

DEFAMATION AND MALICIOUS PUBLICATION (SCOTLAND) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Defamation

Jurisdiction

Section 19: Actions against a person not domiciled in the UK

106. Section 19 lays down a jurisdictional threshold limiting the circumstances in which an action for defamation may competently be brought in a court in Scotland.
107. Subsections (1) and (2) set out the precise limitation of the jurisdiction of the Scottish courts. Subsection (1) provides that the section applies where defamation proceedings are brought in a Scottish court against a person who is not domiciled in the UK.
108. Subsection (2) makes clear that a court in Scotland has jurisdiction to hear and determine such proceedings only if satisfied that, of all the places in which the statement complained about has been published, Scotland is clearly the most appropriate one in which to bring proceedings. The result is that where a statement has been published in Scotland and in other jurisdictions, the court will have to look at the overall global picture. It is intended that this will overcome the problem of courts readily accepting jurisdiction simply because a claimant frames their claim so as to focus on damage which has occurred in this jurisdiction only. This would mean that, for example, if a statement was published 100,000 times in Australia and only 5,000 times in Scotland that would be a good basis on which to conclude that the most appropriate jurisdiction in which to bring an action in respect of the statement was Australia rather than Scotland. There will however be a range of factors which the court may wish to take into account including, for example, the amount of damage to the claimant's reputation in this jurisdiction compared to elsewhere, the extent to which the publication was targeted at a readership in this jurisdiction compared to elsewhere, and whether there is reason to think that the claimant would not receive a fair hearing elsewhere.
109. Subsection (3) provides that references in subsection (2) to the statement complained of are to be taken to include any statement conveying the same, or substantially the same, imputation as the particular statement complained of. This is intended to prevent attempts to circumvent the effect of the section by drawing distinctions between different incarnations of the statement appearing in different jurisdictions, in circumstances where no meaningful distinctions exist.
110. Subsection (4) makes clear that the provision does not affect the opportunity of a defender to take a plea of forum non conveniens. The essence of such a plea is that, although a given court has jurisdiction to determine proceedings, the interests of all the parties involved would be better served if they were determined by a different court, which has concurrent jurisdiction.

*These notes relate to the Defamation and Malicious Publication (Scotland)
Act 2021 (asp 10) which received Royal Assent on 21 April 2021*

111. Subsection (5) sets out the circumstances in which a person will be taken to be domiciled in the UK.
112. Subsection (6) is a transitional provision to make clear that nothing in subsections (1) to (5) have effect in relation to defamation proceedings that have begun before section 19 comes into force.