



# Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

## PART 1

### DEFAMATION

#### *Defences*

#### 5 Defence of truth

- (1) It is a defence to defamation proceedings for the defender to show that the imputation conveyed by the statement complained of is true or is substantially true.
- (2) Where defamation proceedings are brought in respect of a statement conveying two or more distinct imputations, the defence under subsection (1) does not fail if—
  - (a) not all of the imputations have been shown to be true or substantially true, and
  - (b) having regard to the imputations that have been shown to be true or substantially true, publication of the remaining imputations has not caused serious harm to the reputation of the pursuer.

#### Commencement Information

II [S. 5](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

#### 6 Defence of publication on a matter of public interest

- (1) It is a defence to defamation proceedings for the defender to show that—
  - (a) the statement complained of was, or formed part of, a statement on a matter of public interest, and
  - (b) the defender reasonably believed that publishing the statement complained of was in the public interest.

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*Changes to legislation:* There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Cross Heading: Defences. (See end of Document for details)

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- (2) Subject to subsections (3) and (4), in determining whether the defender has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
- (3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the pursuer was a party, the court must, in determining whether it was reasonable for the defender to believe that publishing the statement was in the public interest, disregard any omission of the defender to take steps to verify the truth of the imputation conveyed by it.
- (4) In determining whether it was reasonable for the defender to believe that publishing the statement was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
- (5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

#### Commencement Information

**12** [S. 6](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

## 7 Defence of honest opinion

- (1) Subject to subsections (5) and (6), it is a defence to defamation proceedings for the defender to show that the conditions in subsections (2) to (4) are met.
- (2) The first condition is that the statement complained of was a statement of opinion.
- (3) The second condition is that the statement indicated, either in general or specific terms, the evidence on which it was based.
- (4) The third condition is that an honest person could have held the opinion conveyed by the statement on the basis of any part of that evidence.
- (5) The defence fails if the pursuer shows that the defender did not genuinely hold the opinion conveyed by the statement.
- (6) Where the statement complained of was published by the defender but made by another person (“the author”)—
  - (a) subsection (5) does not apply, but
  - (b) the defence fails if the pursuer shows that the defender knew, or ought to have known, that the author did not genuinely hold the opinion conveyed by the statement.
- (7) For the purpose of subsection (2), a “statement of opinion” includes a statement which draws an inference of fact.
- (8) For the purpose of subsections (3) and (4), “evidence” means—
  - (a) any fact which existed at the time the statement was published,
  - (b) anything asserted to be a fact in a privileged statement made available before, or on the same occasion as, the statement complained of, or
  - (c) anything that the defender reasonably believed to be a fact at the time the statement was published.

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- (9) For the purpose of subsection (8) (b), a statement is a “privileged statement” if the person responsible for its publication would have one or more of the following defences if defamation proceedings were to be brought in respect of it—
- (a) the defence of publication on a matter of public interest under section 6,
  - (b) the defence of absolute privilege under section 9, or
  - (c) the defence of qualified privilege under section 10 or 11.

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**Commencement Information**

**I3** [S. 7](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

## **8 Abolition of common law defences and transitional provision**

- (1) Any rules of law providing for—
- (a) the defence of innocent dissemination,
  - (b) the defence of veritas,
  - (c) the defence known as the Reynolds defence,
  - (d) the defence of fair comment,
- cease to have effect.
- (2) Nothing in sections 5 to 7 or subsection (1) of this section has effect in relation to defamation proceedings if the right to bring the proceedings accrued before the commencement of the section or subsection in question.

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**Commencement Information**

**I4** [S. 8](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

**Changes to legislation:**

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