



Bill Digest

Blasphemy (Abolition of Offences and Related Matters) Bill 2019

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Abstract

On 26 October 2018 a referendum took place on whether the offence of blasphemy should be removed from the Constitution. The results of the vote were 64.85% in favour of its removal while 35.15% voted against its removal. The [Thirty-seventh Amendment of the Constitution \(Repeal of the offence of publication or utterance of blasphemous matter\) Act 2018](#) provides for the removal of the offence of blasphemy from the Constitution. However, new legislation is now required to give effect to the removal of blasphemy from the Constitution and any other related legislative provisions and this is provided for in the [Blasphemy \(Abolition of Offences and Related Matters\) Bill 2019](#). More detailed information on blasphemy is available in the [Bill Digest: Thirty-seventh Amendment of the Constitution \(Repeal of offence of publication or](#)

Contents

Summary	1
Summary of the Bill's provisions	2
Legislative development of the offence of blasphemy	3
Current Context	9
Principal Provisions.....	10

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Summary

A referendum was held in Ireland on 26 October 2018 in which the public were asked whether or not the offence of blasphemy should be removed from the Constitution. The original provision for the offence of blasphemy was inserted into the Constitution in 1937 and instructed that blasphemous material should be published in accordance with the law. [Section 13](#) of the [Defamation Act 1961](#) set out the penalties for printing or publishing blasphemous libel; it did not, however provide a definition of the offence. A definition of blasphemy was not inserted into legislation until 2009 as a result of an amendment to the [Defamation Act 2009](#). The gap was highlighted in the 1999 [Corway case](#). As a result a definition was provided in [section 36](#) of the 2009 Act and a person found guilty of the offence could face a fine of up to €25,000:

Section 36 Defamation Act 2009

- (2) For the purpose of this section, a person publishes or utters blasphemous matter if-
- (a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and
 - (b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

Since 1991 various reviews of the law were undertaken recommending the removal of the offence of blasphemy from the Constitution.¹ In more recent times, the [Stephen Fry](#)² investigation placed blasphemy back in the spotlight, highlighting the onerous level of proof required to secure a prosecution and conviction under the [Defamation Act 2009](#). This is reflected in the fact that no-one has been convicted of blasphemy in Ireland since 1855. A full analysis of blasphemy, the historical and legislative developments around the issue, relevant case-law and a comparative analysis of European and international countries' legal stance towards the issue is provided for in the [Bill Digest: Thirty-seventh Amendment of the Constitution \(Repeal of offence of publication or utterance of blasphemous matter\) Bill 2018](#).

On 26 October 2018 the results of the referendum showed that 951,650 people (64.85%) voted to remove blasphemy as an offence from the Constitution while 515,808 people (35.15%) voted against it. The President signed the *Thirtieth Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Bill* on 27th November 2018. This means that the word 'blasphemous' needs to be removed from Article 40.6.1 of the Constitution. The Minister for Justice and Equality is also required to repeal [sections 36](#) and [37](#) of the 2009 *Defamation Act* and amend references to blasphemy in the [Censorship of Films Act 1923](#) and [Censorship of Films \(Amendment\) Act 1925](#). On 20 December 2018 Minister for Justice and

¹ Law Reform Commission (1991) [The Crime of Libel](#); [Constitution Review Group](#) (1995); Report of the (2006) [Joint Oireachtas Committee on the Constitution](#); [Convention on the Constitution](#) (2014).

² McMahon, C., "[Gardaí launch blasphemy probe into Stephen Fry comments on 'The Meaning of Life'](#)" *Irish News* (06 May 2017).

Equality, Charlie Flanagan, published the [General Scheme of the Repeal of Offence of Publication or Utterance of Blasphemous Matter Bill](#). The Minister noted that:³

“The proposed repeal is fully in accord with the policy that it should no longer be possible to initiate a prosecution for blasphemy in this jurisdiction.”

It is also the intention of the Department to review the *Defamation Act 2009* to address issues other than those falling within the scope of the Scheme. Following a public consultation, a review will consider the following issues:⁴

- The respective roles of judge and jury in defamation cases;
- The defences available to the media in the context of public interest news reporting, and;
- The level of damages which can be awarded by Irish courts in defamation cases.

Summary of the Bill’s provisions

Table 1 below summarises the provisions of the [Blasphemy \(Abolition of Offences and Related Matters\) Bill 2019](#). Further discussion of key provisions of the Bill can be found in the Principal Provisions section of this Bill Digest.

Table 1: Provisions of the *Blasphemy (Abolition of Offences and Related Matters) Bill 2019*

Section	Title	Effect
1.	Abolition of offence of blasphemy	This provision legislates for the abolition of any offence which criminalises blasphemy or blasphemous libel.
2.	Amendment of the Censorship of Films Act 1923	The word blasphemous is removed from section 7 of the 1923 Act
3.	Amendment of the Censorship of Films (Amendment) Act 1925	The word blasphemous is removed from section 3 of the 1925 Act.
4.	Repeal of sections 36 and 37 of the Defamation Act 2009	Sections 36 and 37 which provide the definition of blasphemy and set out the fines applied to contravention of the law are repealed.
5.	Short title and commencement	<p>This section provides that this Act may be cited as the <i>Blasphemy (Abolition of Offences and Related Matters) Act 2019</i>.</p> <p>It provides that the Act, or particular sections of the Act, will come into force by a commencement order of the Minister. The Minister may commence different sections of the Act at different times.</p> <p>This is a standard provision.</p>

³ Department of Justice and Equality (20 December 2018), “[General Scheme of Blasphemy Bill published Minister Flanagan says Bill will ensure Blasphemy prosecutions will no longer be possible](#)”.

⁴ *Ibid.*

Legislative development of the offence of blasphemy

Constitutional Provision for Blasphemy

[Article 40.6.1](#) of the Constitution guarantees rights to freedom of expression, freedom of assembly and freedom to form associations and unions. However these rights are balanced with other rights in order to protect public order and morality. For instance, sub-section i of the Article details the constitutional offence of publication or utterance of blasphemous, seditious or indecent matter. This is the only offence provided for in the Constitution.⁵

Article 40.6.1

The State guarantees liberty for the exercise of the following rights, subject to public order and morality:

- i. The right of citizens to express freely their convictions and opinions The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

The Defamation Acts 1961 and 2009

Under [section 13 of the Defamation Act 1961](#) penalties for the offence of blasphemy were set out as follows:

“Every person who composes, prints or publishes any blasphemous or obscene libel shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or to penal servitude for a term not exceeding seven years.”

The Act conferred powers on the courts to make orders of search and seizure in respect of material considered blasphemous. However, the Act failed to outline the precise scope and

⁵ Sarahrose Murphy, [“Blasphemy Law in Ireland: An overview of its historical development and current proposals for reform”](#) p.3. Paper presented at the 14th meeting of the Joint Council on Constitutional Justice (Venice Commission) (Bucharest, 12 June 2015).

definition of the offence meaning a criminal conviction was not possible. As stated in the Supreme Court decision of [Corway v Independent News](#) (discussed in detail below):⁶

In this state of law, and in the absence of any legislative definition of the constitutional offence of blasphemy, it is impossible to say what the offence of blasphemy consisted...The task of defining the crime is one for the legislature not the courts. In the absence of legislation and in the present uncertain state of the law the Court could not see its way to authorising the institution of a criminal prosecution for blasphemy.”

In its conclusion of *Corway v Independent News*, the Supreme Court noted its inability to define blasphemy because of the separation of powers, as guaranteed under [Article 15](#) of the Constitution, directing that it was the function of the legislature.

In 2009, the then Minister for Justice, Equality and Law Reform, Dermot Ahern, remarked that, following advice from the Attorney General, he had to choose between holding a referendum on the issue of blasphemy or reform section 13 of the 1961 Act; by only repealing the relevant provisions of the 1961 Act a gap would be created in the case of these offences which are created by the Constitution.⁷ Due to the country's weak economic position at that time, it was considered that reforming the law and updating the law on blasphemy was more desirable than a referendum.⁸

The law was subsequently reformed and now [Section 36](#) of the *Defamation Act 2009* gives statutory definition to the constitutional offence of blasphemy. Under [section 36\(2\)](#) publication or utterances of blasphemous matter occur when:

- (a) [a person] publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, **and**
- (b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

It provides for a maximum fine of €25,000 when convicted on indictment, for the publication or utterance of blasphemous matter. During the Select Committee debates, the Minister set out that the rationale for a significant monetary fine was to ensure there was no trivialisation of the constitutional position.

Under [section 36\(3\)](#) of the 2009 Act it is a defence where it can be proved that a reasonable person would find genuine literary, artistic, political, scientific or academic value in the matter to which the offence relates ([section 36\(3\)](#)). It has been noted that this means it would be very difficult to bring a successful prosecution for blasphemy and that arguably “the terms of the statutory

⁶ [\[1999\] 4 IR 484, pp.436-437.](#)

⁷ Select Committee on Justice, Equality, Defence and Women's Rights Committee Debate, [“Defamation Bill 2006”](#) (20 May 2009)

⁸ *Ibid.*

offence are so tightly drawn that it is highly unlikely to have any application in practice”.⁹ Justice Peter Charleton sets out four conditions which highlight the demanding standards that need to be met in order to secure a conviction for blasphemy:¹⁰

- i. There would need to be expert evidence that proves the matter being referred to is ‘sacred’ and that the reference was grossly abusive or insulting;
- ii. Proof would be required to show that the words produced cause outrage and would have substantial impact on a number of adherents;
- iii. It would have to be shown that it was the intention of the accused to cause outrage. Justice Charleton notes that this is a standard which is “notoriously difficult to prove, particularly intent based causation”;
- iv. Finally, the accused is also able to raise the defence that, while the matter was outrageous, a reasonable person would find a recognised value in the matter.

If a person is convicted of an offence under section 36 the court may issue a warrant permitting the Gardaí to enter the premises where it is believed the blasphemous material is contained to carry out a search and seizure ([section 37](#)). To date there have been no prosecutions for blasphemy under the 2009 Act.¹¹

Common Law Developments

There are three recorded cases of blasphemy in the common law courts of Ireland prior to independence:¹²

1. The Thomas Emlyn case, unreported;
2. John Syngean Bridegman case, unreported;
3. R v Petcherine.

In the R v Petcherine¹³ case a Redemptorist priest had organised a bonfire to destroy so called “vile English novels” and inadvertently burned a bible which was hidden within the books. He was acquitted because the Court found that for a blasphemy prosecution to be successful, it would have to be demonstrated that the accused intended to burn the Bible. The next case to come before the Irish courts on blasphemy was 140 years later; following Ireland’s independence and

⁹ The Convention on the Constitution, [Sixth Report of the Convention on the Constitution: Removal of the offence of blasphemy from the Constitution](#) (January 2014). See Expert Presentation by Cox on Introduction and the Irish context.

¹⁰ Charleton, P & Pratt-O’Brien, R., “[Blasphemy: Religion Challenges Freedom of Speech](#)” [2017] *Irish Judicial Studies Journal* Vol.1, pp.15-30.

¹¹ Sarahrose Murphy, “[Blasphemy Law in Ireland: An overview of its historical development and current proposals for reform](#)”. Paper presented at the 14th meeting of the Joint Council on Constitutional Justice (Venice Commission) (Bucharest, 12 June 2015).

¹² The earliest recorded case concerned the trial of a Unitarian Minister, Thomas Emlyn, the author of a book called *A Humble Enquiry into the Scripture Account of Jesus Christ*. The next blasphemy law trial in the common law courts was the 1852 case of John Syngean Bridegman, a Franciscan friar, who was convicted of “unlawfully, wickedly and blasphemously” setting fire to a Protestant Bible. For a discussion of these cases, see [Law Reform Commission, Consultation Paper on the Crime of Libel](#) (1991) pp.14 - 16.

¹³ (1855) 7 Cox 79.

enactment of the Constitution. According to Cox, blasphemy has never been an issue which has troubled the Irish courts¹⁴ because, since the enactment of the Irish Constitution there has only been one case.¹⁵

Corway v Independent Newspapers

After Petcherine, a case of blasphemy did not come before the courts again until 1999. As noted above, in [John Corway v Independent Newspapers](#)¹⁶ the respondents published an article in the newspaper insinuating that the influence of the Catholic Church in Ireland was decreasing. The article was accompanied by a cartoon depicting three Government Ministers refusing the host and chalice being offered to them by a priest. The cartoon was accompanied by the heading 'Hello Progress-Bye-bye Father?'. The applicant applied to the High Court to commence an action of blasphemous libel under the [Defamation Act 1961](#). He claimed that he had suffered offence and outrage by reason of insult, ridicule and that contempt was shown towards the sacrament of the Eucharist as a result of the publication. Although the Constitution criminalises blasphemy, **there was neither a constitutional nor a legislative definition of blasphemy at that time**. The 1961 Act only provided for penalties and seizure of material.¹⁷

The High Court found that the applicant **must establish, *prima facie*, that the libel was so serious that the criminal law needed to be invoked and it was necessary in the public interest**. It was not necessary that the publication was likely to provoke a breach of the peace. Secondly, **it must be shown that the words or pictures complained of were an attack on some tenet of Christian religion**. The High Court found that the picture complained of was an isolated cartoon and there was no evidence to support that the newspaper had an agenda to offend Christian beliefs. They also found that commencing proceedings would not be in the public interest.

The case was appealed to the Supreme Court in which four main findings were discussed:

1. Firstly, the common law offence of blasphemy related to an established Church which predated the enactment of the Constitution and could not survive that enactment; because the common law offence was solely concerned with Christianity, it was incompatible with [Article 44.2.3](#) of the Constitution which prohibits discrimination on grounds of religion and [Article 40.1](#) which guarantees general equality;
2. Secondly, due to the absence of any legislative definition of the offence of blasphemy it was not possible to say what the offence of blasphemy consisted of;
3. Thirdly, because of the Constitutional rights of freedom of conscience, freedom of religion and freedom of expression, the mere publication of an opinion on a religious matter did not constitute a criminal offence unless the publication would undermine the public morality or order of the State;

¹⁴ Cox, N., "[Sacrilige and Sensibility: The Value of Irish Blasphemy Law](#)" (1997) 19(1) *Dublin University Law Journal* 87.

¹⁵ See below discussion of [Corway v Independent Newspaper \[1999\] 4 IR 484](#).

¹⁶ [1999] 4 IR 484.

¹⁷ *Defamation Act 1961*, [section 13](#).

4. Fourthly, the publication of blasphemous matter, without proof of any intention to blaspheme, could not support a conviction of blasphemy.

The decision of the Supreme Court meant that a prosecution of blasphemy was not possible under the 1961 Act until the legislature provided a statutory definition.

However, in a 2017 paper, Justice Charleton contends that, from a constitutional perspective, laws on blasphemy are not a necessity despite being specifically mentioned in the constitution. He compares it to the constitutional references to felony crimes, which, although mentioned in the constitution, no longer exist in Ireland.¹⁸

Reviews of the offence of blasphemy

Table 1 is a summary of recommendations from different international and national bodies recommending the removal of the offence of blasphemy:

Table 1: Overview of reports and official commentary on Article 40.6.1.i

Date	Body	Recommendation
1991	Law Reform Commission The Crime of Libel	The LRC recommended that “ <i>any revision which may be undertaken by referendum of the Constitution, so much of Article 40.6.1.i which renders the publication or utterance of blasphemous matter an offence should be deleted</i> ”. They advised that religious adherents could be protected by the incitement to hatred legislation instead.
1995	Constitution Review Group	The Review Group recommended that Article 40.6.1.i should be replaced with a new clause protecting free speech modelled on Article 10 of the European Convention on Human Rights (ECHR) because it allows for the balancing of other competing values.
2006	Report of the Special Rapporteur on freedom of religion or belief	The Rapporteur recommended that expressions should only be prohibited under article 20 of the International Covenant on Civil and Political Rights (ICCPR) ¹⁹ if they constitute incitement to imminent acts of violence or discrimination against a specific

¹⁸ Charleton & Pratt-O’Brien, supra note 9, pp.22-23.

¹⁹ Ireland ratified The International Covenant on Civil and Political Rights (ICCPR) in 1989. The ICCPR considers blasphemy and religious defamation laws as contrary to human rights and constituting violations of international law. Article 20(2) considers that only extreme speech should be banned and the test should be set at a very high level.

		individual or group.
2007	Report of the Joint Oireachtas Committee on the Constitution	The Committee endorsed the view of the Constitution Review Group, also recommending that Article 40.6.1.i should be deleted.
2010	The Venice Commission	The report concluded that incitement to hatred, including religious hatred, should be a crime; that insult to religious feelings should not be a crime; and that the offence of blasphemy should be abolished and should not be reintroduced.
2011	UN Human Rights Committee, General Comment 34 , section 48	The Committee said “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, [...] it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”
2014	Convention on the Constitution	The majority of members of the Convention voted in favour of removal of blasphemy from the Constitution and replacing it with a general constitutional prohibition/legislative provision of incitement to religious hatred.

Source: Compiled by Library & Research Service.

Table 2 sets out some of the arguments for and against retention of the offence of blasphemy in the Constitution:

Table 2: Arguments for and Against the Retention of Blasphemy

Arguments in favour of Retention	Arguments against Retention
It protects religious beliefs and sensibilities and deters disrespect of religion	The Article on blasphemy is unworkable because neither the courts nor the legislature have successfully defined what it means
Its removal might result in the downgrading of religion as a value worth recognising	The provision does not protect non-believers

It serves to protect Ireland's multicultural society by providing protection to all religious beliefs	Sufficient legislation already exists in the area
It does not do any harm as it stands because there have been no convictions under the Constitutional provision. Therefore removing it could do more harm than good and it is preferable to retain the status quo	The law belongs to a different time
If it is removed it would be difficult to have it reinserted in the Constitution	There should be a separation between Church and State
	It elevates religion over other forms of discrimination

Source: The Convention on the Constitution, [Sixth Report of the Convention on the Constitution](#) (January 2014)

Current Context

A referendum to remove blasphemy from the Constitution was held on 26 October 2018. The results were 64.85% supporting its removal and 35.15% against.²⁰ Every constituency voted in a majority for its removal.²¹

The [General Scheme for the Blasphemy Bill](#) was published on 20 December 2018. The [Blasphemy \(Abolition of Offences and Related Matters\) Bill 2019](#) was published on the 17 July 2019 and does not diverge in substance from the General Scheme. It provides for the removal of the word 'blasphemous' from the Constitution and the repeal of [sections 36](#) and [37](#) of the 2009 *Defamation Act*. It also amends references to blasphemy in the [Censorship of Films Act 1923](#) and [Censorship of Films \(Amendment\) Act 1925](#).

²⁰ ["Blasphemy Referendum Votes"](#) *Irish Times*.

²¹ McGarry, P. (28 October 2018) ["Ireland votes as one to remove blasphemy from Constitution"](#).

Principal Provisions

The [Blasphemy \(Abolition of Offence and Related Matters\) Bill 2019](#) consists of 5 sections. This part of the Digest sets out what the Bill provides for.

The main development that this Bill will bring about is that prosecutions for blasphemy will no longer be possible and the relevant legislative provisions will be repealed or amended to ensure this.

Preliminary and General

Section 5(1) sets out the citation of the Bill. **Section 5(2)** of the Bill empowers the Minister to commence various parts of the Act by way of order for different purposes.

Amendments and Repeals

Section 1 legislates for the abolition of the offence blasphemy or blasphemous libel.²²

Sections 2 and 3 remove the word 'blasphemous' in the following pieces of legislation:

1. [Section 7\(2\)\(a\)\(ii\)](#) of the [Censorship of Films Act 1923](#). This section allows the Director of Film Classification to deem a film unfit for general public exhibition where it is deemed to be indecent, obscene or blasphemous;
2. [Section 3\(2\)](#) of the [Censorship of Films \(Amendment\) Act 1925](#). This allows the Official Censor to prohibit the display of film advertisements where it is deemed to be indecent, obscene or blasphemous.

Section 4 repeals the entirety of sections 36 and 37 of the [Defamation Act 2009](#). [Section 36](#) of the Act gives statutory definition to the constitutional offence of blasphemy. It provides for a maximum fine of €25,000 when convicted on indictment, for the publication or utterance of blasphemous matter. If a person is convicted of an offence under section 36 the court may issue a warrant permitting the Gardaí to enter the premises, where it is believed the blasphemous material is contained, to carry out a search and seizure ([section 37](#)).

²² **Blasphemous libel** the offense of speaking disparaging words about God, Jesus Christ, the Bible, or the Book of Common Prayer with the intent to undermine religious beliefs and promote contempt and hatred for the church as well as general immorality. Source: [the Legal Dictionary](#).



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