Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

PART 3

GENERAL

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).”.

Commencement Information

I1 S. 32 in force at 8.8.2022 by S.S.I. 2022/154, **regs. 1(2)**, 2

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).".

Commencement Information

I2 S. 33 in force at 8.8.2022 by S.S.I. 2022/154, **regs. 1(2)**, 2 (with reg. 4(2))

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.".

Commencement Information

I3 S. 34 in force at 8.8.2022 by S.S.I. 2022/154, **regs. 1(2)**, 2 (with reg. 4(2))

Changes to legislation:
There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Cross Heading: Limitation.