

# DEFAMATION ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 1: Serious harm*

10. *Subsection (1)* of this section provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant. The provision extends to situations where publication is likely to cause serious harm in order to cover situations where the harm has not yet occurred at the time the action for defamation is commenced. *Subsection (2)* indicates that for the purposes of the section, harm to the reputation of a body that trades for profit is not “serious harm” unless it has caused or is likely to cause the body serious financial loss.
11. The section builds on the consideration given by the courts in a series of cases to the question of what is sufficient to establish that a statement is defamatory. A recent example is *Thornton v Telegraph Media Group Ltd*<sup>1</sup> in which a decision of the House of Lords in *Sim v Stretch*<sup>2</sup> was identified as authority for the existence of a “threshold of seriousness” in what is defamatory. There is also currently potential for trivial cases to be struck out on the basis that they are an abuse of process because so little is at stake. In *Jameel v Dow Jones & Co*<sup>3</sup> it was established that there needs to be a real and substantial tort. The section raises the bar for bringing a claim so that only cases involving serious harm to the claimant’s reputation can be brought.
12. *Subsection (2)* reflects the fact that bodies trading for profit are already prevented from claiming damages for certain types of harm such as injury to feelings, and are in practice likely to have to show actual or likely financial loss. The requirement that this be serious is consistent with the new serious harm test in *subsection (1)*.

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<sup>1</sup> [2010] EWHC 1414.

<sup>2</sup> [1936] 2 All ER 1237.

<sup>3</sup> [2005] EWCA Civ 75.