

*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**

##### **Absolute privilege**

##### *Section 9: Contemporaneous reports of court proceedings*

68. Section 9 of the Act re-enacts section 14 of the 1996 Act and extends the circumstances in which the defence can be used.
69. Subsection (1) provides that the contemporaneous publication of a statement which is a fair and accurate report of proceedings in public before a court (defined in subsections (3) and (4)) is absolutely privileged.
70. Subsection (2) provides that where publication of a report of proceedings is required to be postponed (either by an order of the court or as a consequence of a statutory provision) it is to be treated as contemporaneously published if it is published as soon as practicable after that is permitted. Non-contemporaneous reports of court proceedings are only subject to qualified privilege (see paragraphs 3 and 4 of the schedule).
71. Subsections (3) and (4), taken together, extend the current scope of the defence so that it also covers proceedings in any court established under the law of a country or territory outside the United Kingdom, and any international court or tribunal established by the Security Council of the United Nations or by an international agreement. Currently, subsection (3) of section 14 provides for absolute privilege to apply only to fair and accurate reports of proceedings in public before any court in the UK; the European Court of Justice or any court attached to that court; the European Court of Human Rights; and any international criminal tribunal established by the Security Council of the United Nations or by an international agreement to which the UK is a party.