

Equality Impact Assessment Record

**Defamation and Malicious
Publication (Scotland) Bill**

December 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

EQUALITY IMPACT ASSESSMENT RECORD

Title of legislation	Defamation and Malicious Publication (Scotland) Bill	
Minister	Minister for Community Safety	
Lead official	Michael Paparakis	
Officials involved in the EQIA	Michael Paparakis	Private Law Unit
Directorate: Division: Team	Justice: Civil Law and Legal System; Private Law Unit	
Is this new policy or revision to an existing policy?	New	

Screening

Policy Aim

The Bill implements, in large part, the recommendations of the Scottish Law Commission (“the Commission”) in their Report on Defamation (No. 248), published in December 2017.

The overarching purpose of the Bill is to modernise and simplify the law of defamation. What is already a complex area of law is made more complex because parts are found in cases of some vintage and some others are found in various statutory provisions.

Who will it affect?

The Bill is capable of impacting upon any person or body in Scotland who communicates to a third party. Examples include an individual using social media; newsprint publishers; broadcast media; and internet intermediaries (such as Facebook or Twitter). All forms of communication are currently subject to the law of defamation.

The Bill has no impact on any of the equality groups.

What might prevent the desired outcomes being achieved?

The desired outcomes would not be achieved if Parliament did not pass the Bill or if it was amended in a way that would not achieve the intended simplicity.

Stage 1: Framing

Results of framing exercise

The Bill is capable of impacting upon any person or body in Scotland who communicates to a third party. The proposals in the Bill apply equally to all affected and does not affect certain groups disproportionately.

Extent/Level of EQIA required

Minimal EQIA required.

Stage 2: Data and evidence gathering, involvement and consultation

Not required.

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	<p>The Bill is capable of impacting upon any person or body in Scotland who communicates to a third party. The proposals in the Bill apply equally to all affected and does not affect certain groups disproportionately.</p> <p>Where there are age limits in the law, for example the age at which a person can raise a civil action, this Bill does not change that position.</p>
Advancing equality of opportunity			X	
Promoting good relations among and between different age groups			X	

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	As above.
Advancing equality of opportunity			X	
Promoting good relations among and between disabled and non-disabled people			X	

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above.
Advancing equality of opportunity			X	
Promoting good relations between men and women			X	

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above.
Advancing equality of opportunity			X	
Promoting good race relations			X	

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above.
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership¹	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	As above,

¹ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	No.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ² ?	No.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A.
If not justified, what mitigating action will be undertaken?	N/A.

Describing how Equality Impact analysis has shaped the policy making process

- ◆ The EQIA has confirmed that the Bill does not impact on equality groups.
- ◆ Given that no positive or negative impacts have been identified, no direct changes have been made to this policy as a result of this EQIA.
- ◆ There are no direct implications for finance as a result of this EQIA.

² See EQIA – Setting the Scene for further information on the legislation.

Monitoring and Review

In recognition that the EQIA is an iterative process, the Scottish Government will continue to ensure that full account of equality issues is taken into consideration as the legislation progresses and through the implementation stage.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for Defamation and Malicious Publication (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Gavin Henderson

Position: Deputy Director

Authorisation date: 20 November 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2019

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-381-5 (web only)

Published by The Scottish Government, December 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS669382 (12/19)

W W W . g o v . s c o t