

# Defamation and Malicious Publication (Scotland) Bill

## **Corrected Groupings of Amendments for Stage 2**

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated at Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### **Groupings of amendments**

#### **Actionability of defamatory statements**

29, 30, 31, 32, 36

*Notes on amendments in this group*

Amendment 29 pre-empts amendments 30, 31 and 32

#### **Prohibition on public authorities bringing proceedings**

1, 33, 2, 3, 34, 4, 35

*Notes on amendments in this group*

Amendment 33 pre-empts amendment 2

#### **Secondary publishers**

5, 6, 7, 37

#### **Offer to make amends: amount of court awarded compensation**

8

#### **Changes required as a result of EU exit: Jurisdiction and information society services**

9, 10, 11, 12, 28

#### **Malicious publication**

13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

#### **Powers of court in relation to a statement**

38

#### **Limitation**

26, 27

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**Amendments in debating order**

**Actionability of defamatory statements**

**Andy Wightman**

- 29 In section 1, page 1, line 7, leave out subsections (1) to (3)

**Andy Wightman**

- 30 In section 1, page 1, line 11, leave out <serious> and insert <actual>

**Andy Wightman**

- 31 In section 1, page 1, line 14, leave out <serious> and insert <actual>

**Andy Wightman**

- 32 In section 1, page 1, line 15, leave out <serious> and insert <significant>

**Andy Wightman**

- 36 In section 5, page 4, line 36, leave out <serious>

**Prohibition on public authorities bringing proceedings**

**Ash Denham**

- 1 In section 2, page 2, line 3, leave out from <person> to the end of line 4 and insert <public authority is—
- (a) any institution of central government, including in particular the Scottish Ministers and any non-natural person owned or controlled by them,
  - (b) any institution of local government, including in particular each local authority and any non-natural person that such an authority owns or controls,
  - (c) a court or tribunal,
  - (d) any person or office not falling within paragraphs (a) to (c) whose functions include functions of a public nature (unless excluded by regulations made under subsection (6)).>

**John Finnie**

- 33 In section 2, page 2, line 5, leave out subsections (3) and (4)

**Ash Denham**

- 2 In section 2, page 2, line 13, leave out <subsection (3)(b)> and insert <this section>

**Ash Denham**

- 3 In section 2, page 2, line 22, after <office-holder> insert <or employee>

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### **John Finnie**

- 34 In section 2, page 2, line 23, at beginning insert <Subject to subsection (6A)>

### **Ash Denham**

- 4 In section 2, page 2, line 24, after <are> insert <or are>

### **John Finnie**

- 35 In section 2, page 2, line 25, at end insert—

<(6A) Regulations under subsection (6) must not specify a person or description of a person who is not to be treated as a public authority for the purposes of subsection (1) where the person—

(a) is a non-natural person which—

(i) has as its primary purpose trading for profit, or

(ii) is a charity or has purposes consisting only of one or more charitable purposes, and

(b) is not owned or controlled by a public authority.

(6B) For the purposes of subsection (6A)(b), a non-natural person is owned or controlled by a public authority if the authority—

(a) holds (directly or indirectly) the majority of shares or voting rights in it,

(b) has the right (directly or indirectly) to appoint or remove a majority of the board of directors of it, or

(c) has the right to exercise, or actually exercises, significant influence or control over it.>

## **Secondary publishers**

### **Ash Denham**

- 5 In section 3, page 3, line 18, after <statement> insert <or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it,>

### **Ash Denham**

- 6 In section 3, page 3, line 28, after <statement> insert <or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it,>

### **Ash Denham**

- 7 In section 3, page 4, line 5, after <statement> insert <(or, in the case of an employee or agent of such a person, responsible for its content or the decision to publish it)>

### **Liam Kerr**

- 37 In section 3, page 4, line 7, after <material> insert <in order to reflect technological developments and changes in use of technology for dissemination of materials and information>

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**Offer to make amends: amount of court awarded compensation**

**Ash Denham**

- 8 In section 14, page 9, line 28, at end insert—  
<and may reduce or increase the amount to be paid from that offered (if any) accordingly.>

**Changes required as a result of EU exit: Jurisdiction and information society services**

**Ash Denham**

- 9 In section 19, page 11, leave out lines 19 and 20

**Ash Denham**

- 10 In section 19, page 11, line 30, leave out subsection (5) and insert—  
<(5A)Sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether an individual, corporation or association is regarded as domiciled in the United Kingdom.>

**Ash Denham**

- 11 In section 19, page 11, line 36, leave out subsection (6)

**Ash Denham**

- 12 In section 19, page 12, line 9, leave out <(6)> and insert <(5A)>

**Ash Denham**

- 28 Leave out section 34

**Malicious publication**

**Liam Kerr**

- 13 Before section 21, insert—  
**<Actionability of malicious statements**
- (1) This section applies to a false and malicious statement made or published by a person (A) about another person (B).
  - (2) A right to bring proceedings in respect of the statement accrues only if—
    - (a) A has published the statement to a person other than B, and
    - (b) the publication of the statement has caused (or is likely to cause) serious harm to the reputation of B.
  - (3) For the purposes of subsection (2)(b), where B is a non-natural person which has as its primary purpose trading for profit, harm to B's reputation is not "serious harm" unless it has caused (or is likely to cause) B serious financial loss.

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- (4) For the purposes of this Act, unless the context otherwise requires—
- (a) a reference to publishing a statement is a reference to communicating the statement by any means to a person in a manner that the person can access and understand, and
  - (b) a statement is published when the recipient has seen or heard it.
- (5) Nothing in this section affects a right to bring proceedings which accrued before the commencement of this section.>

**Ash Denham**

- 14 In section 21, page 12, line 31, leave out <either> and insert <both>

**Ash Denham**

- 15 In section 21, page 12, line 32, after second <was> insert <recklessly>

**Ash Denham**

- 16 In section 21, page 12, line 33, leave out <or> and insert <and>

**Ash Denham**

- 17 In section 22, page 13, line 13, leave out <either> and insert <both>

**Ash Denham**

- 18 In section 22, page 13, line 14, after second <was> insert <recklessly>

**Ash Denham**

- 19 In section 22, page 13, line 15, leave out <or> and insert <and>

**Ash Denham**

- 20 In section 23, page 13, line 32, leave out <either> and insert <both>

**Ash Denham**

- 21 In section 23, page 13, line 33, after second <was> insert <recklessly>

**Ash Denham**

- 22 In section 23, page 13, line 34, leave out <or> and insert <and>

**Liam Kerr**

- 23 In section 24, page 14, line 2, at the beginning insert <Subject to subsection (2),>

**Liam Kerr**

- 24 In section 24, page 14, line 3, at end insert—

<(2) The Court of Session may by act of sederunt make provision as to the minimum level of financial loss to a pursuer before proceedings can be brought.>

**Liam Kerr**

- 25 After section 26, insert—

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### <Defences

The defences under sections 5 to 7 of this Act in relation to defamation proceedings under Part 1 also apply to proceedings brought under this Part.>

### Powers of court in relation to a statement

#### Fulton MacGregor

- 38 In section 30, page 15, line 13, leave out <remove the statement> and insert <state in a prominent location on the website that the statement is subject to such proceedings>

### Limitation

#### Liam Kerr

- 26 In section 32, page 15, line 32, at end insert—

<“(1ZA) Notwithstanding the provisions of section 19A, the court may, if it seems to it equitable to do so, allow a person to bring the action after the end of the period of 1 year beginning with the date when the right of action accrued.>

#### Liam Kerr

- 27 After section 33, insert—

#### <Interruption of limitation period: alternative dispute resolution

After section 19CB of the Prescription and Limitation (Scotland) Act 1973 (interruption of section 18A(1) limitation period: mediation) insert—

#### “19CC Interruption of section 18A(1) limitation period: alternative dispute resolution

- (1) In any computation of the period specified in section 18A(1), any period of alternative dispute resolution in relation to a relevant matter is to be disregarded.
- (2) For the purposes of this section, a period of alternative dispute resolution—
  - (a) begins on such day as the court determines, and
  - (b) ends on such day as the parties may agree or, otherwise, on the day—
    - (i) on which a party notifies another party that they are withdrawing from the alternative dispute resolution, or
    - (ii) which falls 14 days after the day on which a party makes a request for confirmation that another party is continuing with the alternative dispute resolution (and no response has been received).
- (3) In this section “alternative dispute resolution” includes expert determination and press or ombudsman complaints processes.
- (4) This section does not apply to a cross-border dispute within the meaning given by section 19F(4).”>

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