

Defamation Bill

CONTENTS

Defences

1. Responsible publication on matters of public interest
2. Honest opinion
3. Establishing a defence of honest opinion
4. Truth
5. Establishing a defence of truth

Statutory privilege

6. Reports of court proceedings protected by absolute privilege
7. Reports etc of certain Parliamentary matters protected by absolute privilege
8. Other reports etc protected by qualified privilege

Publication

9. Responsibility for publication
10. Multiple publications

Cause of action

11. Action for defamation brought by body corporate
12. Striking out where claimant suffers no substantial harm
13. Harmful event in cases of publication outside the jurisdiction

Trial by jury

14. Reversal of presumption of trial by a jury in defamation proceedings
15. Determining an application for trial by a jury

Evidence concerning proceedings in Parliament

16. Evidence concerning proceedings in Parliament

Miscellaneous and supplementary

17. Interpretation
18. Minor and consequential provision
19. Repeals
20. Extent
21. Commencement
22. Short title

SCHEDULE 1

PART 1 — Statements having qualified privilege without explanation or contradiction

PART 2 — Statements privileged subject to explanation or contradiction

PART 3 — Supplementary provisions

SCHEDULE 2 — Minor and consequential amendments

SCHEDULE 3 — Repeals

A

BILL

TO

Amend the law of defamation and for connected purposes.

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:-

Defences

Responsible publication on matters of public interest

1.—(1) Any defendant in an action for defamation has a defence if the defendant shows that—

- (a) the words or matters complained of were published for the purposes of, or otherwise in connection with, the discussion of a matter of public interest; and
- (b) the defendant acted responsibly in making the publication.

(2) Subsection (1) applies irrespective of whether the publication contains statements of fact or inferences or opinions.

(3) The court when deciding for the purposes of subsection (1)(b) whether the defendant has acted responsibly must have regard to all the circumstances of the case.

(4) Those circumstances may include (among other things)—

- (a) the nature of the publication and its context;
- (b) the nature and seriousness of anything alleged about the claimant;
- (c) what information the defendant had before publication;
- (d) what steps (if any) were taken by the defendant to verify what was published;
- (e) if appropriate, whether the defendant gave the claimant an opportunity to comment before publication;
- (f) whether there were factors supporting urgent publication;
- (g) the extent of the defendant's compliance with any relevant code of conduct or other relevant guidelines; or
- (h) whether subsection (5) applies.

(5) Where a publication reports accurately and impartially on a pre-existing matter (for example, that there is a dispute between two parties), a defendant may be regarded as acting responsibly to the extent that the court is satisfied that it is in the public interest for the existence of that matter, and anything reported in connection with it, to be the subject of a report or series of reports.

(6) In determining for the purposes of subsection (5) whether publication is in the public interest, the court may disregard any question as to the truth of anything reported in connection with a pre-existing matter.

Honest opinion

2. In an action for defamation, the defence known before the commencement of this section as the defence of fair comment is, after commencement, to be known as the defence of honest opinion.

Establishing a defence of honest opinion

3.—(1) A defendant has a defence of honest opinion in an action for defamation if the defendant shows that Conditions 1 to 4 are satisfied (subject to subsections (7) and (8)).

(2) Condition 1 is that the words or matters complained of relate to a matter of public interest.

(3) Condition 2 is that, in the circumstances in which the words or matters are published, an ordinary person would reasonably consider those words or matters to be an opinion.

(4) Condition 3 is that, at the time of publication, there existed—

- (a) one or more facts;
- (b) any material that falls within section 1 (responsible publication on matters of public interest);
- (c) any material that falls within section 6, 7 or 8 (statutory privilege); or
- (d) any material that is otherwise protected by privilege.

(5) Condition 4 is that an honest person could form the opinion on the basis of the facts or material shown by the defendant in satisfying Condition 3.

(6) In relation to the facts or material relied on by the defendant as providing a basis for the opinion, no account is to be taken of—

- (a) anything that the defendant does not show, provided that the defendant shows that Condition 4 is satisfied on the basis of what is shown;
- (b) whether the defendant first learned of the facts or material before or after publication; or
- (c) whether the facts or material were or were not included (by reference or otherwise) in the publication.

(7) There is no defence of honest opinion if the claimant shows that the defendant did not in fact hold the opinion.

(8) Where the defendant was not the author (“A”) of the words or matters complained of, there is no defence of honest opinion if the claimant shows that—

- (a) the defendant knew that the A did not in fact hold the opinion; or
- (b) the defendant had reason to believe that A did not in fact hold the opinion and published without determining whether or not A did hold it.

Truth

4. In an action for defamation, the defence known before the commencement of this section as the defence of justification is, after commencement, to be known as the defence of truth.

Establishing a defence of truth

5.—(1) A defendant has a defence of truth in an action for defamation if the words or matters complained of are substantially true.

(2) For these purposes, the defendant may show either that—

- (a) the meaning (or meanings) alleged by the claimant are substantially true; or
- (b) the words or matters complained of have a less serious meaning (or meanings) and each such meaning is substantially true.

(3) A defence of justification does not fail only because a particular meaning alleged by the claimant is not shown as being substantially true, if that meaning would not materially injure the claimant’s reputation having regard to the truth of what the defendant has shown to be substantially true.

(4) Where—

- (a) the words or matters complained of make two or more distinct allegations; and
- (b) the truth of every allegation is not shown;

a defence of justification does not fail only because of paragraph (b) if anything not shown to be true does not materially injure the claimant's reputation having regard to the truth of the remaining allegations.

Statutory privilege

Reports of court proceedings protected by absolute privilege

6.—(1) A fair and accurate report of proceedings in public before a court to which this section applies, if published contemporaneously with the proceedings, is absolutely privileged.

(2) A report of proceedings which by an order of the court, or as a consequence of any statutory provision, is required to be postponed is to be treated as published contemporaneously if it is published as soon as practicable after publication is permitted.

(3) This section applies to—

- (a) any court in the United Kingdom;
- (b) the European Court of Justice or any court attached to that court;
- (c) the European Court of Human Rights;
- (d) any international criminal tribunal established by the Security Council of the United Nations or by an international agreement to which the United Kingdom is a party;
- (e) any court established under the law of a country or territory outside the United Kingdom;
- (f) the Inter-American Court of Human Rights;
- (g) the African Court of Human and People's Rights;
- (h) the International Court of Justice; and
- (i) any other judicial or arbitral tribunal deciding matters in dispute between States.

In paragraph (a) "court" includes any tribunal or body exercising the judicial power of the State.

Reports etc of certain Parliamentary matters protected by absolute privilege

7.—(1) The following are absolutely privileged—

- (a) a fair and accurate report of proceedings in Parliament;
- (b) a fair and accurate report of anything published by or on the authority of Parliament; and
- (c) a fair and accurate copy of, extract from or summary of anything published by or on the authority of Parliament.

(2) The court must stay any proceedings where the defendant shows that—

- (a) the proceedings relate to the publication of anything that falls within paragraph (a), (b) or (c) of subsection (1); or
- (b) the proceedings seek to prevent or postpone the making of any such publication.

(3) This section also has effect in relation to the Welsh Assembly and the Northern Ireland Assembly (and any reference to Parliament is to be read as a reference to the Assembly in question).

Other reports etc protected by qualified privilege

8.—(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.

(2) In an action for defamation in respect of the publication of a report or other statement mentioned in Part 2 of Schedule 1, there is no defence under this section if the claimant shows that the defendant—

- (a) was requested by the claimant to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction; and
- (b) refused or neglected to do so without sufficient cause.

(3) For this purpose “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.

(4) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public concern and the publication of which is not for the public benefit.

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

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

Publication

Responsibility for publication

9.—(1) Any defendant in an action for defamation has a defence if the defendant shows that the defendant’s only involvement in the publication of the words or matters complained of—

- (a) is as a facilitator; or
- (b) is as a broadcaster of a live programme in circumstances in which it was not reasonably foreseeable that those words or matters would be published.

(2) Any defendant in an action for defamation, apart from a primary publisher, has a defence unless the claimant shows that—

- (a) the notice requirements specified in subsection (3) have been complied with;
- (b) the notice period specified in subsection (4) has expired; and
- (c) the words or matters complained of have not been removed from the publication.

(3) The notice requirements are that the substance of the claimant’s complaint must be communicated in writing to the defendant, specifying—

- (a) the words or matters complained of and the person (or persons) to whom they relate;
- (b) the publication that contains those words or matters;
- (c) why the claimant considers the words or matters to be defamatory;
- (d) the details of any matters relied on in the publication which the claimant considers to be untrue; and
- (e) why the claimant considers the words or matters to be harmful in the circumstances in which they were published.

(4) The notice period is—

- (a) the period of 14 days starting with the date of receipt by the defendant of all the information required by subsection (3); or
- (b) such other period as the court may specify (whether of its own motion or on an application by any party to the action).

(5) Employees or agents of a primary publisher, or other person who publishes the words or matters complained of, are in the same position as their principal to the extent that they are responsible for the content of what is published or the decision to publish it.

(6) In this section—

“facilitator” means a person who is concerned only with the transmission or storage of the content of the publication and has no other influence or control over it; and

“primary publisher” means an author, an editor or a person who exercises effective control of an author or editor.

(7) For the purposes of the definition of “primary publisher” in subsection (6)—

“author”—

- (a) means a person who originates the words or matters complained of; but
- (b) does not include a person who does not intend that they be published; and

“editor”, in relation to a publication, means a person with editorial or equivalent responsibility for the content of the publication or the decision to publish it.

(8) This section does not apply to any cause of action which arose before the section came into force.

Multiple publications

10.—(1) In any case to which subsection (2) applies—

(a) the first occasion on which the publication is made available to the public generally (or to any section of the public) is to be regarded for all purposes as the date of publication of each subsequent publication; and

(b) in an action for defamation based on any publication to which this section applies, the cause of action is to be treated as having accrued on that date.

(2) This subsection applies to any publication (such as a book, newspaper, periodical or material in an archive) which—

(a) is published by the same person on multiple occasions; and

(b) on each occasion, has the same, or substantially the same, content.

(3) Subsection (2) does not apply where a subsequent publication is made in a materially different manner, but this is without prejudice to that publication itself constituting a first publication for the purposes of subsection (1).

Cause of action

Action for defamation brought by body corporate

11. 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.

Striking out where claimant suffers no substantial harm

12.—(1) The court must strike out an action for defamation unless the claimant shows that—

(a) the publication of the words or matters complained of has caused substantial harm to the claimant’s reputation; or

(b) it is likely that such harm will be caused to the claimant’s reputation by the publication.

(2) Subsection (1) does not apply if, in exceptional circumstances, the court is satisfied that it would be in the interests of justice not to strike out the action.

(3) In determining whether a claimant’s reputation is or may be substantially harmed, the court must have regard to all the circumstances of the case.

(4) An order under subsection (1) may be made by the court of its own motion or on an application by any party to the action.

(5) Subsection (1) does not limit any power to strike out proceedings which is exercisable apart from this section.

Harmful event in cases of publication outside the jurisdiction

13.—(1) This section applies in an action for defamation where the court is satisfied that the words or matters complained of have also been published outside the jurisdiction (including publication outside the jurisdiction of any words or matters that differ only in ways not affecting their substance).

(2) No harmful event is to be regarded as having occurred in relation to the claimant unless the publication in the jurisdiction can reasonably be regarded as having caused substantial harm to the claimant’s reputation having regard to the extent of publication elsewhere.

Trial by jury

Reversal of presumption of trial by a jury in defamation proceedings

14. In section 69(1)(b) of the Senior Courts Act 1981 (c.54) (trial by jury) omit the words “libel, slander”.

Determining an application for trial by a jury

15.—(1) If the court is satisfied that it is in the interests of justice to do so, it may order trial by jury of such matter or matters arising in an action for defamation as are specified in the order.

(2) An order under subsection (1) may be made on an application by any party to the action and the court determining the application must have regard to all the circumstances of the case.

(3) Those circumstances may include (among other things)—

- (a) whether there is a public interest in the subject matter of the action or anything arising in connection with it;
- (b) the identity of any of the parties to the action;
- (c) any office or other position held by any party to the action;
- (d) whether it is in the interests of justice that the verdict of a jury or a reasoned judgment be obtained on any matter arising in the action;
- (e) the extent to which early resolution of any matter (for example, as to the meaning of the words complained of) is likely to facilitate settlement of the action, improve active case management or assist in achieving a just and equitable outcome; and
- (f) whether the trial is likely to require the prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury.

(4) An application must be made in accordance with such procedure as may be prescribed by rules of court.

Evidence concerning proceedings in Parliament

Evidence concerning proceedings in Parliament

16.—(1) In this section “the relevant protection”, in relation to the proceedings of either House of Parliament, means the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament.

(2) The Speaker of either House of Parliament may, in accordance with Standing Orders of that House, by notice in writing waive the application of the relevant protection to such proceedings in an action for defamation as are specified in that notice.

(3) Where the relevant protection is waived in relation to any proceedings in an action for defamation—

- (a) that protection is not to apply to prevent evidence being given, questions being asked or statements, submissions, comments or findings being made in those proceedings; and
- (b) none of those things is to be regarded as infringing the privilege of either House of Parliament.

(4) Nothing in this section affects any enactment or rule of law so far as it protects a person from legal liability for words spoken or things done in the course of, or for the purposes of or incidental to, any proceedings in Parliament.

(5) Without prejudice to the generality of subsection (4), that subsection applies to—

- (a) the giving of evidence before either House or a committee;
- (b) the presentation or submission of a document to either House or a committee;
- (c) the preparation of a document for the purposes of or incidental to the transacting of any such business;

- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of either House or a committee; and
- (e) any communication with the Parliamentary Commissioner for Standards or any person having functions in connection with the registration of members' interests.

In this subsection "a committee" means a committee of either House or a joint committee of both Houses of Parliament.

Miscellaneous and supplementary

Interpretation

17.—(1) In this Act—

"the 1996 Act" means the Defamation Act 1996 (c.31);

"archive" includes any collection of sound recordings, images or other information however stored (including by electronic means);

"author" has the meaning given in section 9;

"publication" and "publish", in relation to a statement, have the meaning they have for the purposes of the law of defamation generally but "primary publisher" is specially defined for the purposes of section 9;

"statement" means words, pictures, visual images, gestures or any other method of signifying meaning;

"statutory provision" means—

- (a) a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (c.30);
- (b) a provision contained in an Act of the Scottish Parliament or in an instrument made under such an Act; or
- (c) a statutory provision within the meaning of the Interpretation Act (Northern Ireland) 1954 (c.33 (N.I.)).

(2) In this Act any reference to—

- (a) a defendant in an action for defamation includes any person against whom a counterclaim for defamation is brought; and
- (b) an action for defamation is to be construed accordingly.

Minor and consequential provision

18. Schedule 2 contains minor and consequential amendments.

Repeals

19. Schedule 3 contains repeals.

Extent

20.—(1) This Act extends to England, Wales and Northern Ireland.

(2) An amendment or repeal contained in this Act has the same extent as the enactment to which it relates.

(3) Subsection (2) does not apply to any amendment or repeal of an enactment which extends to Scotland.

Commencement

21.—(1) The following provisions of this Act come into force on the day this Act is passed—

- (a) section 20;
- (b) this section; and
- (c) section 22.

(2) The other provisions of this Act come into force on such day as may be appointed by order of the Secretary of State; and different days may be appointed for different purposes.

(3) Any such order is to be made by statutory instrument.

Short title

22. This Act may be cited as the Defamation Act 2010.

SCHEDULE 1

Section 8

QUALIFIED PRIVILEGE

PART 1

Statements having qualified privilege without explanation or contradiction

1. A fair and accurate report of proceedings in public of a legislature anywhere in the world.
2. A fair and accurate report of—
 - (a) proceedings in public before a court anywhere in the world;
 - (b) any statements or submissions which, for the purposes of any such proceedings, are made by, or on behalf of, any of the parties.
3. A fair and accurate report of proceedings in public of a person appointed to hold a public inquiry by a government or legislature anywhere in the world.
4. A fair and accurate report of proceedings in public anywhere in the world of an international organisation or an international conference.
5. A fair and accurate copy of or extract from any register or other document required by law to be open to public inspection.
6. A notice or advertisement published by or on the authority of a court, or of a judge or officer of a court, anywhere in the world.
7. A fair and accurate copy of, extract from or summary of matter published by or on the authority of a government or legislature anywhere in the world.
8. A fair and accurate copy of, extract from or summary of matter published anywhere in the world by an international organisation or an international conference.

PART 2

Statements privileged subject to explanation or contradiction

- 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 in the United Kingdom or another member State;
 - (b) a legislature in any other country or territory;

- (c) the government of the United Kingdom or another member State;
 - (d) the government of any other country or territory;
 - (e) the European Parliament;
 - (f) the European Commission;
 - (g) an authority anywhere in the world which performs governmental functions;
 - (h) an international organisation or international conference.
- (2) In this paragraph “governmental functions” includes—
- (a) police functions; and
 - (b) functions performed by a public authority within the meaning of section 6 of the Human Rights Act 1998 (c.42).
10. A fair and accurate copy of, extract from or summary of a document made available by—
- (a) a court in the United Kingdom or another member State;
 - (b) a court in any other country or territory;
 - (c) any court attached to a court falling within sub-paragraph (a) or (b);
 - (d) a judge or officer of any court falling within any of sub-paragraphs (a) to (c).
11. A fair and accurate copy of, extract from or summary of material in an archive where—
- (a) the material has been publicly available online for a period of at least 12 months starting with the date of first publication by or on behalf of the archive; and
 - (b) in the course of that period, no challenge has been made, whether in the courts or otherwise, which indicates that the material is considered to be defamatory.
- 12.—(1) A fair and accurate report of proceedings at any public meeting or sitting in the United Kingdom of—
- (a) a local authority or local authority committee;
 - (b) in the case of a local authority which are operating executive arrangements, the executive of that authority or a committee of that executive;
 - (c) a justice or justices of the peace acting otherwise than as a court exercising judicial authority;
 - (d) a commission, tribunal, committee or person appointed for the purposes of any inquiry by any statutory provision, by Her Majesty or by a Minister of the Crown, a member of the Scottish Executive, the Welsh Ministers or the Counsel General to the Welsh Assembly Government, or a Northern Ireland Department;
 - (e) a person appointed by a local authority to hold a local inquiry in pursuance of any statutory provision;
 - (f) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any statutory provision.
- (2) In the case of a local authority which are operating executive arrangements, a fair and accurate record of any decision made by any member of the executive where that record is required to be made and available for public inspection by virtue of section 22 of the Local Government Act 2000 (c.22) or of any provision in regulations made under that section.
- (3) In sub-paragraphs (1)(a) and (b) and (2)—
- “local authority” means—
- (a) in relation to England and Wales, a principal council within the meaning of the Local Government Act 1972 (c. 70), any body falling within any paragraph of section 100J(1) of that Act or an authority or body to which the Public Bodies (Admission to Meetings) Act 1960 (c. 67) applies;

- (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) or an authority or body to which the Public Bodies (Admission to Meetings) Act 1960 (c. 67) applies;
 - (c) in relation to Northern Ireland, any authority or body to which sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.)) apply; and
- “local authority committee” means any committee of a local authority or of local authorities, and includes—
- (a) any committee or sub-committee in relation to which sections 100A to 100D of the Local Government Act 1972 (c. 70) apply by virtue of section 100E of that Act (whether or not also by virtue of section 100J of that Act); and
 - (b) any committee or sub-committee in relation to which sections 50A to 50D of the Local Government (Scotland) Act 1973 (c.65) apply by virtue of section 50E of that Act.
- (4) In sub-paragraphs (1) and (2) “executive” and “executive arrangements” have the same meaning as in Part 2 of the Local Government Act 2000 (c.22).
- (5) A fair and accurate report of any corresponding proceedings in—
- (a) any of the Channel Islands or the Isle of Man;
 - (b) another member State; or
 - (c) any other country or territory.
- 13.—**(1) A fair and accurate report of proceedings at any public meeting held in the United Kingdom, in another member State or in any other country or territory.
- (2) In this paragraph a “public meeting” means a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of a matter of public concern, whether admission to the meeting is general or restricted.
- 14.** A fair and accurate report of proceedings at a press conference given—
- (a) by or on behalf of any body, officer or other person falling within this Schedule or designated under it; and
 - (b) in respect of published material to which qualified privilege applies by virtue of section 8.
- 15.—**(1) A fair and accurate report of proceedings at a general meeting of a UK public company or an overseas company.
- (2) A fair and accurate copy of, extract from or summary of any document circulated to members of a UK public company or of an overseas 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 UK public company or of an overseas company, which relates to the appointment, resignation, retirement or dismissal of directors of the company.
- (4) In this paragraph—
- “overseas company” means—
- (a) a company incorporated outside the United Kingdom; and
 - (b) any other body corporate formed under the law of another member State or any other country or territory; and
- “UK public company” means—
- (a) a public company within the meaning of section 4(2) of the Companies Act 2006 (c. 46) or Article 12(3) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)); or

- (b) a body corporate incorporated by or registered under any other statutory provision, or by Royal Charter, or formed in pursuance of letters patent.
- (5) A fair and accurate report of proceedings at any corresponding meeting of, or copy of or extract from any corresponding document circulated to members of, a public company formed under the law of—
- (a) any of the Channel Islands or the Isle of Man;
 - (b) another member State; or
 - (c) any other country or territory.
16. A fair and accurate report of any finding or decision of any of the following descriptions of association, formed in the United Kingdom, another member State or any other country or territory, or of any committee or governing body of such an association—
- (a) an association formed for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate on matters of interest or concern to the association, or the actions or conduct of any person subject to such control or adjudication;
 - (b) an association formed for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with that trade, business, industry or profession, or the actions or conduct of those persons;
 - (c) an association formed for the purpose of promoting or safeguarding the interests of a game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;
 - (d) an association formed for the purpose of promoting charitable objects or other objects beneficial to the community and empowered by its constitution to exercise control over or to adjudicate on matters of interest or concern to the association, or the actions or conduct of any person subject to such control or adjudication.
- 17.—(1) A fair and accurate report of, copy of, extract from or summary of, any adjudication, report, statement or notice issued by a body, officer or other person designated for the purposes of this paragraph—
- (a) for England and Wales or Northern Ireland, by order of the Lord Chancellor; and
 - (b) for Scotland, by order of the Secretary of State.
- (2) An order under this paragraph is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 3

Supplementary provisions

- 18.—(1) In this Schedule—
- “court” includes—
- (a) the European Court of Justice (or any court attached to that court) and the Court of Auditors of the European Communities;
 - (b) the European Court of Human Rights;
 - (c) any international criminal tribunal established by the Security Council of the United Nations or by an international agreement to which the United Kingdom is a party;
 - (d) the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States; and
 - (e) 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; and

“legislature” includes a local legislature.

(2) References in this Schedule to the United Kingdom or another member State include any European dependent territory of the United Kingdom or other member State.

(3) In paragraphs 1, 3 and 7 “legislature” includes the European Parliament.

19.—(1) Provision may be made by order identifying—

(a) for the purposes of paragraph 12, the corresponding proceedings referred to in sub-paragraph (5);

(b) for the purposes of paragraph 15, the corresponding meetings and documents referred to in sub-paragraph (5).

(2) An order under this paragraph may be made—

(a) for England and Wales or Northern Ireland, by the Lord Chancellor; and

(b) for Scotland, by the Secretary of State.

(3) An order under this paragraph is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 2

Section 18

Minor and consequential amendments

Parliamentary Papers Act 1840 (c.9)

1. The Parliamentary Papers Act 1840 ceases to have effect.

Defamation Act 1952 (c.66)

2. The Defamation Act 1952 is amended in accordance with paragraphs 3 to 5.

3. Omit section 5 (justification).

4. Omit section 6 (fair comment).

5. Omit section 9(1) (extension of certain defences to broadcasting).

Rehabilitation of Offenders Act 1974 (c.53)

6. In section 8(6) of the Rehabilitation of Offenders Act 1974 (defamation actions: reports of court proceedings), for “section 14 of the Defamation Act 1996” substitute “section 6 of the Defamation Act 2010”.

Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I.27))

7. In Article 9(6) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (defamation actions: reports of court proceedings), for “section 14 of the Defamation Act 1996” substitute “section 6 of the Defamation Act 2010”.

Limitation Act 1980 (c.68)

8. For section 4A of the Limitation Act 1980 (time limit for actions for defamation or malicious falsehood) substitute—

“Time limit for actions for defamation or malicious falsehood

4A.—(1) The time limit under section 2 of this Act shall not apply to an action for—

(a) libel or slander, or

(b) slander of title, slander of goods or other malicious falsehood,
but no such action shall be brought after the expiration of one year from the date on which the cause of action accrued.

(2) In any case to which section 10 of the Defamation Act 2010 (multiple publications) applies, the date on which a cause of action in libel or slander shall be treated as having accrued is the date of first publication referred to in that section.”.

9. For section 32A of the Limitation Act 1980 (discretionary exclusion of time limit for actions for defamation or malicious falsehood) substitute—

“Discretionary exclusion of time limit for actions for defamation or malicious falsehood

32A.—(1) If it appears to the court that it would be in the interests of justice to allow an action to proceed notwithstanding that the period of limitation has expired, the court may direct that section 4A(1) shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

(2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

- (a) the length of, and the reasons for, any delay in bringing the action;
- (b) where the reason or one of the reasons for delay was that all or any of the facts relevant to the cause of action did not become known to the claimant until after the end of the period mentioned in section 4A(1)—
 - (i) the date on which any such facts did become known to the claimant, and
 - (ii) the extent to which the claimant acted promptly and reasonably once the claimant knew whether or not the facts in question might be capable of giving rise to an action;
- (c) the extent to which, having regard to the delay, relevant evidence is likely—
 - (i) to be unavailable, or
 - (ii) to be less cogent than if the action had been brought within the period mentioned in section 4A(1); and
- (d) in relation only to an action that falls within section 4A(2)—
 - (i) any material change of circumstances since the date of first publication, and
 - (ii) whether the defendant, has without sufficient cause, refused or neglected to comply with any reasonable request by the claimant to remove or correct any inaccuracy in the publication or to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction.

(3) In the case of an action for slander of title, slander of goods or other malicious falsehood brought by a personal representative—

- (a) the references in subsection (2) above to the claimant shall be construed as including the deceased person to whom the cause of action accrued and any previous personal representative of that person; and
- (b) nothing in section 28(3) of this Act shall be construed as affecting the court’s discretion under this section.

(4) In this section “the court” means the court in which the action has been brought.”.

Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I.11))

10. The Limitation (Northern Ireland) Order 1989 is amended in accordance with paragraphs 11 and 12.

11. In article 6 (time limit: certain actions founded on tort) after paragraph (2) insert—

“(2A) In any case to which section 10 of the Defamation Act 2010 (multiple publications) applies, the date on which a cause of action in libel or slander shall be treated as having accrued is the date of first publication referred to in that section.”.

12. In article 51 (court’s power to override time limit: actions for defamation or malicious falsehood), at the end of paragraph (2)(c) insert “andSS

“(d) in relation only to an action that falls within article 6(2A)—

- (i) any material change of circumstances since the date of first publication, and
- (ii) whether the defendant, has without sufficient cause, refused or neglected to comply with any reasonable request by the claimant to remove or correct any inaccuracy in the publication or to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction.”.

Defamation Act 1996 (c.31)

13. In the Defamation Act 1996, omit the following provisions—

- (a) section 1 (responsibility for publication);
- (b) section 13 (evidence concerning proceedings in Parliament);
- (c) section 14 (reports of court proceedings absolutely privileged);
- (d) section 15 (reports etc protected by qualified privilege);
- (e) Schedule 1 (qualified privilege).

SCHEDULE 3

Section 19

Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Parliamentary Papers Act 1840 (c.9)	The whole Act.
Defamation Act 1952 (c.66)	Sections 5 and 6. Section 9(1).
Senior Courts Act 1981 (c.54)	The words “libel, slander”.
Broadcasting Act 1990 (c.42)	Paragraph 1 of Schedule 20.
Defamation Act 1996 (c.31)	Section 1. Sections 13 to 15. Schedule 1.