

**Fairer Scotland Duty
Results**

Defamation and Malicious Publication (Scotland) Bill

December 2019



Scottish Government
Riaghaltas na h-Alba
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FAIRER SCOTLAND DUTY RESULTS

<p>Title of Policy or Programme</p>	<p>Defamation and Malicious Publication (Scotland) Bill</p>
<p>Summary of aims and expected outcomes of strategy, proposal, programme or policy</p>	<p>The Bill implements in large part the legislative recommendations contained in the Scottish Law Commission’s (“the Commission”) Report on Defamation. Subsequent to publication of this Report the Scottish Government launched a consultation – <i>Defamation in Scots Law</i> – that sought further views on some aspects of reform.</p> <p>The existing law of defamation in Scotland is piecemeal in nature, scattered across aged common law rules and several statutes. The Bill does not replace completely the Scots common law on defamation, instead placing certain key elements of it on a statutory basis. At the same time, the Bill replaces and restates elements of the existing statutory provisions. The overarching policy objectives of the Bill are to modernise and simplify the law of defamation (and the related action of malicious publication).</p> <p>Amongst other provisions, the Bill:</p> <ul style="list-style-type: none"> • Amends the actionability of potentially defamatory statements so that it is now a pre-requisite that the statement complained of is communicated to a third party – that is a person other than the person who is the subject of the statement complained of; and that the harm caused by such statements must be serious; • Restricts proceedings being brought by a public authority (the Derbyshire principle); • Removes liability from a secondary publisher. A secondary publisher may or may not be defined in law. This is a matter of further discussion amongst the Bill team; • Restates the main defences to an action and introduces a statutory defence of publication in the public interest; • Replaces the multiple publication rule with a single publication version and amends the accrual date for determining the limitation period; • Introduces a new range of remedies including the power to order a summary of its judgement to be published; power to require removal of a statement.

<p>Summary of evidence</p>	<p>The Bill is about re-calibrating the existing balance in Scots law between the competing rights of protection of reputation and freedom of expression.</p> <p>The Bill ensures that those who have been unfairly defamed receive appropriate vindication of their damaged reputation. Most usually, such vindication will take the form of an award of damages. The Bill will, however, also expand the range of discursive remedies available to the court.</p> <p>At the same time, the Bill ensures that an individual's right to freedom of expression is not unduly infringed. In this regard, the Bill re-orientates the law towards protection of reputation and introduces a threshold test to ensure that trivial claims are rejected at an early stage of proceedings.</p> <p>The law aims to ensure that victims are properly compensated. It is about restoring an individual to the situation they would have been in but for the damage done to their reputation – no more and no less. The law does not seek to penalise those who cause the damage, but aims to ensure a fair outcome. Its function is not to address underlying aspects of socio-economic disadvantage.</p>
<p>Summary of assessment findings</p>	<p>This area of the law has a specific aim. Its function is to vindicate, as far as possible, the damaged reputation of the pursuer. At the same time, it balances the competing right of the defender to exercise their right to free expression.</p> <p>In calculating the award the pursuer's socio-economic situation bears no relevance.</p>
<p>Decision</p>	<p>Based on considerations set out above, no changes to the existing policy are proposed.</p>
<p>Sign off (by Deputy Director or above)</p>	<p>Name: Gavin Henderson</p> <p>Job title: Deputy Director, Civil Law and Legal System</p> <p>Date: 20 November 2019</p>



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