

# Draft Defamation Bill Published in UK – what is in the consultation?

The Ministry of Justice in the UK has published a consultation paper considering a draft defamation bill.

The consultation paper is divided into two main parts: consultation on proposals which have been included in the draft Bill at Annex A, and consultation on other issues which have not at this stage been included in the draft Bill.

Issues included in the draft Bill are as follows:

- A new requirement that a statement must have caused substantial harm in order for it to be defamatory
- A new statutory defence of responsible publication on matters of public interest
- A statutory defence of truth (replacing the current common law defence of justification)
- A statutory defence of honest opinion (replacing the current common law defence of fair/honest comment)

Draft Defamation Bill: Consultation

- Provisions updating and extending the circumstances in which the defences of absolute and qualified privilege are available
- Introduction of a single publication rule to prevent an action being brought in relation to publication of the same material by the same publisher after a one year limitation period has passed
- Action to address libel tourism by ensuring a court will not accept jurisdiction unless satisfied that England and Wales is clearly the most appropriate place to bring an action against someone who is not domiciled in the UK or an EU Member State
- Removal of the presumption in favour of jury trial, so that the judge would have a discretion to order jury trial where it is in the interests of justice

Issues for consultation which were not been included in the draft Bill at this stage are:

- Responsibility for publication on the internet. The paper seeks views on whether the law should be changed to give greater protection to secondary publishers such as internet service providers, discussion forums and (in an offline context) booksellers, or alternatively how the existing law should be updated and clarified
- A new court procedure to resolve key preliminary issues at as early a stage as possible, so that the length and cost of defamation proceedings can be substantially reduced
- Whether the summary disposal procedure should be retained, and if so whether improvements can usefully be made to it
- Whether the power of the court under the summary procedure to order publication of a summary of its judgment should be made more widely available in defamation proceedings
- Whether further action is needed beyond the proposals in the draft Bill and the introduction of a new court procedure to address issues relating to an inequality of arms in defamation proceedings, including whether any specific restrictions should be placed on the ability of corporations to bring a defamation action

- Whether the current provisions in case law restricting the ability of public authorities and bodies exercising public functions to bring defamation actions should be placed in statute and whether these restrictions should be extended to other bodies exercising public functions.

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