



# The ‘chilling effect’ of defamation law in Northern Ireland? A comparison with England and Wales in relation to the presumption of jury trial, the threshold of seriousness and the public interest defence<sup>†</sup>

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## ABSTRACT

This article compares defamation law in England and Wales with that of Northern Ireland and analyses whether the current law in Northern Ireland is having a ‘chilling effect’ on free speech. At the time of writing, the Northern Ireland Assembly is formally considering adopting legislation based on the Defamation Act 2013 which reformed the law in England and Wales. The article aims to contribute to that debate in Northern Ireland, but it should also be of broader interest as an analysis of the effectiveness of the Defamation Act 2013. The article focuses on three key areas of reform, in both the Defamation Act 2013 and the Northern Ireland Defamation Bill: the presumption of jury trial, the threshold of seriousness, and the public interest defence. It demonstrates that the different approach of the law in Northern Ireland in these areas did not simply occur with the enactment of the 2013 Act, but rather that it started several years before that with a divergence from developments in the common law in England and Wales. The article argues that the difference has been entrenched by the changes in the 2013 Act, and that, in relation to each of those areas, the law in Northern Ireland is now on a singular course and one that can be seen to have a definite ‘chilling effect’ on free speech.

**Keywords:** Defamation Act 2013; Northern Ireland; freedom of expression; presumption of jury trial; serious harm; public interest defence.

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