



Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

PART 1

DEFAMATION

Actionability and restrictions on bringing proceedings

3 Restriction on proceedings against secondary publishers

- (1) Except as may be provided for under section 4, a right to bring defamation proceedings in respect of a defamatory statement does not accrue against a person unless the person is—
- (a) the author, editor or publisher of the statement, or
 - (b) both—
 - (i) an employee or agent of such a person, and
 - (ii) responsible for the statement's content or the decision to publish it.
- (2) In this section, subject to subsections (3) to (5)—
- “author” means the person from whom the statement originated, but does not include a person who did not intend the statement to be published,
 - “editor” means a person with editorial or equivalent responsibility for the content of the statement or the decision to publish it,
 - “publisher” means a commercial publisher (that is to say, a person whose business is issuing material to the public or to a section of the public) who issues material containing the statement in the course of that business.
- (3) Where a statement is in electronic form, a person is not to be considered the editor of the statement or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it, if—
- (a) the person's involvement with the statement is only—
 - (i) publishing the same statement or providing a means to access the statement (for example a hyperlink) in a manner which does not alter the statement, or

Changes to legislation: There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Section 3. (See end of Document for details)

- (ii) marking the person's interest in, approval of or disapproval of the statement in a manner which does not alter the statement (typically by means of a symbol), and
 - (b) that involvement does not materially increase the harm caused by the publication of the statement.
- (4) A person is not to be considered the author, editor or publisher of a statement or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it, if the person's involvement with the statement is only—
 - (a) printing, producing, distributing or selling printed material containing the statement,
 - (b) processing, making copies of, distributing, exhibiting or selling a film or sound recording (as defined in Part 1 of the Copyright, Designs and Patents Act 1988) containing the statement,
 - (c) processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded,
 - (d) operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form,
 - (e) broadcasting a live programme containing the statement in circumstances in which the person has no effective control over the maker of the statement,
 - (f) operating or providing access to a communications system by means of which another person over whom the person has no effective control transmits the statement or makes it available,
 - (g) moderating the statement (for example, by removing obscene language or correcting typographical errors without altering the substance of the statement).
- (5) Where a person does not fall within subsection (3) (a) or (4) (a) to (g), the court may have regard to those paragraphs by way of analogy in determining whether a person is the author, editor or publisher of a statement (or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it).
- (6) The Scottish Ministers may by regulations modify subsection (3) or (4) to add, amend or remove activities or methods of disseminating or processing material.
- (7) Regulations under subsection (6)—
 - (a) may be made only where the Scottish Ministers consider it appropriate to take account of—
 - (i) technological developments (including obsolescence) relating to the dissemination or processing of material, or
 - (ii) changes in how material is disseminated or processed as a result of such developments, and
 - (b) are subject to the affirmative procedure.
- (8) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (6), the Scottish Ministers must consult such persons as they consider appropriate.

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Commencement Information

II S. 3 in force at 8.8.2022 by S.S.I. 2022/154, **regs. 1(2), 2** (with reg. 4(1))

Changes to legislation:

There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Section 3.