



# Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

## PART 1

### DEFAMATION

#### *Defences*

#### **7 Defence of honest opinion**

- (1) Subject to subsections (5) and (6), it is a defence to defamation proceedings for the defender to show that the conditions in subsections (2) to (4) are met.
- (2) The first condition is that the statement complained of was a statement of opinion.
- (3) The second condition is that the statement indicated, either in general or specific terms, the evidence on which it was based.
- (4) The third condition is that an honest person could have held the opinion conveyed by the statement on the basis of any part of that evidence.
- (5) The defence fails if the pursuer shows that the defender did not genuinely hold the opinion conveyed by the statement.
- (6) Where the statement complained of was published by the defender but made by another person (“the author”)—
  - (a) subsection (5) does not apply, but
  - (b) the defence fails if the pursuer shows that the defender knew, or ought to have known, that the author did not genuinely hold the opinion conveyed by the statement.
- (7) For the purpose of subsection (2), a “statement of opinion” includes a statement which draws an inference of fact.
- (8) For the purpose of subsections (3) and (4), “evidence” means—
  - (a) any fact which existed at the time the statement was published,

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**Changes to legislation:** There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Section 7. (See end of Document for details)

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- (b) anything asserted to be a fact in a privileged statement made available before, or on the same occasion as, the statement complained of, or
  - (c) anything that the defender reasonably believed to be a fact at the time the statement was published.
- (9) For the purpose of subsection (8) (b), a statement is a “privileged statement” if the person responsible for its publication would have one or more of the following defences if defamation proceedings were to be brought in respect of it—
- (a) the defence of publication on a matter of public interest under section 6,
  - (b) the defence of absolute privilege under section 9, or
  - (c) the defence of qualified privilege under section 10 or 11.

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**Commencement Information**

**II** S. 7 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

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