



# Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

## PART 2

### MALICIOUS PUBLICATION

#### *Actionable types of malicious publication*

#### **21 Statements causing harm to business interests**

- (1) A person (B) may bring proceedings under this section against another person (A) where—
- (a) A has—
    - (i) made a false and malicious statement about B's business or business activities, and
    - (ii) published the statement to a person other than B, and
  - (b) the statement has caused (or is likely to cause) financial loss to B.
- (2) For the purposes of subsection (1) (a) (i), a statement is malicious only if B shows—
- (a) that the imputation conveyed by the statement complained of was presented as being a statement of fact (rather than a statement of opinion) and was sufficiently credible so as to mislead a reasonable person, and
  - (b) both—
    - (i) that A knew that the imputation was false or was recklessly indifferent as to the truth of the imputation, and
    - (ii) that A's publication of the statement was motivated by a malicious intention to cause harm to B's business or business activities.

#### **Commencement Information**

**II** S. 21 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

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*Changes to legislation: There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, PART 2. (See end of Document for details)*

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## 22 Statements causing doubt as to title to property

- (1) A person (B) may bring proceedings under this section against another person (A) where—
- (a) A has—
    - (i) made a false and malicious statement about B's title to land or other property, and
    - (ii) published the statement to a person other than B, and
  - (b) the statement has caused (or is likely to cause) financial loss to B.
- (2) For the purposes of subsection (1) (a) (i), a statement is malicious only if B shows—
- (a) that the imputation conveyed by the statement complained of was presented as being a statement of fact (rather than a statement of opinion) and was sufficiently credible so as to mislead a reasonable person, and
  - (b) both—
    - (i) that A knew that the imputation was false or was recklessly indifferent as to the truth of the imputation, and
    - (ii) that A's publication of the statement was motivated by a malicious intention to delay or jeopardise a transaction involving the land or other property of B.

### Commencement Information

**I2** [S. 22](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

## 23 Statements criticising assets

- (1) A person (B) may bring proceedings under this section against another person (A) where—
- (a) A has—
    - (i) made a false and malicious statement criticising or denigrating the quality, condition, use or treatment of assets owned, possessed or controlled by B, and
    - (ii) published the statement to a person other than B, and
  - (b) the statement has caused (or is likely to cause) financial loss to B.
- (2) For the purposes of subsection (1) (a) (i), a statement is malicious only if B shows—
- (a) that the false imputation conveyed by the statement complained of was presented as being a statement of fact (rather than a statement of opinion) and was sufficiently credible so as to mislead a reasonable person, and
  - (b) both—
    - (i) that A knew that the imputation was false or was recklessly indifferent as to the truth of the imputation, and
    - (ii) that A's publication of the statement was motivated by a malicious intention to cause B financial loss.

### Commencement Information

**I3** [S. 23](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

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**Changes to legislation:** There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, PART 2. (See end of Document for details)

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### *General provision*

## **24 Limit on requirement to show financial loss**

A pursuer in proceedings under this Part does not need to show financial loss if the statement complained of is more likely than not to cause such loss.

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### **Commencement Information**

**I4** [S. 24](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

## **25 Statements conveying two or more meanings**

- (1) This section applies where proceedings are brought under this Part in respect of a statement that is capable of conveying two or more distinct meanings.
- (2) It is not necessary for the purposes of deciding whether harm has occurred for the court to determine—
  - (a) which of the meanings is conveyed by the statement in the circumstances, or
  - (b) that one meaning should be preferred to the exclusion of the other or others.
- (3) But nothing in this section prevents the court from excluding or disregarding possible meanings where it considers it appropriate to do so.

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### **Commencement Information**

**I5** [S. 25](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

## **26 Damages for anxiety and distress**

- (1) In determining the appropriate amount of damages to award in proceedings under this Part, the court may take into account any distress and anxiety caused to the pursuer by the statement complained of.
- (2) This section does not limit any other basis of claim for damages or remedy that may be available to a pursuer in proceedings under this Part.

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### **Commencement Information**

**I6** [S. 26](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), [regs. 1\(2\), 2](#)

### *Abolition of common law verbal injuries*

## **27 Abolition of common law verbal injuries**

- (1) Any rules of law providing for a right to bring proceedings for a verbal injury cease to have effect.
- (2) Subsection (1) does not affect any right to bring proceedings for a verbal injury which accrued before the commencement of that subsection.

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**Changes to legislation:** There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, PART 2. (See end of Document for details)

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#### Commencement Information

**I7** [S. 27](#) in force at 8.8.2022 by [S.S.I. 2022/154](#), **regs. 1(2), 2**

**Changes to legislation:**

There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, PART 2.