



# 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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*Status: This is the original version (as it was originally enacted).*

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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.