

Dear Lord Pentland,

I am delighted that the Scottish Law Commission is working to reform the out-dated and inadequate defamation law in Scotland. I believe the law as it stands threatens free expression and enables powerful and wealthy pursuers to silence legitimate criticism and debate both online and off.

The proposed reform is a step in the right direction. It is vital that a statement should be required to be communicated to a 3rd party and I am supportive of the inclusion of a serious harm test, as well as a public interest and honest opinion defence. Similarly, I believe it is important to move to a single publication rule and reduce the period within which a defamation action can be brought, as well as bringing the Derbyshire Principle into law to ensure public bodies cannot bring proceedings.

While there is much to be optimistic about, this falls short in a number of important ways that should be addressed. These include:

- Making it unlawful for private companies to bring defamation proceedings and establishing methods by which restrictions cannot be weakened through private proceedings;
- Ensuring the public interest defence is as strong as the defence outlined in the 2013 Defamation Act in England and Wales.
- Establishing a definition of an “editor” that protects online expression including social media users;
- Ensuring modifications to the bill are made through primary legislation, so that robust and transparent scrutiny can take place;

These are vital reforms that ensure free expression can be robustly protected and not controlled by vested interests. The vibrant exchange of ideas and opinions is a vital underpinning of democracy and I hope soon we will have the laws in place to protect everyone who takes part.

Kind regards,
Jean Rafferty