

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: General

Remedies

Section 30: Power of court to order display of notice or removal of statement etc.

133. Section 30 is intended to provide for the fact that it may not always be appropriate or possible for the author of material which is the subject of defamation proceedings or proceedings under Part 2 for a malicious publication to prevent further distribution of the material or orchestrate its removal.
134. Subsection (1) sets out two express powers of the court where a statement which is the subject of defamation or Part 2 proceedings is hosted on a website.
135. First, the court is empowered to order that a prominent notice is affixed to a statement on any website on which it appears. Subsection (2) requires this notice to be in a place or form that ensures that a person accessing the statement is made aware of the notice every time that they access the statement.
136. Second, the court is empowered to order the removal of material from any website on which it appears, as well as to order a person who was not the author, editor, or publisher of the material to stop distributing, selling, or exhibiting material containing the statement.
137. The exercise of these two powers is not confined to circumstances in which the final outcome of the proceedings has already been determined by the court. Accordingly, the court would be entitled in an appropriate case to grant an order for the display of a notice or the removal or cessation of distribution on an interim basis, before the final outcome of the proceedings is known.
138. Subsection (3) makes clear that the powers to make such an order do not constrain the court's exercise of other powers that are available to it. This may include the granting of an interdict or interim interdict.
139. Subsection (4) makes clear that the terms "author", "editor" and "publisher" have the same definition, for the purposes of section 30, as they have in section 3 (on secondary publishers).