

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

DEFAMATION AND MALICIOUS PUBLICATION (SCOTLAND) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Defamation

Defences

Section 8: Abolition of common law defences and transitional provision

62. Section 8 provides for the abolition of a number of common law defences, for which statutory equivalents are introduced, in some form, by the Act (see section 4(2) and sections 5 to 7). These are the defences of innocent dissemination, veritas (i.e. truth), the Reynolds defence (which, as noted above, includes reportage) and the defence of fair comment. While abolishing the common law defences means that the courts would be required to apply the words used in the statute, the current case law would constitute a helpful (albeit not binding) guide to interpreting how the statutory defences should be applied. A court may, when interpreting the new statutory defences in sections 5 - 7, take into account case law on the common law defences where it considers it appropriate to do so.
63. Subsection (2) is a transitional provision to make clear that nothing in sections 5 to 7 (i.e. the new statutory defences) or subsection (1) (i.e. the abolition of common law defences) has effect in relation to defamation proceedings if the right to bring the proceedings accrued before the commencement of the provision in question.