

## **DEFAMATION ACT 2013**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Section 7: Reports etc protected by privilege***

49. This section amends the provisions contained in the 1996 Act relating to the defences of absolute and qualified privilege to extend the circumstances in which these defences can be used.
50. *Subsection (1)* replaces subsection (3) of section 14 of the 1996 Act, which concerns the absolute privilege applying to fair and accurate contemporaneous reports of court proceedings. Subsection (3) of section 14 currently provides for absolute privilege to apply to fair and accurate reports of proceedings in public before any court in the UK; the European Court of Justice or any court attached to that court; the European Court of Human Rights; and any international criminal tribunal established by the Security Council of the United Nations or by an international agreement to which the UK is a party. *Subsection (1)* replaces this with a new subsection, which extends the scope of the defence so that it also covers proceedings in any court established under the law of a country or territory outside the United Kingdom, and any international court or tribunal established by the Security Council of the United Nations or by an international agreement.
51. *Subsection (2)* amends section 15(3) of the 1996 Act by substituting the phrase “public interest” for “public concern”, so that the subsection reads “This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit”. This is intended to prevent any confusion arising from the use of two different terms with equivalent meaning in this Act and in the 1996 Act. *Subsection (6)(b)* makes the same amendment to paragraph 12(2) of Schedule 1 to the 1996 Act in relation to the privilege extended to fair and accurate reports etc of public meetings.
52. *Subsections (3) to (10)* make amendments to Part 2 of Schedule 1 to the 1996 Act in a number of areas so as to extend the circumstances in which the defence of qualified privilege is available. Section 15 of and Schedule 1 to the 1996 Act currently provide for qualified privilege to apply to various types of report or statement, provided the report or statement is fair and accurate, on a matter of public concern, and that publication is for the public benefit and made without malice. Part 1 of Schedule 1 sets out categories of publication which attract qualified privilege without explanation or contradiction. These include fair and accurate reports of proceedings in public, anywhere in the world, of legislatures (both national and local), courts, public inquiries, and international organisations or conferences, and documents, notices and other matter published by these bodies.
53. Part 2 of Schedule 1 sets out categories of publication which have the protection of qualified privilege unless the publisher refuses or neglects to publish, in a suitable manner, a reasonable letter or statement by way of explanation or correction when requested to do so. These include copies of or extracts from information for the public published by government or authorities performing governmental functions (such as

the police) or by courts; reports of proceedings at a range of public meetings (e.g. of local authorities) general meetings of UK public companies; and reports of findings or decisions by a range of associations formed in the UK or the European Union (such as associations relating to art, science, religion or learning, trade associations, sports associations and charitable associations).

54. In addition to the protection already offered to fair and accurate copies of or extracts from the different types of publication to which the defence is extended, amendments are made by *subsections (4), (7)(b) and (10)* of the section to extend the scope of qualified privilege to cover fair and accurate summaries of the material. For example, *subsection (4)* extends the defence to summaries of notices or other matter issued for the information of the public by a number of governmental bodies, and to summaries of documents made available by the courts.
55. Currently qualified privilege under Part 1 of Schedule 1 extends to fair and accurate reports of proceedings in public of a legislature; before a court; and in a number of other forums anywhere in the world. However, qualified privilege under Part 2 only applies to publications arising in the UK and EU member states. *Subsections (4), (6)(a), (7), and (8)* extend the scope of the defence to cover the different types of publication to which the defence extends anywhere in the world. For example, *subsection (6)* does this for reports of proceedings at public meetings, and *subsection (8)* for reports of certain kinds of associations.
56. *Subsection (5)* provides for qualified privilege to extend to a fair and accurate report of proceedings at a press conference held anywhere in the world for the discussion of a matter of public interest. Under the current law as articulated in the case of *McCartan Turkington Breen v Times Newspapers Ltd*<sup>1</sup>, it appears that a press conference would fall within the scope of a “public meeting” under paragraph 12 of Schedule 1 to the 1996 Act. This provision has been included in the Act to clarify the position.
57. Currently Part 2 qualified privilege extends only to fair and accurate reports of proceedings at general meetings and documents circulated by UK public companies (paragraph 13). *Subsection (7)* of the section extends this to reports relating to public companies elsewhere in the world. It achieves this by extending the provision to “listed companies” within the meaning of Part 12 of the Corporation Tax Act 2009 with a view to ensuring that broadly the same types of companies are covered by the provision in the UK and abroad. It also extends a provision in the 1996 Act (which provides for qualified privilege to be available in respect of a fair and accurate copy etc of material circulated to members of a listed company relating to the appointment, resignation, retirement or dismissal of directors of the company) to such material relating to the company’s auditors.
58. *Subsection (9)* inserts a new paragraph into Schedule 1 to the 1996 Act to extend Part 2 qualified privilege to fair and accurate reports of proceedings of a scientific or academic conference, and to copies, extracts and summaries of matter published by such conferences. It is possible in certain circumstances that Part 2 qualified privilege may already apply to academic and scientific conferences (either where they fall within the description of a public meeting in paragraph 12, or where findings or decisions are published by a scientific or academic association (paragraph 14)). The amendments made by *subsection (9)* will however ensure that there is not a gap.
59. *Subsection (11)* substitutes new general provisions in Schedule 1 to reflect the changes that have been made to the substance of the Schedule. It also removes provisions allowing for orders to be made by the Lord Chancellor identifying “corresponding proceedings” for the purposes of paragraph 11(3) of the Schedule, and “corresponding meetings and documents” for the purposes of paragraph 13(5). The provision relating to paragraph 13(5) no longer has any application in the light of the amendments made to that paragraph by *subsection (7)*, while the power in relation to paragraph 11(3)

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<sup>1</sup> [2001] 2 AC 277.

*These notes refer to the Defamation Act 2013 (c.26)  
which received Royal Assent on 25April 2013*

has never been exercised and the amendment leaves the provision to take its natural meaning.