[GB] New UK Defamation Act

IRIS 2014-4:1/20

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Since the Defamation Act 2013 (the Act) received Royal Assent in Parliament on the 25th April 2013, on the 1st January 2014 saw the implementation. As flagged in a previous IRIS article (see IRIS 2013-7/16), the Act has addressed various criticisms of the existing defamation laws by shifting the emphasis more in favour of the publisher than the subject of a publication.

As previously reported, the Act introduces the defence of statutory truth replacing justification (see Section 2 of the Act). The new defence succeeds even if one of the imputations is not substantially true; provided that the imputation(s) found not to be substantially true do not cause any serious harm to the claimant's reputation.

Section 3 of the Act abolishes the common law defence of fair comment, replacing it with the defence of honest opinion. The Act sets out the necessary criteria for this defence to succeed.

A public interest defence is depicted at Section 4 of the Act. Effectively, the so-called Reynolds defence has been partially abolished by the Act setting new criteria:

- the statement complained of was, or formed part of, a statement on a matter of public interest; and

- the defendant reasonably believed that publishing the statement complained of was in the public interest.

The Reynolds defence had more exacting standards such as a standard of reasonable journalism and the publisher acted both fairly and reasonably in gathering and publishing the information.

However, the Act does codify the neutral reportage part of the Reynolds defence (see section 4(3) of the Act).

Previous references to peer-reviewed scientific or academic journals is addressed at Section 6 of the Act whereby a qualified privilege defence will exist provided an independent review is conducted by the editor or person(s) with suitable expertise.

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Comment or a review of a scientific or academic statement carries a privilege, provided that the review includes a fair and accurate copy or extract of the reviewed statement.

Rules protecting website operators are addressed at Section 5 of the Act; a defence is available action to the site's host when something is posted by a third party. However, for this defence will be defeated:

- if the claimant cannot identify (sufficient for the purposes of bringing proceedings) the third party who posted the statement.

- the claimant has given the host site operator notice of complaint in relation to the statement.

- the operator failed to respond to the notice of complaint in accordance with any provisions contained in the Regulations.

If malice is shown by the operator the defence is also defeated. The defence is available where the website's operator moderates material posted on it by others.

The United Kingdom limitation period for bringing a defamation claim is one year from publication. The Act curtails the potential for creating fresh claims from repeat publications, so that "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" (see Section 8(3) of the Act).

The Act prevents "libel tourists", unless the publisher is domiciled inside the European Union, Iceland, Norway and Switzerland the claimant must satisfy the court "… 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" (see Section 9(2) of the Act). Whether the claimant has a reputation within England and Wales requiring protection will be a factor.

The Act removes the presumption of defamation trials being heard before a jury and cases will be before judge alone, unless the court's discretion deems otherwise.

Section 12 of the Act gives the court can give directions as to the timing and manner of the defendant publishing the court's judgment.

Defamation Act 2013

http://www.legislation.gov.uk/ukpga/2013/26/contents

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