

Defamation (Amendment) Bill 2024: Radical Reforms Proposed

19 August 2024

Following from our recent [Insight](#) in advance of the publication of the [Defamation \(Amendment\) Bill 2024](#) (the “**Bill**”), the Bill was published by the Oireachtas on 2 August 2024. The Bill has now completed the first stage in its enactment and, if passed in its current form, is set to be a radical update to the law in relation to defamation in Ireland.

In this Insight, we consider what the Bill seeks to achieve, including the key changes contained in the Bill and recommendations of the Committee, which will inform the drafting of the final Bill.

Purpose of the Bill

As noted in our previous updates ([here](#)) the Bill proposes major reforms aiming to balance the protection of reputations with freedom of expression and journalistic integrity. These changes include:

- Abolishing juries in High Court defamation cases;
- The introduction of a “*serious harm*” test for defamation claims by corporate bodies and public authorities;
- New defences for Retailers and Broadcasters;
- Support for Alternative Dispute Resolution (“**ADR**”); and
- Anti-Strategic Lawsuits Against Public Participation (“**SLAPP**”) Provisions.

Abolition of Juries

Part 3 of the Bill provides that High Court defamation actions will no longer be tried by jury. This was included on foot of the [Report of the Review of the Defamation Act 2009](#) and is aimed at reducing legal costs, increasing consistency in verdicts, and preventing excessive damages awards. Assuming this change is retained in the final Act, any defamation proceedings, instituted after the date of coming into effect of the Act, would be heard by a judge only.

Impact for Corporate Bodies and Public Authorities

Part 4 of the Bill provides that a body corporate / public authority wishing to bring a defamation action must prove “*serious harm*” was or is likely to be caused by the publication. This requires proof that the harm is or is likely to result in the company experiencing “*serious financial loss*”. This would be a departure from Ireland’s tradition of defamation being actionable ‘*per se*’, (ie, without requiring proof of

actual damage) and is a move closer to the position which applies more generally to defamation actions in the UK.

Defences for Retailers and Broadcasters

A new statutory defence is proposed to apply to claims of “*transient retail defamation*”. Section 8 of the Bill expands the defence of qualified privilege to include inquiries as to whether a person has paid for, or has in his / her possession proof of payment of, goods or services. While this defence does not refer directly to retailers, it is open to persons who have a duty or interest in making such an inquiry.

The Bill also proposes a “*live broadcaster defence*” in circumstances where a broadcaster takes reasonable and prudent precautions to prevent the live publication of a defamatory statement by a participant and / or person whose presence was not invited, during their programme.

Anti-SLAPP Provisions

Part 4A of the Bill addresses certain provisions designed to discourage Strategic Lawsuits Against Public Participation (“**SLAPP**”). They include provisions allowing the courts to dismiss such cases early and to potentially award costs and damages to defendants if the litigation is deemed abusive. These anti-SLAPP provisions are connected to the transposition of the EU Anti-SLAPP Directive which came into force on 6 May 2024. Ireland must transpose the Directive into national legislation within two years of this date.

Support for Alternative Dispute Resolution

The Bill emphasises support for ADR by providing an obligation on solicitors to inform their clients, prior to initiating proceedings, of the possibility and impact of making a complaint to the Press Council or utilising the Coimisiún na Meán ‘Right of Reply’ Scheme. The Court is also given the power to consider a party’s participation, or refusal to participate, in ADR when determining liability for costs.

Next Steps

[The Department of Justice has noted that several additional measures are likely to be brought as Government amendments during the bill’s passage through the Oireachtas. These include](#)

- Amendments to the defence of fair and reasonable publication in the public interest;
- Powers for the Circuit Court to issue ‘Norwich Pharmacal’ orders directing digital services providers to identify an anonymous poster of defamatory online material; and
- Power for the courts to award damages for harm suffered by a person targeted by SLAPP proceedings.

We will continue to monitor the progress of the Bill and will provide further updates in due course. Please get in touch with [Michael Byrne](#) or your usual Matheson contact, should you require further information in relation to the material referred to in this article. Visit our [Defamation, Reputation & Media Management](#) and [Commercial Litigation and Dispute Resolution](#) pages to stay up to date with the latest updates, articles and briefing notes.