



Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

PART 3

GENERAL

Remedies

28 Power of court to order a summary of its judgment to be published

- (1) A court may, in finding for the pursuer in defamation proceedings or proceedings under [Part 2](#), order the defender to publish a summary of the judgment.
- (2) It is for the parties to agree—
 - (a) the wording of the summary, and
 - (b) the time, manner, form and place of its publication.
- (3) But if the parties cannot agree—
 - (a) the wording of the summary, the court must determine it,
 - (b) a matter in [subsection \(2\)\(b\)](#), the court may give such directions as it considers appropriate.

29 Making a statement in open court

- (1) In defamation proceedings or proceedings under [Part 2](#), where the parties have reached an agreement in settlement of the proceedings, the court may allow a statement to be made in open court.
- (2) The wording of the statement—
 - (a) may be agreed between the parties, or
 - (b) in the absence of agreement, may be determined by the pursuer.
- (3) The statement may not be made unless the court has approved its wording.

30 Power of court to order display of notice of proceedings, removal of a statement etc.

- (1) In defamation proceedings or proceedings under [Part 2](#), a court may order—
- (a) the operator of a website on which the statement complained of is posted—
 - (i) to include on the website a prominent notice that the statement is subject to the proceedings, or
 - (ii) to remove the statement, or
 - (b) any person who was not the author, editor or publisher of the statement to stop distributing, selling or exhibiting material containing the statement.
- (2) For the purpose of subsection (1)(a), a notice is prominent if it is in a place or form that ensures that a person accessing the statement is made aware of the notice every time that the person accesses the statement.
- (3) This section does not limit the other powers available to the court in respect of the statement or any person who is publishing it.
- (4) In this section, “author”, “editor”, and “publisher” are to be construed in accordance with section 3.

31 Remedies: transitional provision

Nothing in sections 28 to 30 has effect in relation to defamation proceedings begun before the commencement of the section in question.

*Limitation***32 Limitation of actions**

- (1) Section 18A of the Prescription and Limitation (Scotland) Act 1973 (limitation of defamation and other actions) is amended as follows.
- (2) In subsection (1)—
- (a) after “defamation” insert “or under section 21, 22 or 23 of the 2021 Act (actionable types of malicious publication)”,
 - (b) for “3 years” substitute “one year”.
- (3) After subsection (1), insert—
- “(1A) Where—
- (a) a person publishes a statement to the public or to a section of the public (“the first publication”), and
 - (b) the person subsequently publishes (whether or not to the public) the same statement or a statement that is substantially the same (“the subsequent publication”),
- any right of action against the person for defamation or under section 21, 22 or 23 of the 2021 Act in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.
- (1B) Subsection (1A) does not apply where the court determines that the manner of the subsequent publication is materially different from the manner of the first publication.

- (1C) In determining whether the manner of the subsequent publication is materially different from the manner of the first publication, the court may have regard to—
- (a) the level of prominence that the statement is given,
 - (b) the extent of the subsequent publication, and
 - (c) any other matter that the court considers relevant.”.
- (4) In subsection (2), after “defamed” insert “or harmed by a malicious publication in a manner described in section 21, 22 or 23 of the 2021 Act”.
- (5) After subsection (3) insert—
- “(3A) This section continues to have effect in relation to a statement which was published before the day on which section 32 of the 2021 Act comes into force as if it had not been amended by section 32 of the 2021 Act.
- (3B) In determining whether subsection (1A) applies, no account is to be taken of a statement which was published before the day on which section 32 of the 2021 Act comes into force.”.
- (6) In subsection (4)—
- (a) for paragraph (a) substitute—
 - “(aa) “the 2021 Act” means the Defamation and Malicious Publication (Scotland) Act 2021,”
 - (b) in paragraph (b)—
 - (i) after “construed” insert “(subject to subsection (1A))”,
 - (ii) for “publication or communication” substitute “statement”,
 - (iii) after “defamation” insert “or, as the case may be, under section 21, 22 or 23 of the 2021 Act”,
 - (iv) for “first came to the notice of the pursuer.” substitute “was published, and”,
 - (c) after [paragraph \(b\)](#), insert—
 - “(c) “statement” has the meaning given in section 36 of the 2021 Act (interpretation).”.

33 Interruption of limitation period: mediation

After section 19CA of the Prescription and Limitation (Scotland) Act 1973 (interruption of limitation period: arbitration) insert—

“19CB Interruption of section 18A(1) limitation period: mediation

- (1) In any computation of the period specified in section 18A(1), any period of mediation in relation to a relevant matter is to be disregarded.
- (2) For the purposes of this section, a period of mediation—
 - (a) begins on the day on which a mediator is appointed by the parties, and
 - (b) ends on such day as the parties may agree or, otherwise, on the day—
 - (i) on which a party notifies another party that they are withdrawing from the mediation,

- (ii) which falls 14 days after the day on which a party makes a request for confirmation that another party is continuing with the mediation (and no response has been received), or
- (iii) which falls 14 days after the day on which the mediator resigns or dies or otherwise becomes incapable of acting (and no replacement has been appointed).

(3) In this section—

“mediation” means a structured process, whereby two or more parties to a dispute attempt, with the assistance of a mediator, to resolve or reduce disagreement between or among them with a view to resolution of the dispute without recourse to court,

“mediator” means an independent person who is appointed by the parties to conduct a mediation, whether or not for remuneration, in an effective, impartial, and competent way,

“party” means a party to the mediation, and

“relevant matter” means a matter to which a limitation period applies by virtue of section 18A(1).”

34 **Interruption of limitation period: media complaints and expert determination**

After section 19CB of the Prescription and Limitation (Scotland) Act 1973 (interruption of limitation period: mediation) insert—

“19CC Interruption of section 18A(1) limitation period: media complaints and expert determination

- (1) In any computation of the period specified in section 18A(1), any relevant period in relation to a relevant matter is to be disregarded.
- (2) For the purposes of this section, a relevant period—
 - (a) begins on the day on which the parties agree, in writing, to attempt to resolve the dispute by way of a complaints process or expert determination (“the process”), and
 - (b) ends on such day as the parties may agree or, otherwise, on the day—
 - (i) on which a party notifies another party that they are withdrawing from the process,
 - (ii) which falls 14 days after the day on which a party makes a request for confirmation that another party is continuing with the process (and no response has been received),
 - (iii) which falls 14 days after the day on which any person (other than a party) who was conducting or facilitating the process resigns or dies or otherwise becomes incapable of acting (and no replacement has been appointed).
- (3) This section does not apply where the process is one to which section 19CA or 19CB applies.
- (4) In this section—

“complaints process” means a process whereby two or more parties to a dispute attempt to resolve the dispute between them by referring the relevant matter to an independent person that handles complaints relating

to the publication of material in the medium in question to make a determination on the merits of the relevant matter,

“expert determination” means a process whereby two or more parties to a dispute attempt to resolve the dispute between them by appointing a single independent and suitable individual who holds appropriate professional qualifications and is a member of a suitable professional body to act as an expert and decide the dispute, such person to be agreed by the parties or, failing which, to be determined in a manner agreed by the parties,

“party” means a party to the complaints process or expert determination,

“relevant matter” means a matter to which a limitation period applies by virtue of section 18A(1).

(5) The Scottish Ministers may by regulations amend the definitions in subsection (4).

(6) Regulations under subsection (5) are subject to the affirmative procedure.”.

Miscellaneous

35 Consequential modifications

- (1) The Defamation Act 1952 is amended as follows—
 - (a) sections 3, 5, 6 and paragraph (b) of section 14 are repealed,
 - (b) in section 14 (application of Act to Scotland), in paragraph (d)—
 - (i) after “pursuer” insert “and”,
 - (ii) the words from “for” where it second occurs, to the end are repealed.
- (2) The Rehabilitation of Offenders Act 1974 is amended as follows—
 - (a) in section 8(6) (defamation actions: reports of court proceedings), after “1996” insert “, section 9 of the Defamation and Malicious Publication (Scotland) Act 2021”,
 - (b) in section 8(8) (defamation actions)—
 - (i) after paragraph (b), the word “and” is repealed,
 - (ii) for paragraph (c) substitute—
 - “(c) for references to a defence under section 2 of the Defamation Act 2013 there is substituted a reference to a defence under section 5 of the Defamation and Malicious Publication (Scotland) Act 2021, and
 - (d) for the reference to a defence under section 3 of the Defamation Act 2013 there is substituted a reference to a defence under section 7 of the Defamation and Malicious Publication (Scotland) Act 2021.”.
- (3) The Defamation Act 1996 is amended as follows—
 - (a) sections 1 to 4, 14, 15, 17(2) and schedule 1 are repealed,
 - (b) in section 18(2) (provisions extending to Scotland)—
 - (i) the words “section 1 (responsibility for publication),” are repealed,
 - (ii) the words “sections 2 to 4 (offer to make amends), except section 3(8),” are repealed,

(iii) the words “section 14 and 15 and Schedule 1 (statutory privilege)” are repealed.

- (4) The Defamation Act 2013 is amended as follows—
- (a) sections 6, 7(9), 15 and 16(5) are repealed,
 - (b) in section 17 (short title, extent and commencement)—
 - (i) in subsection (2), the words “Subject to subsection (3),” are repealed,
 - (ii) subsections (3) and (5) are repealed,
 - (iii) in subsection (4), for “subsections (5) and” substitute “subsection”.

36 Interpretation

In this Act, unless the context otherwise requires—

- (a) “publish” (and cognate expressions), in relation to a statement, are to be construed in accordance with section 1,
- (b) “statement” means words, pictures, visual images, gestures or any other method of signifying meaning,
- (c) a reference to proceedings brought under [Part 2](#) is a reference to proceedings brought under section 21, 22 or 23,
- (d) in relation to proceedings generally, a reference to—
 - (i) a pursuer includes a petitioner,
 - (ii) a defender includes a respondent,
 - (iii) defences includes answers.

37 Regulations

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations includes the power to make—
 - (a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
 - (b) different provision for different purposes.
- (2) This section does not apply to regulations made under section 38 or 39.

38 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
 - (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.
- (3) Regulations under this section which contain provision adding to, replacing or omitting any part of the text of an Act are subject to the affirmative procedure.
- (4) Otherwise, regulations under this section are subject to the negative procedure.

39 Commencement

- (1) This section and sections 36 to 38 and 40 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
 - (a) include transitional, transitory, or saving provision,
 - (b) make different provision for different purposes.
- (4) Regulations under this section which bring section 32 into force may amend section 18A of the Prescription and Limitation (Scotland) Act 1973 so that, instead of referring to the day on which section 32 comes into force, it specifies the date on which section 32 actually comes into force.

40 Short title

The short title of this Act is the Defamation and Malicious Publication (Scotland) Act 2021.