



# Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

## PART 1

### DEFAMATION

#### *Actionability and restrictions on bringing proceedings*

#### **2 Prohibition on public authorities bringing proceedings**

- (1) A public authority may not bring defamation proceedings.
- (2) For the purpose of [subsection \(1\)](#), a public authority is—
  - (a) any institution of central government, including in particular the Scottish Ministers and any non-natural person owned or controlled by them,
  - (b) any institution of local government, including in particular each local authority and any non-natural person that such an authority owns or controls,
  - (c) a court or tribunal,
  - (d) any person or office not falling within paragraphs (a) to (c) whose functions include functions of a public nature (unless excluded by regulations made under subsection (6)).
- (3) But, where the person—
  - (a) is a non-natural person which—
    - (i) has as its primary purpose trading for profit, or
    - (ii) is a charity or has purposes consisting only of one or more charitable purposes, and
  - (b) is not owned or controlled by a public authority,it is not a public authority by reason only of its carrying out functions of a public nature from time to time.
- (4) For the purposes of this section, a non-natural person is owned or controlled by a public authority if the authority—
  - (a) holds (directly or indirectly) the majority of shares or voting rights in it,

- (b) has the right (directly or indirectly) to appoint or remove a majority of the board of directors of it, or
  - (c) has the right to exercise, or actually exercises, significant influence or control over it.
- (5) For the avoidance of doubt, nothing in this section prevents an individual from bringing defamation proceedings in a personal capacity (as distinct from the individual acting in the capacity of an office-holder or employee).
- (6) The Scottish Ministers may by regulations make provision specifying persons or descriptions of persons who are or are not to be treated as a public authority for the purpose of [subsection \(1\)](#).
- (7) Regulations under [subsection \(6\)](#) are subject to the affirmative procedure.
- (8) Before laying a draft of a Scottish statutory instrument containing regulations under [subsection \(6\)](#) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.
- (9) In this section—
  - (a) a reference to a charity is a reference to a non-natural person—
    - (i) registered in the Scottish Charity Register, or
    - (ii) managed or controlled wholly or mainly outwith Scotland and which is registered in a register equivalent to the Scottish Charity Register for the purposes of the country in which it operates,
  - (b) “charitable purposes” is to be construed in accordance with section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005.