

*These notes relate to the Defamation and Malicious Publication (Scotland) Act 2021 (asp 10) which received Royal Assent on 21 April 2021*

# **DEFAMATION AND MALICIOUS PUBLICATION (SCOTLAND) ACT 2021**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Defamation**

#### **Actionability and restrictions on bringing proceedings**

#### ***Section 4: Power to specify persons to be treated as publishers***

36. Section 4 effectively qualifies section 3, discussed above.
37. Subsection (1) gives the Scottish Ministers power to make regulations specifying categories of persons who are to be treated as publishers of a statement, for the purposes of the bringing of defamation proceedings, despite not being persons who would be classed as authors, editors or publishers by virtue of section 3. In other words, the provision is concerned with people who neither fall within the definition of author, editor, or publisher under section 3, nor are an employee or agent of such a person. This is designed to cater, in particular, for a scenario in which a new category of publisher emerges and is actively facilitating the causing of harm.
38. Subsection (2) enables the Scottish Ministers to make provision in regulations under subsection (1) for a defence to defamation proceedings for persons who are treated as publishers under those regulations, who did not know, and could not reasonably be expected to have known, that the material which they disseminated contained a defamatory statement and who satisfy any further conditions specified by the regulations.
39. Subsections (3) to (4) provide that regulations under subsection (1) are to be the subject of consultation by the Scottish Ministers, and are to be subject to the affirmative procedure of the Scottish Parliament.