



Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

PART 1

DEFAMATION

Qualified privilege

10 Peer-reviewed statement in scientific or academic journal etc.

- (1) The publication of a statement in a scientific or academic journal is privileged if the conditions in subsections (2) and (3) are met.
- (2) The first condition is that the statement relates to a scientific or academic matter.
- (3) The second condition is that before the statement was published an independent review of the statement's scientific or academic merit was carried out by—
 - (a) the editor of the journal, and
 - (b) one or more persons with expertise in the scientific or academic matter concerned.
- (4) Where the publication of a statement in a scientific or academic journal is privileged by virtue of [subsection \(1\)](#), the publication in the same journal of any assessment of the statement's scientific or academic merit is also privileged if—
 - (a) the assessment was written by one or more of the persons who carried out the independent review of the statement, and
 - (b) the assessment was written in the course of that review.
- (5) Where the publication of a statement or assessment is privileged by virtue of this section, the publication of a fair and accurate copy of, extract from or summary of the statement or assessment is also privileged.
- (6) The publication of a statement is not privileged by virtue of this section if it is shown to have been made with malice.
- (7) Nothing in this section is to be construed as—

- (a) protecting the publication of matter the publication of which is prohibited by law, or
 - (b) limiting any privilege subsisting apart from this section.
- (8) The reference in [subsection \(3\)\(a\)](#) to “the editor of the journal” is to be read, in the case of a journal with more than one editor, as a reference to the editor or editors who were responsible for deciding to publish the statement concerned.

11 Other statements protected by qualified privilege

- (1) Other than as provided in this section, the publication of any statement mentioned in the schedule (however described) is privileged.
- (2) The publication of a statement is not privileged by virtue of this section if it is shown to have been made with malice.
- (3) [Subsection \(4\)](#) applies to defamation proceedings brought in respect of the publication of a statement mentioned in [Part 2](#) of the schedule.
- (4) If the pursuer shows that the defender—
- (a) was requested by the pursuer to publish, in a suitable manner, a reasonable statement by way of explanation or contradiction, and
 - (b) refused or neglected to do so,
- the publication of the statement complained of is not privileged by virtue of this section.
- (5) For the purpose of [subsection \(4\)\(a\)](#), “in a suitable manner” means—
- (a) in the same manner as the statement complained of, or
 - (b) in a manner that is adequate and reasonable in the circumstances.
- (6) This section does not apply to the publication of matter which is not of public interest and the publication of which is not for the public benefit.
- (7) Nothing in this section is to be construed as—
- (a) protecting the publication of matter the publication of which is prohibited by law, or
 - (b) limiting any privilege subsisting apart from this section.

12 Privilege: transitional provision

Nothing in sections 9 to 11 (or the schedule) has effect in relation to defamation proceedings if the right to bring the proceedings accrued before the commencement of the section in question.