

4.53 pm

*Sitting suspended.*

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## **Defamation Act 2013: Northern Ireland**

### *Question for Short Debate*

5 pm

*Asked by Lord Lexden*

To ask Her Majesty's Government what assessment they have made of the implications of the Defamation Act 2013 not applying to Northern Ireland.

**Lord Lexden:** My Lords, this is a short debate. It is also the last debate of the day, indeed of the week, but its subject is of the utmost importance. When it is implemented, the Defamation Act 2013 will transform an area of law that has been much criticised over many years. It will introduce major improvements and confer great benefits on the people of England and Wales, particularly those working in our ever expanding media industries, one of the great success stories of our country today.

No one knows more about those improvements or understands the prospective benefits more fully than my noble friend Lord Lester of Herne Hill. His patient, determined work over a long period prepared the ground for what has now been enshrined in legislation. I am delighted that he is able to take part in this debate, along with other noble Lords who are far more versed than I am in the provisions of this hugely significant Act. I am immensely grateful to them.

The law of defamation in Northern Ireland has never been detached from that in England and Wales. In the 1950s, Westminster and the Stormont Parliament introduced the same changes to it. Now, however, for the first time in our history, Northern Ireland is to be severed from England and Wales in this wide area of law. For an ardent Unionist like me it is a highly disagreeable prospect, although I could be persuaded to accept it if compelling reasons existed to justify Ulster's severance. I have not yet heard or read them.

As a layman in search of enlightenment and truth I turned to a leading legal expert in Northern Ireland, Mr Paul McDonnell, a partner in the distinguished Belfast firm of solicitors, McKinty and Wright. In recent months he has made a careful study of the legal implications of Ulster's severance. I asked him for an assessment to which I could refer in this debate and this is what he sent me yesterday:

“The refusal of the Northern Ireland Executive to extend to Northern Ireland the remit of the Defamation Act, and the legal clarity and free speech protection it brings, is quite simply unjustifiable. Why should the citizens and journalists of Northern Ireland not be afforded the same protection as those in the rest of United Kingdom, whether they are expressing opinions online or holding government to account? Why, as the rest of the United Kingdom embraces the digital revolution, should Northern Ireland be confined by archaic and unfocused freedom of expression laws, some of which were conceived when computing was in its infancy?

The development of a dual defamation system may also have consequences extending across the Irish Sea. Publishers and broadcasters may be forced to sanitise their once uniform national output lest they fall foul of the antiquated laws still operating in Belfast. Investigations in the public interest which concern well-funded organisations will effectively be subject to censorship by the back door, as regional publications will be unable to report on matters for fear of court action in this libel-friendly, free speech limiting UK outpost.

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As a lawyer practising in Northern Ireland, I take pride in our legal system. Failure to bring the law in relation to defamation in line with England and Wales will do nothing for the judicial system's standing. Similarly, failure to introduce this law will inexorably hamper the transparency of government".

Lawyers do not always deliver clear, decisive opinions. There is nothing opaque or unclear about Mr McDonnell's expert opinion. I was struck by Mr McDonnell's phrase, "UK outpost". It stirred memories of that great film, "Passport to Pimlico", in which Pimlico—where I happen to live now—suddenly becomes part of the Kingdom of Burgundy and subject to ancient Burgundian law. By the end of the film the Burgundians are cut off from electricity, food and water and become dependent on people tossing food parcels over the wall they have put up to keep the rest of the world out. Chaos ensues, in which it is the ordinary Burgundians who suffer before common sense produces a resolution. There is a parallel here that is worth pondering. If Northern Ireland is cut off from the new defamation law, the consequences might not be so hilarious or short lived as those faced briefly by the people of Pimlico in that old film.

Noble Lords who do not give close attention to events in the new, more politically stable Northern Ireland that has followed the Belfast agreement 15 years ago might assume that the Northern Ireland Executive's decision to opt out of the new Defamation Act, and remove Northern Ireland from the framework of Westminster's law, was taken after full and careful consideration of the implications. Noble Lords would be wrong to make such an assumption. Responsibility for this area within the Northern Ireland Executive rests not with Northern Ireland's Justice Minister, as might have been expected, but with the Minister of Finance and Personnel.

With very considerable difficulty journalists in Northern Ireland—not, it should be noted, the elected Members of the Northern Ireland Assembly—established in March this year that the Minister of Finance and Personnel had submitted a paper on the new defamation legislation to the Office of the First Minister and Deputy First Minister in May 2012. Shortly afterwards, he withdrew his paper—a decision for which no explanation has been offered. When the matter was raised in the Northern Ireland Assembly at the beginning of this month, Martin McGuinness, the Deputy First Minister, stated:

"We have had no discussions with the Minister of Finance and Personnel on that matter ... It is very important to say that the Executive have not taken any decision in relation to a Defamation Bill. It never appeared on the agenda of any Executive meeting".

In pondering that remarkable statement, is not Parliament's duty clear? We must surely send to the Executive, who we all support, through this debate and by other means, a message encouraging them to put the Defamation Act on their agenda and consider it fully. In this connection we should note, too, the welcome inquiry which is now being carried out by the all-party Finance and Personnel Committee of the Assembly and pay tribute to the leader of the Ulster Unionist Party, Mr Mike Nesbitt, who is bringing forward a Private Member's Bill in the Assembly to extend the new Defamation Act to Northern Ireland.

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I say this not only on my own behalf but on behalf of my noble friend and colleague, Lord Empey, the chairman of the Ulster Unionist Party, who cannot be here today. He has asked me to state his position which is as follows:

"I am a supporter of devolution, but I do not believe it should be at the expense of the integrity of our nation. Devolution should help sustain that integrity while allowing for regional difference. The mistake that was made after 1921 was that London more or less forgot about Ulster. No attempt was made by London to ensure an appropriate degree of national consistency in all key policy areas. We must avoid repeating that mistake".

This debate provides the Government with an opportunity to set out their position. The issue is one in which the Ministry of Justice is directly involved. I hope that both it and the Northern Ireland Office are in constructive and vigorous dialogue with the Northern Ireland Executive, particularly in view of the moves that are afoot in the Assembly to take discussion of the defamation issue into a new phase. Above all, I hope that this debate will show that across party political lines we share the same objective: to do all that we can to prevent the establishment of a dual defamation system in our country.

5.09 pm

**Lord Lester of Herne Hill:** My Lords, we are grateful to my noble friend Lord Lexden for initiating this debate with such a powerful speech on an issue of great importance to everyone within the United Kingdom and beyond, including the media and public. It concerns the refusal by the Northern Ireland Government to consent to the application of the Defamation Act 2013 in that part of the UK or to introduce matching legislation.

The Chief Commissioner of the Northern Ireland Human Rights Commission drew attention to the problem in his letter of 3 May, and my noble friend Lord McNally wrote a further detailed letter on 29 May to the Minister of Finance and Personnel, Mr Sammy Wilson MP MLA, to assist him in considering the position in Northern Ireland. Mr Sammy Wilson is the DUP Member for East Antrim. He replied yesterday as follows:

“I have noted that the new provisions will be brought into force later this year and it will be interesting to see how they operate. However, at this stage, I have no plans to review the law on defamation in Northern Ireland”.

I do not know whether this reply was cleared with his coalition partners in Sinn Féin, whose support for the Good Friday agreement and the effective protection of human rights is so important. But it is in line with the comments made by his colleague, Ian Paisley Jr, the DUP MP for North Antrim, during the Second Reading debate on 12 June 2012, in cols. 204-5, and also those made by the Belfast libel lawyer, Paul Tweed, with whose negative views he agreed.

The Defamation Act was three years in the making. It has support among all three main political parties and was the subject of public consultation and careful scrutiny by a Joint Committee of both Houses. It is a model of how to make law and strike a fair balance between the right to protect a good reputation and the right to freedom of expression. The Bill was introduced in the light of widespread international criticism from

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the UN Human Rights Committee, the United States and beyond, and our own libel reform campaign, because of the chilling effect of our libel laws on freedom of speech.

The Joint Committee on Human Rights, on which I serve, scrutinised the Defamation Bill and received a detailed memorandum from the Ministry of Justice explaining how the new legislation would comply with the convention rights to free speech, a good reputation and access to justice. The memorandum made it clear that the Bill was intended to redress the balance in favour of freedom of speech. We published our report on the Bill on 12 December 2012.

Article 6 of the convention protects access to justice and Article 13 the right to effective domestic remedies for breaches of the convention. Article 8 protects the right to a good reputation. Article 10 protects the right to,

“receive and impart information and ideas without interference by public authority and”—

I emphasise—

“regardless of frontier”.

That includes the public authorities of Northern Ireland and the frontier across the Irish Sea.

Those who publish in England and Wales inevitably publish in Northern Ireland. If libel law in Northern Ireland remains unreformed, as my noble friend said, its chilling effects will interfere with the fundamental rights not only of those who seek to publish information and opinions on matters of public interest and concern, but everyone living within Northern Ireland and the rest of the UK. It will also mean that the courts will have to operate in a situation of legal uncertainty to resolve the conflict of law across the Irish Sea and between the UK and the European Court of Human Rights in Strasbourg.

Those who signed the Good Friday or Belfast agreement dedicated themselves to,

“the protection and vindication of the human rights of all”.

The agreement referred to the convention as a necessary safeguard for the protection of all sections of the community. It recognised the right of the Westminster Parliament to,

“legislate as necessary to ensure the United Kingdom’s international obligations are met in respect of Northern Ireland”.

Article 1 of the convention obliges the UK to secure to everyone within its jurisdiction the convention rights and freedoms. The Northern Ireland Act 1998 gave effect to the Good Friday or Belfast agreement and to the UK’s international legal obligations. Section 26(2) says:

“If the Secretary of State considers that any action capable of being taken by a Minister or Northern Ireland department is required for the purpose of giving effect to any international obligations ... he may ... direct that the action shall be taken”.

However, because we lack a federal system, the only way in which fundamental human rights can be secured by law to everyone is by giving effect to the convention rights protected by the Devolution Acts and the Human Rights Act. It should not be necessary for the Secretary of State to have to use the power of direction vested in her. However, if it becomes necessary and if she fails to do so, she will become vulnerable to legal challenge

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under the Human Rights Act for failing to act in a way that is compatible with convention rights. The Northern Ireland Executive and legislature will also be vulnerable to legal challenge. It would be highly regrettable if it were necessary to use the power to direct or to resort to expensive and lengthy litigation.

What is needed is common sense and a political solution in Northern Ireland. It would be a stain on the reputation of Northern Ireland if it were to replace London as the libel tourist capital by clinging to archaic, unbalanced and uncertain common law, which would be great for the vested interests of wealthy clients and their lawyers in Belfast, but wholly against the public interest. It is profoundly ironic that I am addressing this indirectly to the Democratic Unionist Party, which believes in the union, but seeking help from Sinn Fein, which does not.

**5.16 pm**

**Viscount Colville of Culross:** My Lords, I, too, am grateful to the noble Lord, Lord Lexden, for initiating this debate. Like all other noble Lords here, I am pleased that the Defamation Act has passed into law. I look forward to its commencement and the publication of its regulations. I am, however, dismayed that the Northern Ireland Executive have not been prepared to adopt the Act’s principal measures and reform the Province’s libel laws.

As a journalist I can tell your Lordships that it is not so much what happens in the courts but the prospect of what might happen which has such a chilling effect on free speech and encourages the imposition of self-censorship. The new Defamation Act has been deliberately drafted to ensure that authors are protected by a seriousness threshold and a public interest defence. Nowhere is this more necessary than in Northern Ireland.

I have spoken to the editor of the *Belfast Telegraph*, Mike Gilson, an experienced, respected journalist, who told me:

“Failing to adopt this sensible bill leaves all media and social media users at a serious disadvantage compared with the rest of the UK. In a small country without official opposition the media’s scrutinising role of government and institutions is even more crucial. I have edited newspapers in every country of the United Kingdom and the time and money now needed to fight off vexatious legal claims against us here is the highest I have ever experienced”.

His words were echoed by Mike Nesbitt, the Northern Irish politician who is bringing in a Private Member’s Bill, as has been mentioned.

After talking to diverse journalists in the Province, it seems to me that many of the Province’s politicians are notoriously thin skinned about criticism. Journalists and writers complain of their easy resort to the threat of defamation and keep Mr Paul Tweed, whom the noble Lord, Lord Lester mentioned, busy issuing threats of defamations.

Let me give an example. On 6 August 2012 the *News Letter*, one of the Province’s leading newspapers, reported that there was a row between politicians in County Antrim about whether to support a proposal to introduce plain cigarette packaging as it would adversely affect their constituents who worked in the

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local tobacco factory. The paper said that Ian Paisley Jnr, the local MP, was unavailable for comment because he was on holiday. As this was in August, it was perfectly reasonable that he should have been on holiday. Surely even the most hard-working politician is allowed to take a bit of time off to have a rest. However, his lawyer, Paul Tweed, wrote to the paper to say that Mr Paisley was not on holiday at the time of publication and to suggest that he was on holiday and unavailable to deal with the constituents’ concerns was defamatory. The

*News Letter*

published a clarification, but was there really a need to send a letter threatening defamation?

This is just one of many threatening letters that have been used to cow journalists in the Province. If journalists and authors are going to receive letters threatening defamation for such vexatious cases, imagine the fear there must be in publishing anything more critical of politicians. The new defences against libel available in the rest of the UK from later this year will offer them protection and surely encourage the advance of free speech in the Province. However, as the noble Lord, Lord Lester, has mentioned, it is not just the people of Northern Ireland who deserve to be protected by the libel reforms; the rest of the people of the United Kingdom do as well. The possibility that these libel tourists who flock to London will now flock to the Belfast libel courts seems very dangerous, and will threaten authors who thought that the cause of free speech had been so strongly enhanced by the passing of the Act.

Take the case of Terence Ewing, who has tried and failed to sue the *Times* newspaper in London. His case was thrown out there, and then he tried his luck in Belfast. Again, his case was thrown out—I gathered that he is banned from suing there—but in the process, many hours of journalists’ and lawyers’ time at Times Newspapers was expended. Mr Ewing’s efforts are a warning. He could be copied by other litigants who are no longer able to bring action in English courts but will start to threaten journalists through the Northern Irish courts.

During the Second Reading of the Defamation Bill in the House of Commons, as the noble Lord, Lord Lester, mentioned, Ian Paisley Jr said that,

“there needs to be consultation across the jurisdictions of the UK to get this right and tie it up completely”.—[

*Official Report*

, Commons, 12/6/12; col. 194.]

However, from what I understand, it is his party, led by Peter Robinson, which has rejected attempts so far to get this right. I gather that the First Minister of Northern Ireland thinks that there is little appetite for reform of the libel law among his electorate, but I ask him to think again. The Province has been a beacon and democracy and peace across the world. Only last week, we heard praise at the G8 summit at Enniskillen for the political leaders in Northern Ireland in making such huge progress to enshrine democracy in a place where, for so long, it appeared to have been under threat. I remind the First Minister that an essential prop to a healthy and vibrant democracy is an active press which can scrutinise the political progress and hold

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truth to power, without the deadening threat of being taken to the libel courts. This is a wonderful moment to let free speech thrive. I ask the Minister to do everything possible to encourage the adoption of the great advances laid out in the Defamation Act, which will benefit not just the people of Northern Ireland but all the people of the United Kingdom and beyond.

5.21 pm

**Lord Black of Brentwood:** My Lords, I declare an interest as executive director of the Telegraph Media Group and draw attention to my other interests in the register. We are all indebted to my noble friend Lord Lexden for securing this debate on an issue which is crucial not just for the people of Northern Ireland, a part of our country for which he is such a sturdy champion, but, as he said, for citizens across the UK.

On the surface, this may appear to be a dry and technical legal issue but in reality it is a challenge to UK law that will, unless resolved, have grave and far-reaching consequences for the future of the creative economies and jobs in Northern Ireland, for tens of thousands of ordinary citizens there who use the internet, for journalists and, perhaps above all, for the quality of government and governance in Northern Ireland. I am a strong supporter of the Defamation Act 2013. It clarifies the law to make it easier to understand and cheaper to use. It tackles the chilling impact of the previous libel regime on free speech and updates an antiquated area of law, making it fit for a digital age. It is a liberalising, modernising piece of legislation in which this House in particular should take great pride, because of the role of the noble Lord, Lord Lester of Herne Hill, in fighting to bring it about.

Perhaps the most inexplicable aspect of the Executive's decision not to adopt this modernising legislation is that it shows no understanding of the profound changes happening in the media which, in all their guises, have become global. Content is spread around the world at the click of a mouse not just by media companies but by ordinary citizens who tweet, blog or use social media to express and share opinions. It is not possible to declare UDI from that. The structure of law needs to keep pace with that profound social and technological change, or else the law itself falls into disrepute. The Executive's decision to cling to legislation from a world which has disappeared makes King Canute look perfectly reasonable.

When politicians set their face against their future, investment and jobs suffer. Over 4,000 people work in publishing in Northern Ireland, while another 2,000 work in broadcast. Some of those jobs may well be at risk if media companies decide that it is now too dangerous to operate in a jurisdiction that stifles freedom of expression and exposes them to financial risk, at a time when the publishing industry is under severe commercial pressure. Certainly, the foreign investment that the Province needs for its creative industries to prosper will be deterred. I can see no circumstances in which Google, Yahoo!, AOL, Twitter or others would establish businesses in an area that tied them to an out-of-date, repressive libel jurisdiction. This decision in effect rejects the high-end jobs that the Province

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desperately needs. The Executive decision will therefore have real human consequences for the people of Northern Ireland.

It will pose a problem for UK publishers, too. If Northern Ireland clings to the existing law, editors will have to either edit each edition for Northern Ireland separately, in the process sanitising the news and subjecting copy to different legal scrutiny—something I think unlikely to happen—or withdraw their papers from sale, with the profound consequences of that for media plurality. The UK's publishers will have to confront that issue if there is no change of heart at Stormont. Alternatively, our Government might in the end be forced to legislate in the way President Obama's Administration did to protect American companies from foreign rulings that impinge on freedom of expression—something directed against London, to our great shame, under the old libel regime but which will now be targeted on Belfast. Belfast might have a short-lived moment in the sun as the libel capital of the world but could find itself isolated internationally as Governments move to protect businesses from the courts in Northern Ireland. It could become a pariah.

I referred earlier to the grave impact this decision could have on the quality of democracy in the Province. For democracy to function it needs the scrutiny and free flow of information to the electorate that only a vibrant, pluralistic free press can provide. That is particularly true in Northern Ireland where there is no scrutinising second Chamber. The role of civic society, especially local and regional newspapers, in providing such constitutional safeguards is more vital there than anywhere else in the UK. Yet a libel regime that is loaded in favour of claimants and punishes defendants with an oppressive system of costs has a profoundly chilling impact on investigative journalism. As the noble Viscount, Lord Colville of Culross, said, it plays into the hands of those who seek to bully journalists and editors, particularly on local newspapers, where the realities of business mean that once lawyers are engaged for someone under scrutiny it is prudent to either drop an investigation or produce a sanitised report. That breeds poor government, bureaucratic cover-ups and, at worst, corruption. It is not just the Province's 50 regional and local papers—including some of the finest titles in the UK, such as the *Belfast Telegraph* and *Irish News*—that will feel the force of this. At risk are many thousands of citizen journalists who blog or tweet about politicians. They could find themselves facing extortionate legal bills that would cripple them or indeed destroy their lives—something the Defamation Act is meant to prevent.

I do not pretend to understand the reasoning behind what the noble Lord, Lord Bew, has rightly described as an act of self-mutilation and which my noble friend Lord Lexden so eloquently compared to the plight of the people of Burgundy. It may have been done because many at Stormont fear the scrutiny that will be enhanced by changes to the law. It may be because a handful of lawyers and claims farmers—the Tweed brigade—in Belfast are intent on trying to make it the world's libel capital, as if that is a title to be proud of. But whatever the reasons, I know that the consequences will be very real for the people of Northern Ireland that those at

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Stormont are supposed to represent. It will expose thousands of ordinary people to the intense dangers of costly libel actions. It will blunt the scrutiny role of local and national papers on which citizens depend for information—a role that makes democracy work. It will mean the law remains a toy with which only those with deep pockets can play. It will stop investment with the consequent impact on jobs in the Province's creative economy. It is wrong in every conceivable way. This is a very grave situation. Either the Northern Ireland Assembly must act to reverse the decision or the UK Government must do it for them.

**5.29 pm**

**Lord Bew:** My Lords, first, I thank the noble Lord, Lord Lexden, for securing this debate. It is conventional to say so but in this case I should like to go further and say that it reflects the noble Lord's deep love for Northern Ireland and his consistent concern about its public life even when, at times, Northern Ireland does not present its most attractive face to the world.

I have to acknowledge that I remain puzzled as to why the Northern Ireland Assembly is taking this position at this point and I should like to explain why I am still puzzled. If one looks at the unionist political class, a defining feature of the rhetoric of unionism was the belief in something called equality of citizenship. The current First Minister is famous, above all, for one phrase in the aftermath of the Anglo-Irish agreement of 1985, when he complained that he regarded Northern Ireland as having been pushed on to the window ledge of the union. In this case, it looks as if he himself is scrabbling out of the main room of the house to get himself on to the window ledge of the union.

Equality of citizenship has always been at some level an important part of the historic argument for unionism. That does not mean that in all cases Northern Ireland must apply exactly the law as it is here, and there may be significant reasons for difference. The important point is that there should be—as there has been in other recent cases, to be fair—an open public debate as to why that might be so. What is specific about this case is that there has been virtually no public debate, just a negative fiat and a refusal of legislative consent with no real explanation. Of course, I am delighted to see that politicians in the Assembly are trying to ensure a public debate.

I now refer to the republican and nationalist tradition in the Assembly, which must have a voice in this respect. That tradition has always chosen to identify itself with human rights. It is particularly keen on the campaign for a Northern Ireland Bill of Human Rights. I would say that such a campaign is compromised by the stand that has apparently been taken. Let me explain why.

The noble Lord, Lord Lester, has already referred to the European convention. In the Belfast agreement, strand 1, the sections dealing with the establishment of democratic institutions in Northern Ireland, sections 1 to 4, explain that there will be an Executive established. Section 5 then provides safeguards. The first safeguard is the principle of proportionality in terms of Ministers, committee chairs, and so on, but the second key safeguard is the European convention. Indeed, when

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safeguards are discussed in the third section, the European convention is also mentioned along with any possible Bill of Rights.

So the significance of the European convention for the working of the Belfast agreement is flagged up at the heart of the agreement itself. It seems to me that a political tradition which has identified itself so much, as, for understandable reasons, the republican and nationalist tradition has, with the European convention, and which has identified itself with the campaign for a Northern Ireland Bill of Human Rights, has at this point been remarkably silent on a concrete application which is of real meaning to the citizens of Northern Ireland.

I turn to one other key aspect of the current decision as it affects universities. I hope that the noble Lord, Lord Lexden, will forgive me for that, because I think that his affection for Northern Ireland was first formed when he was an academic at Queen's University Belfast. The truth is that British provincial, what we might call old-style redbrick universities, are finding it more and more difficult in a competitive world to retain their remarkably strong position in league tables. We do not seem at this point to have a problem with keeping Oxford and Cambridge—or Imperial—right up at the top, but there is considerable evidence that universities such as Manchester, Glasgow and Sheffield are struggling in an intensely competitive world to maintain their relatively high positions in those league tables. Queen's University Belfast is certainly not exempt from that difficult struggle.

To me, it sends out a very negative signal for academics who might be considering working at Queen's University Belfast to discover that they would be working in the only region of the United Kingdom where, at this point, the amount of academic freedom is a matter of indifference. One of the most important things in the new defamation legislation is the increased defence of academic freedom, particularly to allow academics to express controversial and difficult opinions in peer-reviewed journals in both the sciences and humanities in a way in which the chill factor previously



undoubtedly militated against. It seems to me symbolically that if you want to maintain a vital university culture, this is a mistake for the Assembly. The sector is of considerable importance to the economy of Northern Ireland and the point has already been made by the noble Lord, Lord Black, that what has been done here has implications for the economy of Northern Ireland.

If the universities of Northern Ireland can maintain a strong position in the international league tables, that must be good for the economy. If they sag, and if there is a growing sense that they are not the best places to work and certainly not the most free, and that the local political class does not really care about that, then that is a negative signal. I hope it will not be sent out. There is a great phrase from Brian Lenihan, a former Foreign Minister of the Irish Republic, about the value of mature recollection. I hope that in this case mature reflection will come to the rescue of the Northern Ireland Assembly and that there will be some reconsideration.

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5.35 pm

**Lord Browne of Ladyton:** My Lords, in his opening sentence, the noble Lord, Lord Lexden, said that this is a short debate. Short it certainly has been, and we know it will last no longer than an hour. However, the contributions have been remarkably informative and, I must say, remarkably comprehensive. I join those who are indebted to the noble Lord, Lord Lexden, for giving your Lordships' Committee the opportunity to debate this important subject. I personally am doubly indebted to him for his generosity in engaging with me as his neighbour in Millbank House in the preparation for this debate, and for encouraging my thoughts in particular directions.

I speak as one who was in an Executive position for a very happy but all too short period of time, and who was part of the previous Government, which helped to form the structure of the current devolved governance in Northern Ireland. I say at the outset that I utterly respect Northern Ireland's right to exercise its democratic functions in the way in which we designed it to. I consider this to be a transition phase, and we all look forward to being able to move to a more normal type of politics in Northern Ireland, rather than one which, to a degree, freezes the divisions of that society and its constitutional structure. However, I utterly respect the right of the Northern Ireland Assembly to make its own decisions, as I do the right of the Scottish Parliament.

However, this is not a situation in which we are competing with a decision made openly and properly by the Northern Ireland Assembly where we have had an open debate. From my review of all the evidence of what has happened since we debated the Bill in this House and it received Royal Assent, it would appear that the very opposite has happened in Northern Ireland. Early in his remarks, the noble Lord, Lord Lexden, had the benefit of a quote by Paul McDonnell. I thought that that was utterly comprehensive. It was a skilled piece of drafting by Mr McDonnell, and he encapsulated almost all the arguments in a couple of short sentences. It was very clear what his opinion was about the necessity of the application of this Act to Northern Ireland, for all of the reasons he set out.

The noble Lord, Lord Bew, said that there was no debate going on in Northern Ireland. With respect to him, I do not think that he meant that in the way in which some may have interpreted it. In fact, a debate is going on in Northern Ireland. There is a very public debate going on, with contributions by legal figures, business people, civic society, politicians and the media. There are two sides to this argument. The overwhelming body of opinion is on one side of the argument, and that is the side represented in this debate, but there is another side to that argument.

The only places where this debate is not going on are the Executive and the Northern Ireland Assembly. That is where the debate should take place. Those are the people who have substantial responsibility for the governance of Northern Ireland. The arguments that are put forward relate to the putting off of inward investment; the vulnerability of ordinary citizens in the internet age; and the good business reasons for a

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consistent regulatory framework in an environment where there has always been a consistent regulatory framework, for the fear of libel tourism.

If these arguments have any substance, it is the responsibility of the devolved politicians in Northern Ireland to engage with them, and to ensure that the people of Northern Ireland have the best regulatory framework in this area and that it serves their needs. It has always been necessary in this area of law and in many others. The noble Lord, Lord Lester of Herne Hill, with his characteristic clarity, set out the dilemma facing the Government. I have some sympathy for the Minister if she chooses to engage with the challenge of the questions that the noble Lord posed. Does she accept that analysis of the conjunction effect of the European Convention on Human Rights and the Belfast or Good Friday agreement? Does she accept that the Government face this dilemma and responsibility and, if so, what do they plan to do about it? That is the principal question.

The noble Viscount, Lord Colville of Culross, in his informative contribution, brought evidence from his journalist colleagues in Northern Ireland of existing practices that show a culture of threat and actual libel tourism. If that is indeed right, there is every reason to believe that whether or not there is a problem with the existing law in Northern Ireland, the potential for it to develop and become a serious problem for these islands is there. Do the Government share that interpretation and recognise that risk and, if so, how do they intend to engage with it?

The noble Lord, Lord Black of Brentwood, explained with some authority in detail why investors will be put off. His argument was eloquently convincing and is reflected in some of the public discourse in the Northern Irish media. There is no reason to believe that people with his level of knowledge should be wrong. Again, this undermines the shared objective of all the Benches in your Lordships' House to see Northern Ireland flourish. This is a responsibility of the Government. We are investing substantial amounts of money in Northern Ireland to ensure that its economy moves from depending on the public sector to the private sector. Do the Government share the view that investors will be put off, and what do they intend to do about it?

The noble Lord, Lord Bew, as he has consistently in our debates on defamation, made a compelling case for the need for independent thinking and for independent and challenging academic and scientific publications with their important role as drivers of innovation and our economy. All parties represented in this debate went into the 2010 election with a commitment to reform the law of defamation. He said that denying the reform to the people of Northern Ireland, as appears to be the case, was done without the knowledge or consent of the executive Ministers of Northern Ireland and without any explanation, never mind an adequate one. From my perspective as someone who loves Northern Ireland and its people, that is not good enough.

My party supports reform of the defamation laws and is pleased that they are where they are. These opportunities and freedoms should be open—I have to say this as a Scot—both to the people of Northern

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Ireland and to the people of Scotland. It is a challenge that the Government face and will have to engage with at some time. There is no time like the present. Will the Minister engage with some of these issues?

5.43 pm

**Baroness Randerson:** My Lords, I congratulate the noble Lord, Lord Lexden, on securing this debate and I thank all noble Lords who have spoken for their positive remarks on the merits of the Defamation Act, which was recently passed by Parliament. I can confirm that the Government are taking forward the necessary procedural steps to enable the Act to be brought into force in England and Wales by the end of the year.

As the Committee is aware, defamation, in common with other civil law issues, is a devolved area, so the law in Northern Ireland is a matter for the Northern Ireland Executive and Assembly. That theme has run throughout this debate, although I have detected a strong requirement from the noble Lords who have participated that the UK Government should step in at this point. I recognise the concerns expressed about the possibility that the law in Northern Ireland may become out of step with that in England and Wales. I do not wish to speculate about the extent to which those concerns may come to be justified, but it is inevitable, as part of having devolved responsibilities, that differences in the law may arise between the different parts of the United Kingdom.

My noble friend Lord Lester expressed his frustration at the lack of a federal system and at the shortcomings of our constitutional settlement. I might share some of his frustration from time to time, but it is very important in this debate that we recognise where we are now in our constitutional settlement. Under the Sewel convention, the UK Parliament remains sovereign but will not normally pass primary legislation relating to areas in which a devolved legislature has legislative competence, except with the agreement of the devolved legislature in the form of a legislative consent Motion. I will give way.

**Lord Lester of Herne Hill:** I am grateful to the Minister. Will she accept the fundamental point made throughout this debate that Northern Ireland law, like all our law, must comply with the European human rights convention, which is embedded in the devolution statutes and the Human Rights Act?

**Baroness Randerson:** I accept that of course, and I will return to that issue later. The memorandum of understanding between the UK Government and the devolved Administrations recognises that the UK Government retain authority to legislate on any issue, whether devolved or not. However, in this instance we do not consider that it would have been right for us to have sought to impose the Defamation Act on Northern Ireland without any concession to the sentiments of the Northern Ireland Executive on the constitutional propriety of such a move, or to its views on the substance of the proposed legislation.

In that context, I can confirm that, in accordance with the Sewel convention, prior to the introduction of the Defamation Bill officials at the Ministry of Justice

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contacted their counterparts in the Northern Ireland Executive. They asked whether the Executive wished to seek the approval of the Northern Ireland Assembly for an LCM in relation to any aspects of the Bill. In the event, an LCM was not requested, and I am not in a position to comment or speculate as to why that was.

Concerns were raised by the noble Lords, Lord Lester and Lord Bew, at a very late stage in the passage of the Bill—namely, during the Lords’ consideration of Commons reasons. In the light of that, following completion of the Bill’s passage, my noble friend Lord McNally wrote to the Minister for Finance and Personnel in the Northern Ireland Executive to commend the Act to him, and to set out the benefits which we believe it has—and which have been expressed around this Chamber today—so that these can be taken into account by the Executive in considering the way forward in Northern Ireland. As the noble Lord, Lord Lester, indicated, the Minister for Finance and Personnel has just replied to the letter from my noble friend Lord McNally indicating that he currently has no plans to review the law. However, as has also been mentioned, the relevant departmental committee in the Assembly is currently taking evidence on the issue and a Private Member’s Bill on the subject may well be introduced.

It is important to point out that, although the debate in the Assembly has taken some time to ignite, it is alive at this moment. I have here a research paper produced for the Northern Ireland Assembly on the Defamation Act 2013, so efforts are now being made to inform the debate in the Assembly. I hope that these developments will ensure that the issue is fully debated and considered in Northern Ireland and throughout civil society in Northern Ireland.

In that context, it continues to be our view that the action that we have taken represents the limit of what it is proper for the Government to do. I join noble Lords in hoping that the Northern Ireland Executive and Assembly give very careful consideration to the question of whether legislation along the lines of the Act is appropriate in Northern Ireland. However, we retain the view that the matter is entirely one for them.

The noble Lord, Lord Browne, said that this has been an extremely good debate and indeed it has. However, it is important that we draw it to the attention of those in the Northern Ireland Assembly and Executive to contribute to the public debate that several noble Lords have referred to this afternoon.

I will reply briefly to some specific points. My noble friend Lord Lexden referred to the “antiquated” libel laws and pointed out what he saw as the anomaly that the responsibility for this issue in Northern Ireland is with the Minister for Finance and Personnel. Noble Lords are very well aware of this, but it is important to point out for the record that the arrangements in the Northern Ireland Executive are complex and balanced. It is therefore possible that which department it lies with is of less significance than those balanced and complex relationships. The noble Lord, Lord Lexden, also pointed out that the Executive have not taken this decision; this issue has not come to the Executive.

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He also pointed out the potential importance of Mike Nesbitt’s Private Member’s Bill on defamation. I am confident that this debate will run in Northern Ireland.

I have already referred to the comments from my noble friend Lord Lester, who intervened to refer to the importance of the human rights implications. It is obviously key that UK Ministers have regard to our international obligations on human rights at all times. However, it is always a matter of balancing one set of human rights against another. Those human rights also bind and oblige the Northern Ireland Executive in the way that they make their decisions. I refer, particularly, to the reference by the noble Lord, Lord Lester, to the ECHR memorandum that was prepared by the MoJ at the request of the Joint Committee on Human Rights to assist its consideration of the Defamation Bill. That memorandum focused on issues relating to the compatibility of the provisions contained in the Bill, not on the compatibility of the existing law.

I move rapidly on to the noble Viscount, Lord Colville, who speculated on why Northern Ireland politicians were not keen to have free comment. The key point that I want to draw out from what he said is the possibility of libel tourism. We do not consider that likely. However, we acknowledge that, once the Act is brought into force in England and Wales, there might be attempts to exploit the differences in law between the two jurisdictions. I am sure that the Northern Ireland Executive and Assembly will take that into consideration as they look at this issue. The noble Lord also pointed out that newspapers cross borders and spoke of the complexities of the situation for the newspaper industry. That was also referred to by my noble friend Lord Black.

The noble Viscount talked about the liberalising and modernising Act and making our law fit for the digital age. He talked about the importance of global media and said that we cannot declare UDI on that. His core point, which will perhaps be of particular interest to those in Northern Ireland reading or possibly even listening to this debate, was on the 6,000 people who work in the media—the publishing and broadcasting industries—and the implications for them and, indeed, for the blogging citizen journalists to whom he referred. I very much hope that the prediction that UK newspapers might withdraw from Northern Ireland will prove to be unfounded, but I understand the logic of what he said.

The noble Lord, Lord Bew, referred to the human rights at the heart of the Belfast agreement. He made a very important point—a new one, not emphasised by other noble Lords—about the impact on academics and the fact that leading academics might not be encouraged to go to Northern Ireland universities if they felt that they were not given the freedom that they get elsewhere.

Finally, the noble Lord, Lord Browne, asked whether I accepted the dilemma at the core of the question whether the UK Government should intervene. I say to noble Lords and, in particular, to the noble Lord, Lord Browne, that I have observed the frequency with which UK Ministers are asked to intervene in Northern

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Ireland for one side or another. I acknowledge the cause of concern on this issue. However, I feel as I do every time people say that UK Ministers should intervene. I acknowledge the frustration but, as the noble Lord said, this is a period of transition. It is important that

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we support and encourage the Northern Ireland Executive and Northern Ireland democracy. We must resist the temptation to take over whenever we have a sense of frustration.

*Committee adjourned at 5.58 pm.*