

DEFAMATION ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 8: Single publication rule

60. This section introduces a single publication rule to prevent an action being brought in relation to publication of the same material by the same publisher after a one year limitation period from the date of the first publication of that material to the public or a section of the public. This replaces the longstanding principle that each publication of defamatory material gives rise to a separate cause of action which is subject to its own limitation period (the “multiple publication rule”).
61. *Subsection (1)* indicates that the provisions apply where a person publishes a statement to the public (defined in *subsection (2)* as including publication to a section of the public), and subsequently publishes that statement or a statement which is substantially the same. The aim is to ensure that the provisions catch publications which have the same content or content which has changed very little so that the essence of the defamatory statement is not substantially different from that contained in the earlier publication. Publication to the public has been selected as the trigger point because it is from this point on that problems are generally encountered with internet publications and in order to stop the new provision catching limited publications leading up to publication to the public at large. The definition in *subsection (2)* is intended to ensure that publications to a limited number of people are covered (for example where a blog has a small group of subscribers or followers).
62. *Subsection (3)* has the effect of ensuring that the limitation period in relation to any cause of action brought in respect of a subsequent publication within scope of the section is treated as having started to run on the date of the first publication.
63. *Subsection (4)* provides that the single publication rule does not apply where the manner of the subsequent publication of the statement is “materially different” from the manner of the first publication. *Subsection (5)* provides that in deciding this issue the matters to which the court may have regard include the level of prominence given to the statement and the extent of the subsequent publication. A possible example of this could be where a story has first appeared relatively obscurely in a section of a website where several clicks need to be gone through to access it, but has subsequently been promoted to a position where it can be directly accessed from the home page of the site, thereby increasing considerably the number of hits it receives.
64. *Subsection (6)* confirms that the section does not affect the court’s discretion under section 32A of the Limitation Act 1980 to allow a defamation action to proceed outside the one year limitation period where it is equitable to do so. It also ensures that the reference in subsection (1)(a) of section 32A to the operation of section 4A of the 1980 Act (section 4A concerns the time limit applicable for defamation actions) is interpreted as a reference to the operation of section 4A together with section 8. Section 32A provides a broad discretion which requires the court to have regard to all the circumstances of the case, and it is envisaged that this will provide a safeguard against injustice in relation to the application of any limitation issue arising under this section.