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*Number 2 of 2026*

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**Defamation (Amendment) Act 2026**

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## **DEFAMATION (AMENDMENT) ACT 2026**

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*Number 2 of 2026*

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## **DEFAMATION (AMENDMENT) ACT 2026**

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An Act to provide that defamation actions in the High Court shall not be tried with a jury; to give effect to Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024<sup>1</sup> on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’) in so far as it relates to defamation proceedings; for those and other purposes to amend the Defamation Act 2009; and to provide for related matters.

[19th February, 2026]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title and commencement**

1. (1) This Act may be cited as the Defamation (Amendment) Act 2026.
- (2) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister for Justice, Home Affairs and Migration, either generally or by reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions, including the insertion into the Principal Act of different provisions of Part 4A of that Act effected by *section 19*.

##### **Definitions**

2. In this Act—
  - “cause of action”, “defamation” and “defamation action” have the same meanings as they have in the Principal Act;
  - “Principal Act” means the Defamation Act 2009.

<sup>1</sup> OJ L, 2024/1069, 16.4.2024.

PART 2

AMENDMENT OF SECTION 2 OF PRINCIPAL ACT

**Amendment of section 2 of Principal Act**

3. Section 2 of the Principal Act is amended—

(a) by the insertion of the following definition:

“ ‘Act of 2015’ means the Legal Services Regulation Act 2015;”,

(b) by the substitution of the following definition for the definition of “periodical”:

“ ‘periodical’ means—

(a) any newspaper, magazine, journal or other publication that is printed, published or issued, or that circulates, in the State at regular or substantially regular intervals and includes any version thereof published on the internet or by other electronic means, or

(b) any newspaper, magazine, journal or other publication that is published or issued, or that circulates, only on the internet or by other electronic means at regular or substantially regular intervals—

(i) by a publisher who is established in the State, or

(ii) the publication of which is specifically targeted at the general public, or a section of the general public, in the State;”,

and

(c) by the deletion of the definition of “summary relief”.

PART 3

ABOLITION OF JURIES IN HIGH COURT DEFAMATION ACTIONS

**Abolition of juries in High Court defamation actions**

4. (1) Subject to *subsection (2)* and notwithstanding section 94 of The Courts of Justice Act 1924, or any other provision made by or under statute or any rule of law, a defamation action in the High Court, or a question of fact or an issue arising in such an action, shall not be tried with a jury.

(2) *Subsection (1)* shall apply only to defamation actions that are brought on or after the date of the coming into operation of this section.

**Amendments consequential to section 4**

5. (1) The Principal Act is amended—

- (a) in section 13, by the deletion of subsection (2),
  - (b) in section 14(3), by the deletion of “and shall be determined, in the case of a defamation action brought in the High Court, in the absence of the jury”,
  - (c) in section 30(4), by the deletion of “or, where the action is tried in the High Court sitting with a jury, the trial judge”,
  - (d) in section 31—
    - (i) by the deletion of subsection (2),
    - (ii) in subsection (4)(k), by the deletion of “or, where the action is tried by the High Court sitting with a jury, would propose to make in the event of there being a finding of defamation”, and
    - (iii) by the deletion of subsection (8),
  - (e) in section 32, by the deletion of subsection (3), and
  - (f) in section 34, by the deletion of subsection (4).
- (2) The amendments effected by *subsection (1)* shall apply only to defamation actions that are brought on or after the date of the coming into operation of this section.

#### PART 4

##### DEFAMATION OF BODY CORPORATE

#### **Defamation of body corporate**

6. The Principal Act is amended by the substitution of the following section for section 12:

#### **“Defamation of body corporate**

- 12.** (1) The provisions of this Act apply to a body corporate as they apply to a natural person, and a body corporate may bring a defamation action under this Act in respect of a statement concerning it that it claims is defamatory.
- (2) A statement concerning a body corporate that is made on or after the date of the coming into operation of *section 6* of the *Defamation (Amendment) Act 2026* is not defamatory unless its publication has caused, or is likely to cause, serious harm to the reputation of the body corporate.
- (3) Harm to the reputation of a body corporate that trades for profit shall not be considered to be serious harm for the purposes of subsection (2) unless it has caused, or is likely to cause, the body corporate serious financial loss.”.

## PART 5

## AMENDMENT OF PART 3 OF PRINCIPAL ACT

**Amendment of section 17 of Principal Act**

7. (1) Section 17 of the Principal Act is amended—

(a) in subsection (2), by the substitution of the following paragraph for paragraph (i):

“(i) a fair and accurate report of proceedings publicly heard before, or a decision made public by, any court (including a court-martial)—

(i) established by law in the State,

(ii) established under the law of Northern Ireland, or

(iii) established under the law of any other state or place,”

and

(b) by the renumbering of subsection (4) (inserted by section 38(b) of the Parole Act 2019) as subsection (5).

(2) The amendment effected by *paragraph (a) of subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.

**Amendment of section 18 of Principal Act**

8. (1) Section 18 of the Principal Act is amended—

(a) in subsection (1), by the substitution of “this section or, in relation to a statement referred to in subsection (1A), the commencement of *section 8* of the *Defamation (Amendment) Act 2026*” for “this section”, and

(b) by the insertion of the following subsection after subsection (1):

“(1A) Without prejudice to the generality of subsection (1), it shall be a defence to a defamation action for the defendant to prove that the statement to which the action relates—

(a) consisted of—

(i) an inquiry as to whether the person whom the statement concerned had—

(I) paid for goods or services,

(II) obtained services, or

(III) in his or her possession—

(A) goods,

(B) proof of payment for goods, or

(C) proof of payment for services,

or

- (ii) a statement that the means of payment proffered by the person whom the statement concerned was unable to be, or not capable of being, accepted,

and

- (b) was not published excessively,

provided that the person who made the inquiry referred to in paragraph (a)(i) or the statement referred to in paragraph (a)(ii) had a duty or interest in making it.”.

- (2) The amendments effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.

#### **Amendment of section 22(5) of Principal Act**

- 9. (1) Section 22(5) of the Principal Act is amended by the substitution of the following paragraph for paragraph (b):

“(b) to publish that correction and apology in such manner as will ensure that the correction and apology will be given the same or similar prominence as was given to the statement concerned, unless the person to whom the statement refers or is alleged to refer otherwise requests,”.

- (2) The amendment effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.

#### **Amendment of section 23 of Principal Act**

- 10. (1) Section 23 of the Principal Act is amended—

- (a) in subsection (2), by the substitution of “unless the plaintiff proves that, at the time of the publication of the statement to which the offer relates, the defendant knew that, or was reckless as to whether” for “unless the plaintiff proves that the defendant knew or ought reasonably to have known at the time of the publication of the statement to which the offer relates that”, and

- (b) by the insertion of the following subsection after subsection (5):

“(6) In addition to having regard to the matters provided for in section 169(1) of the Act of 2015, a court shall, when considering the making of an order as to costs in a defamation action, have regard to the conduct, subsequent to the making of an offer of amends, of—

- (a) the person who made the offer, and
  - (b) the person to whom the offer was made,
- in relation to the offer.”.

- (2) The amendment effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.

### **Defence of fair publication on matter of public interest**

- 11.** (1) The Principal Act is amended by the substitution of the following section for section 26:

#### **“Fair publication on matter of public interest**

**26.** (1) It shall be a defence (to be known as the ‘defence of fair publication on a matter of public interest’) to a defamation action for the defendant to prove that the publication was fair in all the circumstances of the case, in that—

- (a) the statement in respect of which the action was brought was on a matter of public interest,
- (b) the defendant reasonably believed that publishing the statement was in the public interest, and
- (c) the statement was published in good faith.

(2) Subject to subsection (3), a court shall, for the purposes of determining whether subsection (1)(b) is proved, have regard to whether the belief was arrived at after the making of such enquiries and checks as it was reasonable to expect of the defendant.

(3) Where the statement in respect of which the defamation action was brought was an accurate and impartial account of a dispute to which the plaintiff in the defamation action was a party, the court shall, in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest, disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.”.

- (2) The amendment effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.

### **Abolition of Reynolds defence**

- 12.** The Principal Act is amended by the insertion of the following section after section 26:

#### **“Abolition of Reynolds defence**

**26A.** (1) Any common law defence known as the Reynolds defence that, immediately before the commencement of *section 12* of the *Defamation (Amendment) Act 2026*, could have been pleaded as a defence in a defamation action is abolished.

(2) Subsection (1) shall not apply to causes of action accruing before the date of the coming into operation of *section 12* of the *Defamation (Amendment) Act 2026*.”.

**Defence in relation to broadcast of live programme**

13. (1) The Principal Act is amended by the insertion of the following section after section 27:

**“Live broadcast defence**

27A. (1) It shall be a defence (to be known as the ‘live broadcast defence’) to a defamation action that relates to a statement published by a relevant person during the broadcast of a live programme for the broadcaster of the programme to prove that, in advance of and during that broadcast, the broadcaster took reasonable and prudent precautions to prevent the publication by a relevant person of a defamatory statement during the live programme.

(2) The court shall, in determining for the purposes of subsection (1) whether a broadcaster of a live programme took reasonable and prudent precautions, have regard to such matters as the court considers relevant, including the following:

(a) the level of effective control over the relevant person that could reasonably be expected of the broadcaster in those circumstances, including—

(i) the nature of the location from which the live programme was broadcast,

(ii) the nature of the live programme, and

(iii) whether the relevant person was a contributor, or a person other than a contributor, to the live programme;

(b) the overall measures employed by the broadcaster to ensure the taking of reasonable and prudent precautions and risk management in the conception, design and planning of live programmes, including editorial policies, risk assessment, programme production procedures, staff training and guidance and, where appropriate, transmission delays;

(c) the extent to which the broadcaster carried out an appropriate risk assessment, in respect of the risk of a relevant person making a defamatory statement during the live programme, in relation to the programme prior to its broadcast, having regard in particular to—

(i) the type of—

(I) live programme concerned, and

(II) persons envisaged as participants in the live programme,

(ii) the topics to be addressed during the live programme, and

(iii) the public interest in having a live programme on the topic concerned;

- (d) where appropriate, having regard to the conclusions of the risk assessment referred to in paragraph (c), whether any appropriate vetting of participants in the live programme was carried out;
  - (e) the overall management in practice of the live programme concerned, and of its participants, by the broadcaster and in particular by the presenter of the live programme.
- (3) For the avoidance of doubt, the live broadcast defence shall not fail by reason only of the live programme concerned having been broadcast with a minimal delay.
- (4) In this section—
- ‘broadcast’, ‘broadcaster’ and ‘programme’ shall each have the same meaning as they have in the Broadcasting Act 2009;
- ‘contributor’ means a participant in a live programme who has been invited by the broadcaster of the live programme to make statements in the course of the programme and who is not an employee or contractor of the broadcaster;
- ‘relevant person’, in relation to a defamatory statement referred to in subsection (1), includes—
- (a) a contributor, or
  - (b) a person whose presence or participation in the live programme was not invited by the broadcaster concerned and who is not an employee or contractor of the broadcaster.”.
- (2) The amendment effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.

## PART 6

### AMENDMENT OF PART 4 OF PRINCIPAL ACT

#### **Amendment of section 28 of Principal Act**

- 14.** (1) Section 28 of the Principal Act is amended—
- (a) in subsection (2)(a), by the substitution of “application that is reasonably likely to succeed” for “application”, and
  - (b) in subsection (6), by the substitution of “section 30 or 33, or orders under both of those sections” for “section 30 or 33”.
- (2) The amendments effected by *subsection (1)* shall apply only to applications under section 28 of the Principal Act made on or after the date of the coming into operation of this section.

**Amendment of section 29(1) of Principal Act**

- 15.** (1) Section 29(1) of the Principal Act is amended by the deletion of “when filing his or her defence to the action”.
- (2) The amendment effected by *subsection (1)* shall apply only to actions for damages for defamation brought on or after the date of the coming into operation of this section.

**Amendment of section 30(2) of Principal Act**

- 16.** (1) Section 30(2) of the Principal Act is amended—
- (a) in paragraph (a), by the substitution of “published,” for “published, and”,
  - (b) in paragraph (b), by the substitution of “correction, and” for “correction”, and
  - (c) by the substitution of the following paragraph for “and shall, unless the plaintiff otherwise requests, require the correction to be published in such manner as will ensure that it is communicated to all or substantially all of those persons to whom the defamatory statement was published.”:
    - “(c) unless the plaintiff otherwise requests, require the correction to be published in such manner as will ensure that—
      - (i) it is given the same or similar prominence as was given to the defamatory statement, and
      - (ii) it is communicated to all or substantially all of those persons to whom the defamatory statement was published.”.
- (2) The amendments effected by *subsection (1)* shall apply only to defamation actions brought on or after the date of the coming into operation of this section.

**Amendment of section 33(1) of Principal Act**

- 17.** (1) Section 33(1) of the Principal Act is amended by the substitution of “if the court is satisfied that” for “if in its opinion”.
- (2) The amendment effected by *subsection (1)* shall apply only—
- (a) in a case where a defamation action has been brought, where the defamation action is brought on or after the date of the coming into operation of this section, or
  - (b) in a case where a defamation action has not been brought, to an application under section 33 of the Principal Act made to the High Court on or after the date of the coming into operation of this section.

**Amendment of section 34(1) of Principal Act**

- 18.** (1) Section 34(1) of the Principal Act is amended by the substitution of “a correction order or an order prohibiting further publication of the statement to which the defamation action relates, or both,” for “summary relief”.

- (2) The amendment effected by *subsection (1)* shall apply only to defamation actions brought on or after the date of the coming into operation of this section.

## PART 7

### ADDITIONAL PROVISIONS REGARDING DEFAMATION PROCEEDINGS RELATING TO ENGAGEMENT IN PUBLIC PARTICIPATION

#### Insertion of Part 4A into Principal Act

19. The Principal Act is amended by the insertion of the following Part after Part 4:

#### “PART 4A

##### ADDITIONAL PROVISIONS REGARDING DEFAMATION PROCEEDINGS RELATING TO ENGAGEMENT IN PUBLIC PARTICIPATION

#### Definitions (Part 4A)

**34A.** In this Part, unless the context otherwise requires—

‘abusive court proceedings against public participation’ means defamation proceedings or part thereof that pursue unfounded claims and that are not brought to genuinely assert or exercise a right, but that have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, including but not limited to—

- (a) where a claim is of a disproportionate, excessive or unreasonable nature,
- (b) the existence of multiple proceedings initiated by the plaintiff or associated parties in relation to similar matters,
- (c) intimidation, harassment or threats on the part of the plaintiff or his or her representatives, before or during the proceedings, as well as similar conduct by the plaintiff in similar or concurrent cases, or
- (d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith;

‘claim’ includes part of a claim;

‘defamation proceedings’ means—

- (a) an application under section 33 for an order to prevent the publication of an alleged defamatory statement,
- (b) a defamation action, or

- (c) a claim for other relief under this Act in respect of an alleged defamatory statement,

whether brought as a claim or a counter-claim;

‘Directive (EU) 2024/1069’ means Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024<sup>2</sup> on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’);

‘matter of public interest’ means any matter that affects the public to such an extent that the public may legitimately take an interest in it, in areas such as—

- (a) fundamental rights, public health, safety, the environment or the climate,
- (b) activities of a person who is a public figure in the public or private sector, having regard to the right to privacy of an individual,
- (c) matters under consideration by a legislative, executive, or judicial body, or any other official proceedings,
- (d) allegations of corruption, fraud, or of any other criminal offence, or, where relevant to defamation proceedings coming within the scope of Directive (EU) 2024/1069, of administrative offences in a place other than the State, in relation to such matters, or
- (e) where relevant to defamation proceedings coming within the scope of Directive (EU) 2024/1069, activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including the protection of democratic processes against undue interference, in particular against disinformation;

‘public participation’ means the making of any statement or the carrying out of any activity by a person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest.

### **Defamation proceedings to which Part applies**

**34B.** This Part applies to defamation proceedings relating to the engagement by a person in public participation, including those falling within the scope of Article 2 of Directive (EU) 2024/1069.

### **Information to be given to court**

**34C.** Where defamation proceedings have been initiated against a defendant and he or she is of the view that they—

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<sup>2</sup> OJ L, 2024/1069, 16.4.2024.

- (a) have been initiated on account of his or her engagement in public participation, and
- (b) fall within the scope of Article 2 of Directive (EU) 2024/1069,

the defendant shall so inform the court.

### **Security for costs**

**34D.** Where a defendant in defamation proceedings relating to his or her engagement in public participation makes an application, in accordance with law, for security for costs in the context of those proceedings, the court shall, in determining the application, act as expeditiously as possible consistent with the administration of justice.

### **Application to strike out claim and appeal**

**34E.** (1) Where a defendant in defamation proceedings relating to his or her engagement in public participation makes an application to the court, in accordance with law, to strike out the claim as being manifestly unfounded—

- (a) the court shall, in determining the application, and
- (b) where an appeal is brought against the determination of the application, the court that hears and determines the appeal shall, act as expeditiously as possible consistent with the administration of justice.

(2) In this section, ‘manifestly unfounded’, in relation to a claim, includes where—

- (a) the indorsement or pleading—
  - (i) is unnecessary,
  - (ii) is an abuse of the process of the court, or
  - (iii) in the case of an interim or interlocutory application, may unreasonably prejudice or delay the fair trial of the action,
- (b) the claim—
  - (i) discloses no reasonable cause of action,
  - (ii) amounts to an abuse of the process of the court,
  - (iii) is bound to fail, or
  - (iv) has no reasonable chance of succeeding,or
- (c) the statement in respect of which the proceedings have been brought is not reasonably capable of being found to have a defamatory meaning in accordance with section 34(2).

**Application for declaration where application to strike out claim**

- 34F.** (1) Where a defendant in defamation proceedings relating to his or her engagement in public participation makes an application referred to in section 34E(1), he or she may also make an application, on notice to the plaintiff in those proceedings, for a declaration by the court that the proceedings or part thereof amount to abusive court proceedings against public participation.
- (2) Where a court makes a declaration under subsection (1) that the defamation proceedings or part thereof amount to abusive court proceedings against public participation, the court shall, insofar as it considers appropriate, take the declaration into account when making an award of costs or any other order providing for the payment of costs and may, if it thinks fit, order the costs to be paid as between legal practitioner and client or on a legal practitioner and own client basis.

**Application for declaration before, during or at conclusion of trial of action and costs**

- 34G.** (1) In defamation proceedings against a defendant relating to his or her engagement in public participation, he or she may, before, during or at the conclusion of the trial of the action, make an application, on notice to the plaintiff in those proceedings, for a declaration by the court that the proceedings or part thereof amount to abusive court proceedings against public participation.
- (2) Where the court makes a declaration under subsection (1) that the proceedings or part thereof amount to abusive court proceedings against public participation, the court shall—
- (a) insofar as it considers appropriate, take the declaration into account when making an award of costs or any other order providing for the payment of costs and may, if it thinks fit, order the costs to be paid as between legal practitioner and client or on a legal practitioner and own client basis, and
- (b) when making an award or order referred to in paragraph (a), act as expeditiously as possible consistent with the administration of justice.

**Order for damages in case of section 34F or 34G declaration**

- 34H.** (1) Where—
- (a) the court makes a declaration under section 34F or 34G that the defamation proceedings concerned or part thereof amount to abusive court proceedings against public participation (in this section referred to as the ‘declaration’), and
- (b) the defendant in those proceedings (in this section referred to as the ‘defendant’) makes an application to the court, whether before or after the making of the declaration, on notice to the plaintiff in

those proceedings (in this section referred to as the ‘plaintiff’), for an order for the payment of damages by the plaintiff to the defendant under this section,

the court may, in addition to the making of the declaration and in its absolute discretion, order the plaintiff to pay damages to the defendant as a result of injury, loss or damage suffered by the defendant consequent upon the bringing of the proceedings or part thereof the subject of the declaration.

- (2) In deciding whether to make an order under subsection (1), and, where applicable, in determining the amount of any damages to be paid, the court shall have regard to all of the circumstances of the case and the interests of justice, and may take into account the following matters as it considers appropriate:
  - (a) the nature of the public participation concerned;
  - (b) the purpose or purposes for which the defamation proceedings or part thereof the subject of the declaration (in this subsection referred to as the ‘proceedings’) were brought relating to the defendant’s engagement in public participation;
  - (c) the conduct of the proceedings;
  - (d) any other factors leading to the making of the declaration;
  - (e) whether the declaration has been made under section 34F or 34G;
  - (f) whether the declaration relates to all or part of the proceedings;
  - (g) the injury, loss or damage suffered by the defendant as a result of the bringing of the proceedings (including, where appropriate, the threat of such proceedings) and any mitigating factors.
- (3) Where an application for an order for the payment of damages is made under subsection (1)(b)—
  - (a) the plaintiff and the defendant may make submissions to the court and adduce evidence, and
  - (b) the court may direct that evidence be given, in relation to the application.
- (4) Where the court makes an order for the payment of damages to a defendant under this section, the court may, if it considers it appropriate to do so, apply the provisions of section 34F(2) or 34G(2), as the case may be, to costs incurred as a result of an application made by the defendant under subsection (1)(b).
- (5) The damages recoverable under this section in the Circuit Court shall not exceed the amount standing prescribed, for the time being by law, as the higher of any limit of that Court’s jurisdiction in tort.

- (6) The Personal Injuries Assessment Board Act 2003 shall not apply in relation to an application under subsection (1)(b).
- (7) This section shall not affect the operation of sections 31 and 32.

**Publication of certain judgments and court orders**

**34I.** Where a court finds in the course of defamation proceedings that the proceedings are abusive court proceedings against public participation, the court shall direct that any written judgment of the court or, in the absence of a written judgment of the court, any order of the court, related to that finding, shall be published on the website of the Courts Service where practicable and as soon as so practicable.”.

**Transitional provisions relating to provisions of Part 4A of Principal Act**

**20.** Where a provision of Part 4A of the Principal Act comes into operation on a particular date, it shall do so only in relation to defamation proceedings (within the meaning of that Part) brought after that date.

PART 8

ALTERNATIVES TO LEGAL PROCEEDINGS

**Alternative dispute resolution**

**21.** The Principal Act is amended by the insertion of the following Part after Part 4A (inserted by *section 19*):

“PART 4B

ALTERNATIVE DISPUTE RESOLUTION

**Definitions (Part 4B)**

**34J.** In this Part—

‘proceedings’ means—

- (a) a defamation action, or
- (b) an application under section 33 or 34;

‘specified ADR procedures’ means—

- (a) the procedures for the making of a complaint to the Press Council concerning the conduct of its members to which Schedule 2 refers, or
- (b) the scheme for the exercise of the right of reply prepared under section 49 of the Broadcasting Act 2009.

**Practising solicitor and alternatives to issuing of certain proceedings**

- 34K.** (1) A practising solicitor shall, prior to issuing proceedings on behalf of a client, where the specified ADR procedures are applicable to the medium of publication of the alleged defamatory statement—
- (a) inform the client of the availability of the specified ADR procedures,
  - (b) provide the client with information in relation to the implications of engaging in the specified ADR procedures on the proceedings the solicitor may issue on behalf of the client, including implications as to costs,
  - (c) advise the client of the implications of resolving a dispute in relation to the publication of a statement that is alleged to be defamatory of the client otherwise than by way of the issuing of proceedings including by way of the specified ADR procedures, and
  - (d) advise the client that the specified ADR procedures are voluntary.
- (2) If a practising solicitor is acting on behalf of a client who intends to institute proceedings, the originating document by which the proceedings concerned are instituted shall be accompanied by a statutory declaration made by the solicitor evidencing his or her compliance with subsection (1).
- (3) If the originating document referred to in subsection (2) is not accompanied by a statutory declaration made in accordance with that subsection, the court concerned shall adjourn the proceedings for such period as it considers reasonable in the circumstances to enable the practising solicitor concerned to comply with paragraphs (a) to (d) of subsection (1) and provide the court with such declaration or, if the solicitor has already complied with subsection (1), to provide the court with such declaration.
- (4) In this section, ‘practising solicitor’ has the same meaning as it has in the Act of 2015.

**Effect of specified ADR procedures on limitation periods**

- 34L.** In reckoning a period of time for the purposes of any limitation period under section 11 of the Act of 1957 applicable to the bringing of a defamation action, the following periods of time shall be disregarded:
- (a) where a complaint is made to the Press Council to which Schedule 2 refers, the period beginning on the date of the making of the complaint and ending on the date of the determination of the complaint (including, where applicable, its determination by the Press Council on appeal) in accordance with the procedures of the Press Council for the time being in force;

- (b) where a person exercises a right of reply under section 49 of the Broadcasting Act 2009, the period beginning on the date of the making of a request for the right of reply under that section and ending on—
  - (i) the expiration of a period of 21 days after the date of receipt by the requester of a decision to refuse under subsection (8) or (9) of that section, or
  - (ii) where an application to the Compliance Committee is made under that section, the date of receipt by the person who made the application of a statement in writing of the decision of the Compliance Committee under subsection (20) of that section.

#### **Court inviting parties to consider alternatives to certain proceedings**

- 34M.** (1) A court may, on the application of a party to proceedings, or of its own motion where it considers it appropriate having regard to all the circumstances of the case—
- (a) invite the parties to the proceedings to consider engaging in the specified ADR procedures as a means of attempting to resolve the dispute the subject of the proceedings, and
  - (b) provide the parties to the proceedings with information about the specified ADR procedures to settle the dispute the subject of the proceedings.
- (2) Where, following an invitation by the court under subsection (1), the parties decide to engage in a specified ADR procedure, the court may—
- (a) adjourn the proceedings,
  - (b) make an order extending the time for compliance by a party with rules of court or with any order of the court in the proceedings, or
  - (c) make such other order or give such direction as the court considers necessary to facilitate the effective use of the specified ADR procedure.
- (3) An application by a party under subsection (1) shall be made by motion to the court on notice to all other parties to the proceedings and shall, unless the court otherwise orders, be grounded upon an affidavit sworn by or on behalf of the party.
- (4) The power conferred by subsection (1) is without prejudice to any other discretionary power which the court may exercise at any time during the course of proceedings with a view to facilitating the resolution of a dispute.

#### **Factors to be considered by court in awarding costs**

- 34N.** In awarding costs in respect of proceedings in respect of which the court issued an invitation under section 34M(1)(a), a court may, where it

considers it just, have regard to—

- (a) any unreasonable refusal or failure by a party to the proceedings to consider using a specified ADR procedure, and
- (b) any unreasonable refusal or failure by a party to the proceedings to attend or engage in a specified ADR procedure.”.

## PART 9

### MISCELLANEOUS

#### **Circuit Court identification order**

22. The Principal Act is amended by the insertion of the following section after section 44:

- “45. (1) The Circuit Court (in this section referred to as the ‘court’) shall have jurisdiction to hear and determine an application in accordance with this section.
- (2) An application shall be made by an applicant—
- (a) in good faith, and
  - (b) on notice to the relevant intermediary service provider concerned.
- (3) Upon an application, the court may, subject to subsection (4), make an order (in this section referred to as an ‘identification order’) requiring a relevant intermediary service provider to provide to the applicant such relevant information as the court may specify in the identification order where the court is satisfied that—
- (a) a statement was published, or caused to be published, on an information society service by means of an intermediary service provider by a person or entity (in this section referred to as an ‘anonymous publisher’) whose identity is unknown to the applicant and whose identity is not readily ascertainable on the face of the statement or from other information available to the applicant on the information society service,
  - (b) a claim by the applicant in any defamation proceedings against the anonymous publisher that the statement is defamatory is likely to succeed at trial,
  - (c) the relevant information is necessary to enable the applicant to bring defamation proceedings against the anonymous publisher to whom the relevant information relates,
  - (d) the relevant information is likely to be in the possession of the relevant intermediary service provider, and

- (e) the applicant has no other practicable means of obtaining the relevant information.
- (4) A court may—
  - (a) make an identification order only where it considers that—
    - (i) it is in the interests of justice to do so, and
    - (ii) the interests favouring disclosure of relevant information outweigh those against,  
  
having regard to the rights and obligations of the applicant and those of the anonymous publisher and any third parties who are reasonably likely to be affected by the order, and
  - (b) make the order subject to such conditions as it considers appropriate, which may include, in relation to the relevant information disclosed to the applicant by the relevant intermediary service provider in accordance with that order—
    - (i) terms restricting the use of the relevant information so disclosed to the bringing of defamation proceedings against the anonymous publisher, and
    - (ii) an undertaking by the applicant not to use the relevant information so disclosed other than to bring defamation proceedings against the anonymous publisher.
- (5) The court may, whether or not it has made an identification order and where it considers it appropriate to do so, order that an applicant pay any or all of the costs of the relevant intermediary service provider in relation to an application and the costs resulting from the making of any identification order.
- (6) In this section—
  - ‘application’ means an application under this section for an identification order;
  - ‘defamation proceedings’ means—
    - (a) an application under section 33 for an order to prevent the publication of an alleged defamatory statement,
    - (b) a defamation action, or
    - (c) a claim for other relief under this Act in respect of an alleged defamatory statement;
  - ‘information society service’ means a service normally provided—
    - (a) for remuneration, whether such remuneration is provided directly by a recipient of services or indirectly through advertising or other means,

- (b) at a distance, that is to say, that the service is provided without the parties being simultaneously present,
- (c) by electronic means, that is to say, that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means, and
- (d) at the individual request of a recipient of services, that is to say, that the service is provided through the transmission of data on individual request;

‘intermediary service’ means one of the following information society services:

- (a) a ‘mere conduit’ service, consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;
- (b) a ‘caching’ service, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information’s onward transmission to other recipients upon their request;
- (c) a ‘hosting’ service, consisting of the storage of information provided by, and at the request of, a recipient of the service;

‘intermediary service provider’ means a provider of an intermediary service;

‘recipient of the service’, in relation to an intermediary service, means any natural or legal person who uses an intermediary service, in particular for the purposes of seeking information or making it accessible;

‘relevant information’, in relation to an anonymous publisher, means information as to the identity, address or other contact information of the anonymous publisher;

‘relevant intermediary service provider’ means an intermediary service provider that provides the intermediary service by means of which a statement referred to in subsection (3)(a) is published, or caused to be published, by the anonymous publisher.”.

### **Amendment of Schedule 1 to Principal Act**

**23.** (1) Schedule 1 to the Principal Act is amended—

- (a) in Part 1—

- (i) by the deletion of paragraph 2,
  - (ii) in paragraph 11, by the substitution of “in a state or place other than the State” for “under the law of a Member State or of the United Kingdom”, and
  - (iii) in paragraph 12, by the substitution of “in a state or place other than the State” for “in a Member State or in the United Kingdom”,
- and
- (b) in Part 2—
    - (i) in paragraph 1, by the substitution of “the State or in a state or place other than the State” for “the State, in a Member State or in the United Kingdom”,
    - (ii) in paragraph 2, by the substitution of “the State or in a state or place other than the State” for “the State, in a Member State or in the United Kingdom”,
    - (iii) in paragraph 3, by the substitution of “the State or in a state or place other than the State” for “the State, in a Member State or in the United Kingdom”,
    - and
    - (iv) in paragraph 4, by the substitution of “state or place other than the State” for “Member State or in the United Kingdom”.
- (2) The amendments effected by *subsection (1)* shall apply only to causes of action accruing on or after the date of the coming into operation of this section.