (5),’.
- Mr Jonathan Djanogly 3
 Clause 16, page 10, line 7, at end insert—
 ‘(5) The following provisions also extend to Scotland—
 (a) section 6;
 (b) section 7(9);
 (c) section 14;
 (d) section 15(5) (in so far as it relates to sections 6 and 7(9));
 (e) this section.
 (6) Subject to subsections (7) and (8), the provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
 (7) Sections 6 and 7(9) come into force in so far as they extend to Scotland on such day as the Scottish Ministers may by order appoint.
 (8) Section 14, subsections (4) to (8) of section 15 and this section come into force on the day on which this Act is passed.’.
- Helen Goodman 4
 Clause 1, page 1, line 4, at end add ‘or to the reputation of the claimant’s close relative if that close relative died within the year prior to the defamatory statement being published’.
- Helen Goodman 5
 Clause 1, page 1, line 4, at end add—
 ‘(2) For the purposes of this section, “close relative” includes the claimant’s—
 (a) spouse or partner;
 (b) son or daughter;
 (c) brother or sister; and
 (d) father or mother.’.
- Robert Flello 6
 Clause 1, page 1, line 3, after ‘unless’, insert ‘the extent of’.
- Robert Flello 7
 Clause 3, page 2, line 11, leave out ‘did not hold the opinion’ and insert ‘acted out of malice’.
- Robert Flello 8
 Clause 4, page 3, line 11, leave out ‘this section’ and insert ‘subsection (3)’.

Defamation Bill, continued

Robert Flello

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Clause 5, page 3, line 30, leave out ‘any provision contained in regulations’ and insert ‘subsection (3A)’.

Robert Flello

10

Clause 5, page 3, line 30, at end insert—

‘(3A) Where a complaint is received by an operator under subsection (3), the operator must publish a notice of complaint alongside the relevant statement and, if the operator fails to do so within seven days of notice of the complaint, the operator will only be entitled to rely on the standard defences available to a primary publisher, if sued for defamation.’.

Robert Flello

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Clause 8, page 7, line 17, at end insert—

‘(c) the comparative quality and credibility of the source of the subsequent publication, compared with the first publication.’.

Operators of websites: order for removal of defamatory statement

Robert Flello

NC2

To move the following Clause:—

- ‘(1) This section applies where an action for defamation may be brought in respect of a statement posted on a website, whether or not such an action is actually brought and regardless of whether the action lies against the operator of the website, the author of the statement or both.
- (2) A claimant may apply to the court for an order that the operator remove the relevant statement from the website.
- (3) Where an application for an order under this section is made—
 - (a) the operator shall inform the author, if identifiable, of the relevant statement about the application;
 - (b) both the operator and the author, if known, may make written submissions to the court in relation to the application, such written submissions to be made available to the claimant, the operator and the author, if known; and
 - (c) the judge shall take into account any such written submissions before coming to a decision in relation to whether or not to grant the order.
- (4) Any order under this section must be implemented by the operator no later than seven days following notice of the order; and failure to comply with this time limit will render the operator liable in an action for defamation as if the operator were the author of the relevant statement.’.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Robert Flello

NC3

To move the following Clause:—

Defamation Bill, continued

‘The civil legal aid provisions contained within the Legal Aid, Sentencing and Punishment of Offenders Act 2012 shall not apply in relation to civil actions for defamation.’.

Action for defamation brought by body corporate

Robert Flello

NC4

To move the following Clause:—

- (1) Before bringing a claim for defamation, the body corporate shall obtain the permission of the court.
- (2) In determining whether to grant permission, the matters to which the court may have regard include, but are not limited to—
 - (a) whether the body corporate can demonstrate an arguable case;
 - (b) whether it could pursue alternative means of redress;
 - (c) its size and area of operation;
 - (d) the proportionality of allowing the corporation to bring a claim by reference to the likely costs of the proceedings, and the level of harm suffered, or likely to be suffered, by the corporation.
- (3) Subject to subsection (5), a body corporate which seeks to pursue an action for defamation must show that the publication of the words or matters complained of has caused, or is likely to cause, substantial financial loss to the body corporate.
- (4) In determining for the purposes of this section whether substantial financial loss has been incurred, a court shall have regard to the following—
 - (a) whether there has been, or is likely to be, a substantial loss of custom directly caused by an alleged defamatory statement;
 - (b) whether the body corporate can prove likelihood of a general turndown in business as a consequence of the alleged defamatory statement, even if it cannot prove the loss of specific customers or contracts; this shall suffice as a form of actual loss, and satisfy the test of substantial financial loss;
 - (c) a fall in share price shall not suffice as the sole grounds to justify the bringing of a claim;
 - (d) injury to goodwill or any expense incurred in mitigation of damage to reputation shall not suffice as the sole ground to justify the bringing of a claim for defamation.
- (5) The test specified in subsection (3) applies solely to bodies corporate, or other non-natural legal persons that are trading for profit, or trade associations representing “for-profit” organisations; it does not extend to charities, non-governmental organisations or other non-profit making bodies.’.

Civil procedure rules

Robert Flello

NC5

To move the following Clause:—

‘Strict enforcement of the Pre-Action Protocol governing defamation proceedings shall be adhered to, and the following alternatives to court proceedings should first be considered before a party is permitted to commence court proceedings—

Defamation Bill, *continued*

- (1) A presumption that mediation or neutral evaluation will be the default position shall apply.
- (2) In the event that mediation or neutral evaluation is deemed unsuccessful, voluntary arbitration should be sought.
- (3) If the claim has not been settled, court determination of key issues will be permitted.’.

Robert Ffello

12

Clause 2, page 1, line 14, at end insert—

- ‘(3A) The defence under this section does not fail on the basis that one or more of the imputations is not shown to be substantially true, if that imputation would not materially injure the claimant’s reputation in the light of what the defendant has otherwise shown to be substantially true.’.

Robert Ffello

13

Clause 3, page 2, line 8, at end insert ‘or’.

Robert Ffello

14

Clause 3, page 2, line 27, at end insert—

- ‘(e) a defence under common law qualified privilege.’.

Publication on matters of public interest

Robert Ffello

NC6

To move the following Clause:—

- ‘(1) The publication of a statement which is, or forms part of, a statement on a matter of public interest is privileged unless the publication is shown to be made with malice.
- (2) In defamation proceedings in respect of a publication under subsection (1) there is no defence under this section if the claimant shows that the defendant—
 - (a) was requested by him to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction (the “response”), and
 - (b) refused or neglected to do so.
- (3) For the purpose of subsection (2), “in a suitable manner” means in the same manner as the publication complained of or in a manner that is adequate and reasonable in the circumstances, having particular regard to—
 - (a) the need for the response to have equal prominence as the publication complained of,
 - (b) the promptness of the publication of the response, and
 - (c) where appropriate, the extent and promptness of the removal or clarification of, or correction to, the publication complained of.
- (4) Nothing in this section shall be construed—
 - (a) as protecting the publication of matter the publication of which is prohibited by law, or
 - (b) as limiting (or bridging) any privilege subsisting apart from this section.’.

Defamation Bill, *continued*

Robert Flello

15

Clause 7, page 5, line 22, after ‘proceedings’, insert ‘, of the contents of a press release circulated or published’.

Robert Flello

16

Clause 10, page 8, line 22, leave out from ‘court’ to end of line 24 and insert—

- ‘(a) is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher; and
- (b) has made a determination that the statement complained of is defamatory.’.

Robert Flello

17

Clause 5, page 3, line 23, at end insert—

‘(2A) The defence provided in this section is not affected by the operator having a policy of amending content (“moderation”) after it has been published provided that any changes made as a result of the actions of the moderator—

- (a) do not significantly increase the defamatory nature of the words complained of;
- (b) do not remove a relevant defence to an action for defamation in relation to the words complained of; and
- (c) do not significantly increase the extent of the publication of the words complained of.’.

Robert Flello

18

Clause 5, page 3, line 25, leave out from ‘possible’ to end of line 26 and insert—

- ‘(i) for the claimant to identify the person who posted the statement, and
- (ii) for the claimant to contact the person who posted the statement.’.

Robert Flello

19

Clause 5, page 3, line 27, leave out ‘the claimant gave the operator’ and insert ‘the operator was served with’.

Robert Flello

20

Clause 5, page 3, line 30, at end insert—

‘(3A) The condition in sub-paragraph (3)(a)(ii) will be met if the claimant notified the web operator and the web operator did not elicit a reply (for whatever reason) from the author within a timescale provided for in regulations made under this section.’.

Robert Flello

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Clause 5, page 3, line 35, leave out ‘was’ and insert ‘is’.

Defamation Bill, *continued*

Robert Flello

22

Clause 5, page 3, line 36, at end insert—

- ‘(e) is authorised by a court, which is satisfied on the basis of the information that it has before it, that—
 - (i) the statement concerned is capable of being defamatory including having regard to section 1 (serious harm) and is capable of representing a real and substantial tort in the jurisdiction based on the extent of publication;
 - (ii) would not be likely to benefit from a defence to an action for defamation;
 - (iii) that the terms of subsection (3)(a) have been met.
- (f) may specify a time limit by which the statement complained of should be removed in order to benefit from the defence in this section.’

Robert Flello

23

Clause 5, page 3, line 37, at end insert—

- ‘(aa) make provision as to the matters to be considered by the court when considering an application to authorise the issue of a notice of complaint, including the requirements needed to satisfy subsection (3A).’

Robert Flello

24

Clause 5, page 4, line 4, leave out from ‘section’ to end of line 5 and insert ‘shall not come into force without the affirmative resolution of both Houses of Parliament.’

Robert Flello

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Clause 5, page 4, line 6, at end insert—

- ‘(9) In paragraph 1(c) of the Defamation Act 1996, leave out “a defamatory” and insert “an unlawful”.’
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