

## POLICY NOTE

### THE DEFAMATION AND MALICIOUS PUBLICATION (SCOTLAND) ACT 2021 (COMMENCEMENT AND TRANSITIONAL PROVISION) REGULATIONS 2022

#### SSI 2022/154 (C. 10)

The above instrument was made in exercise of the powers conferred by section 39(2), (3) and (4) of the Defamation and Malicious Publication (Scotland) Act 2021.<sup>1</sup> The instrument is laid but not subject to further parliamentary procedure.

#### **Purpose of the instrument.**

The purpose of the instrument is to commence the substantive provisions of the Defamation and Malicious Publication (Scotland) Act 2021 (hereafter referred to as “the 2021 Act”). These substantive provisions come into force on **08 August 2022**.

#### **Policy Objectives**

The existing law of defamation in Scotland is piecemeal in nature, scattered across aged common law rules and several statutes. The Defamation and Malicious Publication (Scotland) Act 2021 implements all the substantive recommendations of the Scottish Law Commission made in their Report on Defamation.<sup>2</sup>

The law of defamation has to strike the right balance between two values that sometimes pull in different directions - the principles of freedom of expression and protection of reputation. Both are fundamental human rights and are of vital importance in a modern democracy. The law of defamation has a central part to play in safeguarding both these rights.

The 2021 Act modernises and simplifies the law of defamation (and the related action of malicious publication) in Scotland in order to strike a more appropriate balance between freedom of expression and the protection of individual reputation; and clarifies the law while improving its accessibility. The Explanatory Notes to the 2021 Act contain detail on each of the sections of the Act.<sup>3</sup>

Regulation 4 of these Regulations makes clear that section 2 (prohibition on public authorities bringing proceedings), section 3 (restriction on proceedings against secondary publishers), section 33 (interruption of limitation period: mediation) and section 34 (interruption of limitation period: media complaints and expert determination) of the 2021 Act have no effect in relation to any right of action for defamation where the right to bring such proceedings accrued before the coming into force date of 08 August 2022. This will help to ensure that these sections do not have retrospective effect on any right of action that accrued before the coming into force date.

#### **Impact Assessments**

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<sup>1</sup> Available at <https://www.legislation.gov.uk/asp/2021/10/contents/enacted>

<sup>2</sup> Available at

[https://www.scotlawcom.gov.uk/files/7315/1316/5353/Report\\_on\\_Defamation\\_Report\\_No\\_248.pdf](https://www.scotlawcom.gov.uk/files/7315/1316/5353/Report_on_Defamation_Report_No_248.pdf)

<sup>3</sup> Available at <https://www.legislation.gov.uk/asp/2021/10/notes/contents>

No impact assessments have been prepared for these commencement Regulations. The Scottish Government, however, published impact assessments when the Defamation and Malicious Publication (Scotland) Bill was Introduced.

1. Fairer Scotland Duty – available at <https://www.gov.scot/publications/fairer-scotland-duty-impact-assessment-defamation-malicious-publication-scotland-bill/>
2. Data Protection Impact Assessment – available at <https://www.gov.scot/publications/data-protection-impact-assessment-defamation-malicious-publication-scotland-bill/>
3. Child Rights and Wellbeing Impact Assessment – available at <https://www.gov.scot/publications/child-rights-wellbeing-impact-assessment-defamation-malicious-publication-scotland-bill/>
4. Equality Impact Assessment – available at <https://www.gov.scot/publications/equality-impact-assessment-defamation-malicious-publication-scotland-bill/>

### **Financial Effects**

The financial effects of the 2021 Act are detailed in the Business and Regulatory Impact Assessment (BRIA)<sup>4</sup> and Financial Memorandum<sup>5</sup> prepared in respect of the Bill that preceded the 2021 Act. No significant financial effects are expected as a consequence of these Regulations.

**Scottish Government**  
**Justice Directorate**  
**May 2022**

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<sup>4</sup> Available at [https://www.scotlawcom.gov.uk/files/2415/1316/5437/BRIA - Report on Defamation Report No 248.pdf](https://www.scotlawcom.gov.uk/files/2415/1316/5437/BRIA_-_Report_on_Defamation_Report_No_248.pdf)

<sup>5</sup> Available at <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/defamation-and-malicious-publication-scotland-bill/introduced/financial-memorandum-defamation-and-malicious-publication-scotland-bill.pdf>