

The Publishers Association response to the Consultation Draft of the Defamation and Malicious Publications (Scotland) Bill

The Publishers Association (the PA) represents book, journal, audio and electronic publishers in all parts of the UK, spanning fiction and non-fiction, academic and educational publishing. Defamation is a significant concern to many of our members – particularly publishers who publish biographies and autobiographies, or to trade and academic publishers whose authors express their opinions.

The PA welcomes the proposals in the working draft to update the defamation law in Scotland and to bring it more into line with the changes introduced in the Defamation Act 2013 in England and Wales.

The PA particularly welcomes proposals to:

- **Introduce a serious harm test** – We believe this will reduce the threat of a defamation claim as a way to curb freedom of expression and would particularly help smaller publishers which have limited funds to fight defamation claims. The introduction of this test in England and Wales demonstrates that whilst helping to deter spurious defamation claims, it has not created an insurmountable barrier to valid ones.
- **Put the public interest, truth and honest opinion defences on a statutory footing** - Putting these defences on a statutory footing would clarify and strengthen the law and end the confusion over common law principles, making it easier for those seeking to exercise their right to free speech.
- **Introduce a single publication rule** - This is particularly important to commercial publishers because it ensures they are not put at risk every time existing material published online is accessed by a new user and in the physical context for the sale of back list titles.
- **Give qualified privilege to peer reviewed journal articles and reports of scientific and academic conferences** – This is a welcome move but as academic journal publishers and editors are often sued for defamation for their news sections, it is still important for them to also be able to rely on a strong public interest defence.
- **Reduce the limitation period for actions to one year**
- **Require businesses to demonstrate serious financial loss** - We believe that corporations should not be able to sue unless they can demonstrate special damages (substantial financial loss to the company).
- **Removal of presumption in favour of jury trials in defamation cases** - Trial by jury adds to the cost of cases being brought, increases the scope for variance in the verdicts and is often not appropriate in complex technical cases such as libel.

We also support the decision not to extend defamation to the deceased. As the Commission notes, although this is a delicate issue the introduction of this would thwart historical research of the kind that has enabled the abuse perpetrated by Jimmy Saville to come to light and would fundamentally alter the nature of defamation.

Overall, we believe these reforms take account of the new platforms and methods of publication used by publishers, and ensures that differences in the law between Scotland and England and Wales do not act as a barrier to freedom of speech or freedom to publish. These reforms will have a positive impact on free speech, while still balancing the rights of claimants wishing to protect their reputations.

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