HOUSE OF LORDS
Library Note

Defamation Bill (HL Bill 41 of 2012–13)

This Library Note is published in advance of the second reading in the House of Lords of the Defamation Bill on 9 October 2012. The Note focuses on the report stage and third reading in the House of Commons, and is complemented by two House of Commons Library Notes on the Bill itself and on the second reading and committee stages in the Commons.

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1. Introduction

This House of Lords Library Note summarises the debates in the House of Commons on the Defamation Bill at report stage and third reading.

The purpose of the Bill is to amend the law of defamation: this area of law is largely governed by common law, supplemented, most recently, by the Defamation Acts 1952 and 1996. In general terms, the law relating to defamation is intended to protect the reputation of a person or organisation. The most commonly applied definition is: "a statement should be taken to be defamatory if it would tend to lower [the claimant] in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally" (*Skuse* v *Granada Television* [1996] EMLR 278 at 286). Under English law, there are two separate civil actions for the publication of defamatory matter. Where the defamatory matter is in writing or in some other permanent form, the action will be for libel. Where the defamatory matter is by word of mouth, the action will be for slander. At the moment, the main defences to an action for defamation are:

- Justification—the words complained of are true
- Fair comment—the expression of an opinion on a matter of public interest
- Absolute privilege—immunity from liability in certain situations conferred by statute, secondary legislation, common law or convention
- Qualified privilege—where the public interest in ensuring freedom of communication outweighs the protection of reputation of an individual
- Reynolds privilege—a defence of publication in the public interest

The Defamation Bill (HL Bill 41 of 2012–13) replaces three of these common law defences with new statutory defences: justification is replaced with the defence of truth (clause 2), which is intended broadly to reflect the current law while simplifying and clarifying certain elements; fair comment is replaced with the defence of honest opinion (clause 3), which is also intended to reflect the current law while simplifying certain elements, but does not include the current requirement for the opinion to be on a matter of public interest; and the defence established in *Reynolds* v *Times Newspapers* [1999] UKHL 45 is replaced with the defence of responsible publication on a matter of public interest (clause 4), and is intended to reflect the principles established in that and subsequent cases (the *Explanatory Notes* mention *Jameel* v *Wall Street Journal* [2006] UKHL 44). The Bill also introduces new defences for operators of websites (clause 5); creates a new defence of qualified privilege for peer-reviewed scientific or academic journals (clause 6); and amends the Defamation Act 1996 in relation to absolute and qualified privilege (clause 7).

Further changes made by the Bill include the introduction of the requirement of serious harm (clause 1); the introduction of a single publication rule which prevents an action being brought against a publisher for the publication of the same material after a one-year limitation period (clause 8); provisions addressing "libel tourism", a term used to describe cases with a tenuous link to England and Wales (clause 9); limits to the circumstances in which an action can be brought against a person who was not the author, editor or publisher (clause 10); the removal of the presumption in favour of jury trials (clause 11); the power of the court to order a summary of the judgment to be published (clause 12); the power to make an order for the removal of a defamatory statement from a website (clause 13); and in relation to special damages in actions for slander (clause 14).

Turning to the background to the Defamation Bill, the Government undertook, in *The Coalition: Our Programme for Government* (2010), to "review libel laws to protect freedom of speech" (p 11). On 26 May 2010, Lord Lester of Herne Hill introduced his Private Member's Defamation Bill (HL Bill 3 of 2010–12), which had a second reading debate on 9 July 2010 (HL *Hansard*, cols 423–84). The House of Lords Library Note, *Defamation* (5 July 2010, LLN 2010/016), looks at the issues surrounding defamation in the run-up to Lord Lester's Bill. In responding to the Bill, the Government undertook to publish a draft Bill (HL *Hansard*, 9 July 2012, col 477), which they did the following year (*Draft Defamation Bill: Consultation*, March 2011, CP3/11). The draft Bill was considered by a Joint Committee of both Houses, who published their report, *Draft Defamation Bill* (HL Paper 203 of 2010–12) in October 2011. The Government responded to the Joint Committee's report in February 2012 (*The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill*, Cm 8295). They also published a summary of responses to the consultation, *Draft Defamation Bill: Summary of Responses to Consultation* (24 November 2011). The House of Commons Library Research Paper, *Defamation Bill* (28 May 2012, RP 12/30), contains some further background information, as well as a narrative on the individual clauses of the current Bill.

The Defamation Bill (HC Bill 5 of 2012–13) was presented to the House of Commons on 10 May 2012. The second reading and programme motion debates took place on 12 June 2012 (HC *Hansard*, cols 177–268), and the Bill was then considered in a Public Bill Committee in five sittings between 19 and 26 June: the main amendments made were in relation to the Bill's commencement and territorial extent. The House of Commons Library Research Paper, *Defamation Bill Committee Stage Report* (31 August 2012, RP 12/49) summarises the debates at second reading and committee stage. The Bill (HC Bill 51 of 2012–13) then had its report stage and third reading on 12 September 2012 (HC *Hansard*, cols 309–82), and is due to have its second reading in the House of Lords on 9 October.

This House of Lords Library Note summarises the debates at report stage and third reading in the House of Commons, and should be read in conjunction with the two Commons Library papers mentioned.

2. Report Stage

The report stage of the Defamation Bill (HC Bill 51 of 2012–13) took place in the House of Commons on 12 September 2012 (HC *Hansard*, cols 309–66). The main amendment accepted was proposed by the Government, and added a new clause to the Bill to allow the court to make an order for the removal of a defamatory statement from a website. Two further amendments were proposed by the Government and made. A number of non-Government amendments were debated, but were not made, on conditional fee agreements, publication on matters of public interest and action against a person who was not the author, editor or publisher. The key exchanges on these issues are summarised below.

2.1 Removal of Defamatory Statement from a Website

A number of amendments were proposed by both the Government and the Opposition in relation to clause 5 of the Defamation Bill: clause 5 provides a defence to the operators of websites where they themselves did not post the defamatory material. The Parliamentary Under-Secretary of State for Justice, Jeremy Wright, began the report stage by introducing new clause 1 to deal with an issue raised during the committee stage by Paul Farrelly (Labour MP for Newcastle-under-Lyme). The issue was that a situation could occur in which a claimant had successfully brought an action against an

author of defamatory material online, but might not be able to secure the removal of the material, as the author might not be in a position to have the defamatory material removed from the website (HC *Hansard*, 12 September 2012, col 309). Furthermore, clause 5 itself might prevent the website operator from having to remove the defamatory material. Jeremy Wright argued that, although such situations were rare, the Government thought "it would be appropriate to include a provision in the Bill to ensure that claimants in such cases do not experience any difficulty in securing the removal of material that has been found to be defamatory". The new clause provides that where a court gives judgment for the claimant in a defamation action, the court may order the operator of a website on which the defamatory statement is posted to remove the statement (now clause 13(1) of HL Bill 41 of 2012–13).

Mr Wright spoke to two further Government amendments, both to clause 5: amendment 5 added a sub-clause on the identification of a poster to a website; and amendment 6 prevents the defence in clause 5 from being defeated by reason only of the fact that the operator of the website moderated statements posted by others (HC *Hansard*, 12 September 2012, col 310). In relation to the former, he explained the amendment would ensure claimants "are not left in limbo, unable to bring proceedings against an author because they lack information that would enable them to do so, but also unable to defeat the defence of the website operator if the operator failed to take steps to assist", and that the Government considered this would ensure "the new process operates fairly and effectively and strikes an appropriate balance between the interests of claimants and those of website operators". In relation to the latter, Jeremy Wright said the Government shared the view expressed by the Joint Committee on the draft Bill and by Members that "responsible moderation of content should be encouraged". The Government had "listened to the concerns raised in Committee" and "consider that it would be helpful to include a provision giving reassurance on that point". However, there could, according to Mr Wright, be situations in which a website operator "goes too far" and moderates "content on the website so much as to change the meaning of what the author had posted in a way that makes it defamatory or increases the seriousness of the defamation". Where this occurrs, it would be up to the courts to consider "whether the operator's actions were sufficient for them to be regarded as having posted the material".

Helen Goodman (Labour MP for Bishop Auckland) responded for the Opposition. She thought the new clause was "sensible and in line with the issues we raised in Committee", and supported the change (col 312). The Opposition were also pleased with amendment 5, "which responds to the concerns we raised in Committee and it will ensure that claimants are not left in a position where they have insufficient information to take effective action against an author and would be prevented from defeating the web operator's defence". However, she raised a question of jurisdiction, asking the Minister for clarification of what would happen if the claimant was a UK citizen, but the author lived in a foreign jurisdiction, or if the claimant and the author were UK citizens, but the website operator was abroad and was "not playing by the rules" (cols 312–3). She commented that amendment 6 was related to an amendment moved at the committee stage by the Opposition, and was also welcomed: "it is important that moderation that neither enhances a defamatory statement nor removes a defence against such a statement be allowed" (col 313).

Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark) welcomed the Government's new clause and amendments. In relation to the new clause, he commented that it dealt with matters discussed at the committee stage and that the clause was "a welcome proposed addition to the Bill", although "it may need to be tidied up further" (col 316). The issues raised in amendment 5 had also been debated during the committee stage: "it was requested that something be done, and [the Government] have put forward a proposal". In relation to amendment 6, the Liberal Democrats had "for

a long time been calling for the sort of change that is made" by the amendment, as "comment moderation is clearly a good thing and should not be discouraged by a risk of liability to an author who is trying to moderate and improve an intolerant comment". However, he thought the provision may also "need additional work". He concluded his contribution on these amendments by saying that the Bill had returned to the floor of the House earlier than expected, and "as a result, all of us... have been caught short, and I therefore accept that the right place to deal with a lot of these issues will be the House of Lords".

Jeremy Wright responded to the question of jurisdiction raised by Helen Goodman, explaining "the Government would not pretend that in this Bill we have resolved the international problem she describes" (col 318). He went on to say "claimants can begin proceedings and obtain judgments in this country even if the operator of the website or the person making the statement is abroad". The issue then was the enforcement of judgments: "there are international agreements with some countries for that, but I do not pretend that the situation is perfect, and we will look again at what we can do to improve it".

Amendment 7, tabled by the Opposition, was the final amendment in this group, and if accepted would have left clause 5 out. Speaking to the amendment, Helen Goodman said that she did not want "anyone to think that, having accepted the Government's improvements to clause 5... we are somehow being churlish in wanting to debate leaving out that clause" (col 313). The Opposition did not mean that the issue of website operators should not be addressed, but rather "a more thorough reform than has been offered by the changes announced by the Minister" was needed. She went on to set out her concerns with clause 5, including: the lack of sight of the draft regulations to be made under the provision; the parliamentary procedure to be attached to the regulations; the content of the notice and process of complaint under clause 5; the problem of where an author refuses to identify themselves, which would require a complainant to take out a potentially costly court order; and the fact that the recommendation made by the Joint Committee that a notice of complaint should be put next to a posting that had been complained of had not been dealt with by the Government (cols 313–15). Helen Goodman concluded by saying: "there is no guidance, there are no regulations, and the Government are not taking a strategic approach".

Simon Hughes, did not think amendment 7 offered "the right approach", and said "we should not remove clause 5" (col 317). Instead, the "Government amendments to the clause are welcome" and "removing the clause would be inappropriate as we are adding two amendments and a new clause to improve its provisions". However, he was "sure more work will need to be done", and "so long as we all share that attitude, I trust we will be able to work constructively".

Responding to the debate on amendment 7, Jeremy Wright did not think that clause 5 should be removed (col 318). He explained the Government would be seeking views on the regulations, and that it was "important to ensure that a broad range of views are sought, and that we make sure we get things right. We hope to have secured the necessary input by the end of the year". In relation to the issue of authors refusing to hand over their contact details, Wright commented that claimants would still be required to go to court to obtain an order, but "we are trying to strike that delicate balance between the interests of defendants and the interests of claimants. Our procedure attempts to make things easier for claimants, in respect of authors who do not want to say who they are to the website operator, in which case their comments will, of course, be taken down from the website, as well as for authors who are prepared to make their contact details available and whose details will then be passed on by the website operator to the claimant" (cols 318–19). On the suggestion of placing a notice of

complaint next to a posting, Jeremy Wright commented: “as I understand it, potentially defamatory statements may be embedded in more than one website. We therefore also face the problem of deciding which website operator should be responsible for placing a notice of complaint next to the posting, and that technical problem should not be entirely passed over”.

The House did not divide on the Government’s new clause 1 and amendments 5 and 6, and the new clause and amendments were added to the Bill (cols 321, 360–1). The House divided on amendment 7, with 204 votes in favour and 276 votes against leaving out clause 5 (cols 357–60).

2.2 Conditional Fee Agreements

Robert Flello, Shadow Minister for Justice, proposed new clause 2, which had been tabled by Andy Slaughter (Labour MP for Hammersmith) during the committee stage, but had not been fully debated due to a lack of time. The purpose of the amendment was to exempt civil actions for defamation, malicious falsehood, breach of confidence, privacy and publication proceedings from the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 relating to conditional fee agreements and after-the-event insurance. Mr Flello explained that through conditional fee agreements and after-the-event insurance, it “became possible for people to take legal action without the fear of losing everything because of significant cost implications” (HC *Hansard*, 12 September 2012, col 322). He pointed out that whereas the damages awarded to claimants in defamation cases were “typically between £10,000 and £20,000”, “the costs of such litigation frequently run to many hundreds of thousands of pounds”, but “the Government now seem to think that the fees lawyers charge will come down if fewer people can get access to justice”. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 left defendants with three options: “first, they can issue a grovelling apology, even if they were absolutely right to say what they did, and hope that that is sufficient to avoid being sued. Secondly, they can try to defend themselves in court without legal assistance or any legal advice and face losing; they will also probably face highly paid, highly skilled lawyers on the side of a major corporation. Thirdly, they can try to scrape together the money to pay a lawyer while bearing in mind that if they lose, the cost might wipe out all their resources” (col 323). He went on to say “the Bill rebalances defamation law in favour of defendants. If we do not remove cases from the Legal Aid, Sentencing and Punishment of Offenders Act 2012, we will condemn wrongly accused people to not receiving justice” (col 324).

Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark) reiterated that “damages in privacy and libel cases are often relatively small and the legal costs often relatively large” (col 328). There was “real concern that the effective removal of success fees will mean that lawyers will no longer be able to offer conditional fee agreements and that that will prevent all but the wealthy from taking action”. The abolition of insurance premiums “would mean that people risked their homes and other assets on legal action against a newspaper”. Although he was glad this unfinished business was on the agenda, he did not think it could be dealt with appropriately “here and now simply by accepting the new clause”, and he looked “forward to the wider debate that we will have on other matters and hope that, before the Bill becomes law, we will have arrived at a position in which the rights of ‘the ordinary person’ or ‘the ordinary citizen’ are defended and they are not at a disadvantage when defending their reputation against people who are much more powerful and influential than they are”.

Responding for the Government, Jeremy Wright, Parliamentary Under-Secretary of State for Justice, began by clarifying what the Government’s proposals would do: “we are not talking about removing access to CFAs. We are talking about reforming and changing

CFAs. The basic rationale for those reforms is that we wish to rebalance the system to make it fairer between claimants and defendants and correct the anomaly whereby those who bring cases have no incentive to keep an eye on legal costs. At the moment, the recoverability of success fees and insurance premiums from the losing side can have the perverse effect of preventing defendants from fighting cases, even when they know they are in the right, for fear of disproportionate legal costs if they lose" (col 330). He went on to explain that in January 2011, the European Court of Human Rights had held, in the case of *MGN v UK* [2011] ECHR 66, "that the existing CFA arrangements... which the new clause would preserve, were incompatible with the right to freedom of expression under article 10 of the European Convention on Human Rights" (HC *Hansard*, 12 September 2012, col 330). Jeremy Wright reminded the House of the requirement of clause 1 to demonstrate serious harm, as well as the procedural changes the Government intended to make to "reduce the costs that are paid by both sides, or either side, in the course of defamation actions". However, he shared "the concern that individuals who are not wealthy or powerful sometimes need to bring defamation or privacy cases", but thought that "nothing in our proposals should prevent this where a case is a good one" (col 331). He concluded by referring to the commitment made by Lord McNally in the House of Lords on 27 March 2012 (HL *Hansard*, col 1332) to look "at the rules on costs protection for defamation and privacy proceedings", and repeated the commitment that the Government would "look at the rules for costs protection for defamation and privacy proceedings before the defamation reforms come into effect" (HC *Hansard*, 12 September 2012, col 331).

Robert Flello closed the debate commenting "a promise was made when we debated the Legal Aid, Sentencing and Punishment of Offenders Bill. The draft Bill did not mention defamation costs to ensure that people can afford to take action if they are defamed or if they want to defend themselves. The Joint Committee has done some excellent work, but it has not resulted in anything that protects claimants and defendants. There was nothing in the Bill on second reading or when it was debated in Committee, and we are now on report and still nothing has been suggested" (col 332). Although there was "a rebalancing between claimants and defendants in the Defamation Bill", "if we want to tackle costs, surely the Government should have addressed that and not stopped those without means being able to get justice".

The House divided, and rejected new clause 2 by 273 to 198 votes (cols 333–6).

2.3 Publication on Matters of Public Interest

The amendments discussed under this heading relate to clause 4 of the Defamation Bill. Clause 4 creates a new defence to an action for defamation of responsible publication on a matter of public interest, and is based on the common law defence established in *Reynolds v Times Newspapers* [1999] UKHL 45. Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark) proposed new clause 4, which "suggests an additional way of dealing with public interest matters" and is "designed to take as many cases as possible out of the courts" (HC *Hansard*, 12 September 2012, cols 338, 340). The amendment would have created a defence under which the publication of a statement which is, or forms part of, a statement on a matter of public interest is privileged, unless the publication is shown to be made with malice. However, this defence would not apply if the claimant could show that the defendant (a) was requested by him to publish a reasonable letter or statement by way of explanation or contradiction and, where appropriate, a correction or clarification; and (b) had refused or otherwise failed to do so. Mr Hughes discussed the Reynolds defence, and questioned whether the drafting of the statutory defence in clause 4 took "account of the law as it now is", in particular the case of *Flood v Times Newspapers* [2012] UKSC 11 (HC *Hansard*, 12 September 2012, col 339). He also questioned whether "it should be for the claimant

to prove that the publisher acted irresponsibly and, therefore what the balance of the argument should be" (col 340). Turning to his amendment, Simon Hughes explained he wanted the "House to agree to a measure that adds to the current clause 4, with a new defence available to publishers who are prepared to correct the record or publish a right-to-reply response promptly and prominently, thereby avoiding the use of lawyers" (col 342). The effect would be to "take disputes out of the courts, thus saving people money", and to "speed up justice and make it more publicly accessible". The defence would not apply "if the author were motivated by malice in its widest definition".

Paul Farrelly (Labour MP for Newcastle-under-Lyme) also proposed a number of amendments in this grouping on clause 4. His aim was to ensure that "what is codified is not a step back from the current case law that has been largely welcomed, and we also do not want to give a charter for sloppy, frivolous, inaccurate or sometimes downright nasty journalism" (col 344). Many of his amendments were based upon Lord Lester of Herne Hill's Private Member's Bill: amendment 9 would have made "it even clearer that a court should take all circumstances into account" (col 345); amendment 10 probed whether or not clause 4 was a step back from the case law; amendment 11 reflected the wording used by Lord Nicholls in *Reynolds* that the court should consider "whether a newspaper might reasonably have delayed publication—for instance, to wait longer for a comment from the subject of an article—rather than going to press when it did" (col 346); and amendment 12 which sought to "give statutory recognition... when newspapers are seeking to rely on qualified privilege, to the importance of journalists following a relevant code of practice—be it their own publication's code, the editors' code, one from a regulator or that of the profession".

John McDonnell (Labour MP for Hayes and Harlington) and secretary of the parliamentary group of the National Union of Journalists, welcomed the "context of clause 4", and proposed a number of amendments: amendment 1 would have inserted a reasonableness test into the requirement under clause 4(2)(f) for the court to take into account whether the defendant had sought the claimant's views before publishing (col 348); amendment 2 was "designed to acknowledge the fact that that, yes, journalists should take all reasonable steps to check the accuracy of facts, but to recognise also the pressures of a news environment" (col 349); under amendment 3 the courts would have to take into account whether the defendant had abided or tried to abide by the National Union of Journalists Code of Conduct; and amendment 4 which would have required the courts to have regard to whether the claimant was someone in public life, the point being "to recognise that there are two different categories of people" (col 350).

Robert Flello, Shadow Minister for Justice, thought that clause 4 was an important, central part of the Bill, but he was not reassured that clause 4 encompassed *Reynolds* as revised by *Flood* and *Jameel* v *Wall Street Journal* [2006] UKHL 44, and he hoped "the other place can pin down the Minister on this matter and get some better legislation out of this" (HC *Hansard*, 12 September 2012, cols 352–3). He commented on Simon Hughes' new clause 4, which he said was similar to an amendment he had proposed during the committee stage: "I support the direction of travel in new clause 4, and look forward to hearing the Minister's comments". He also welcomed the amendments proposed by Paul Farrelly and John McDonnell, stating "much of clause 4 will need to be revisited following the conclusion of Lord Leveson's" inquiry into the culture, practice and ethics of the press, and that "the undue haste of trying to get the Bill through Parliament—specifically clause 4—means that the amended Bill with its additional new clauses does not currently pass the test of good and effective potential legislation" (cols 353–4).

Helen Grant, Parliamentary Under-Secretary of State for Justice, thought the "new clause represents a significant shift in the law towards the interests of defendants. To

obtain any remedy beyond explanation, contradiction or correction, the claimant would have to prove malice—a high test that would require the claimant to prove the defendant's state of mind, which in many cases is likely to be impossible" (col 354). In relation to comments about the Flood case, her view was that it was reflected in the Bill. Furthermore, the factors under clause 4 to be considered by the courts were "illustrative and not exhaustive, and in any event the court must have regard to all the circumstances of the case" (col 355). She concluded by saying: "the Ministry of Justice has a largely new ministerial team, but we are determined to get the legislation right and would therefore like to reflect further in light of the helpful points that have been raised by hon Members in this debate and in Committee, and by stakeholders more generally. If we conclude that there is a better way forward, we will table appropriate amendments in another place".

Simon Hughes withdrew new clause 4, and the House did not divide on the other amendments proposed under this group.

2.4 Action Against a Person who was not the Author, Editor or Publisher

Robert Flello, Shadow Minister for Justice, proposed amendment 8 which would have altered clause 10 on action against a person who was not the author, editor or publisher of an alleged defamatory statement. The amendment was similar to one he had proposed during the committee stage. Under amendment 8, the court would not have the jurisdiction to hear an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of, unless the court (a) was satisfied that it was not reasonably practicable for an action to be brought against the author, editor or publisher, (b) there was a prima facie case that the statement complained of was defamatory and (c) was satisfied that such person did not know that the statement was defamatory until a claim to that effect was made and did not reasonably believe that there was a good defence to any action brought upon it. According to Mr Flello, the amendments incorporated concerns raised by the Booksellers Association that although "section 1 of the Defamation Act 1996 is available to booksellers as a defence, it is very much weaker than the common law defence of innocent dissemination which that section replaced"; furthermore, that "booksellers, and indeed other secondary publishers such as newsagents and distributors, lose that protection if they know, or have reason to believe, that a publication contains any defamatory statement"; and that "as a result of the elimination of the innocent dissemination defence, a technique known as the sending of 'clogging letters' was adopted", whereby "a letter sent by the claimant's lawyers to a bookseller warning that unless a publication containing the alleged libel was immediately withdrawn from sale, proceedings would be started against the bookseller" (HC *Hansard*, 12 September 2012, cols 361–2). The amendment was intended to reinstate the defence of innocent dissemination for booksellers.

Helen Grant, Parliamentary Under-Secretary of State for Justice, responded that the amendment would add "two additional hurdles to overcome before a court had jurisdiction to hear a defamation claim against someone who was not a primary publisher", and that the Government did not consider the amendment to be appropriate, as "it would significantly limit the circumstances in which a court would have jurisdiction to hear an action against a person who was not the author, editor or publisher of a defamatory statement" (col 362). Furthermore, "it would be very unusual to require a court to consider the substance of a case at the same time as determining whether to grant jurisdiction for the action to be brought".

The House divided on amendment 8, and rejected it by 276 votes to 202.

3. Third Reading

Following the completion of the report stage, Chris Grayling, Lord Chancellor and Secretary of State for Justice, moved that the Defamation Bill be read a third time: "the Bill has now proceeded through its scrutiny stages in this House. The issues that it addresses go to the core of what it means to live in a free and open society. The right to speak freely and to debate issues without fear of censure are a vital part of a democratic society. However, that freedom should not be used to damage the reputation of others without regard to the facts. Lives and careers can be destroyed by false allegations that go unanswered. The issue for our defamation laws is ultimately one of striking the right balance between the protection of freedom of expression and the protection of reputation" (HC *Hansard*, 12 September 2012, col 366). The Bill reflected the Government's view that "the law is out of kilter, and that our defamation regime is out of date, costly and over-complicated", and that it was "vital to ensure that people who have been defamed are not left without effective remedies when their reputation has been seriously harmed" (col 367).

Sadiq Khan, Shadow Lord Chancellor and Secretary of State for Justice, responded that the Opposition welcomed much of the Bill and "firmly support the principle of modernising our out-of-date defamation law—indeed, we set the whole process in train when in government. This Bill is the vehicle to bring our defamation law into the 21st century, making it fairer, simpler and cheaper so that public debate is encouraged, not stifled" (cols 369–70). However, he felt "as it stands the Bill is a wasted opportunity. Blue moons come around more often than defamation reform: the most recent reform took place in 1996, and the one before that in 1952... so we should not expect the next opportunity to arise soon". Full advantage needed to be taken of this opportunity—"there is political consensus: all three main political parties called for an update of our defamation law in our election manifesto. The absence of major policy differences should allow us to focus our energy on getting the Bill right and make the most of an infrequent opportunity. That is why we are so disappointed: we have not grasped that opportunity".

Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark) said that he shared the view expressed by the Secretary of State: "we need to uphold the rights of freedom of expression, in particular for journalism, and to encourage good journalism, including good investigative journalism, in the process. Journalists should not be afraid of exposing what they need to expose in the public interest. We also need to ensure that ordinary people are protected against poor and misrepresenting journalists, who ruin reputations in such a way that they cannot be recovered. That is the balance we need to strike" (col 378).

The Bill was read for a third time and passed.

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