

## Reform of defamation law in Ireland: the proposed key amendments to the Defamation Act 2009

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### Defamation (Amendment) Bill

On the 28th of March, the Department of Justice in Dublin approved the publication of the general scheme of the *Defamation (Amendment) Bill*, which will be referred to the Joint Oireachtas Committee for pre-legislative scrutiny. The Bill follows a major review of the *Defamation Act 2009 (2009 Act)* and makes a number of key changes to this cornerstone statute in Irish defamation law.

### Key updates to the Defamation Act 2009

- An Amendment of Section 2 of the 2009 Act (Definitions) will provide for the amendment of the definition of 'periodical', in order to restrict only news websites to fall within the definition of 'periodical'.
- The inclusion of a new requirement for solicitors to inform their clients of alternative dispute resolution options, including mediation, before issuing defamation proceedings, and obliging parties to have considered those options before proceeding.
- An Amendment of Section 27 of the 2009 Act specifying that a broadcaster is not liable for statements made during a live broadcast by a person over whom the broadcaster has no effective control. This is provided that the broadcaster takes reasonable precautions in advance of the live broadcast and reasonable care during the broadcast. Such a defence already exists in England, Wales, Scotland and Australia.
- Where a person is defamed, it is proposed that the correction must now be published with equal prominence to the defamatory publication.
- A new establishment of a statutory notice of complaint process to make it easier, quicker, and cheaper to notify a digital publisher of online defamatory content and request takedown.

- Inclusion of an abolishment of juries in High Court defamation actions.

## Additional measures against abusive litigation

The Bill proposes an insertion after Part 4 in the 2009 Act, of a new Part, entitled ‘Measures against abusive litigation to restrict public participation’. This is to deal with defamation proceedings being used as ‘Strategic Lawsuit Against Public Participation’ (SLAPP). This refers to the strategic and abusive use of vexatious litigation, by a powerful entity or individual, to weaken and deter public interest discussion (and in particular investigative journalism). This new anti-SLAPP mechanism allows a person to apply to court for summary dismissal of defamation proceedings that he/she believes are a SLAPP.

## New power for the Circuit Court: 'Norwich Pharmacal' orders

The Bill includes an introduction allowing the Circuit Court, as well as the High Court, to have a new statutory power to make a ‘Norwich Pharmacal’ order. This means that where defamatory material is posted anonymously on a hosting platform or on social media, the intermediary services provider concerned will possess identifying material about the anonymous poster who is its account holder but will not provide such information in the absence of a court order. The person who considers themselves defamed by that material will have to seek a ‘Norwich Pharmacal’ order from the court to obtain it but can do so if the court considers that the material is, *prima facie*, defamatory.

Currently, the Norwich Pharmacal order can only be granted by the High Court. The costs associated with seeking such an order are quite high. The Circuit Court will now have the jurisdiction to hear and decide defamation cases (including online to make a Norwich Pharmacal order). This key change will reduce the costs involved for all parties (and particularly for the plaintiff, who often has to pay the online services provider’s legal costs, as well as their own) and ensure that such orders are more accessible in practice. For more information on Norwich Pharmacal orders, read our previous article [here](#).

These are all welcome reforms, and it is hopeful the Bill will remain near the top of the Government’s agenda to implement.

*For advice or further information on this topic, please contact Stephen O'Connor (stephen.oconnor@ogier.com) or Clodagh (clodagh.buckley@ogier.com).*

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