



# Scottish Law Commission

*promoting law reform*

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## **Defamation law: time for change?**

Today the Scottish Law Commission, Scotland's independent law reform body, publishes a discussion paper on defamation law. The background to the project is that the law of England and Wales was modernised in 2013. Changes were made to tackle "libel tourism"; claims being brought in the English courts on the back of minimal publication there. There was said to be a chilling effect on freedom of speech. Another factor behind the project is that many of the issues have a cross-border dimension. Publishers and media organisations often operate on a UK wide basis; it can create practical difficulties when there are different rules in different parts of the United Kingdom.

Defamation law is not only of interest and importance to newspapers, broadcasters and commercial publishers; it can potentially affect everyone. With the phenomenal growth in social media and the internet many people now communicate more openly and rapidly on a whole range of issues to a much greater extent than was previously possible.

The paper explains Scots law in key areas and examines possible improvements. It discusses, for example, whether there should be a new threshold test so that a claim can be brought only where a publication has caused a certain level of harm to a claimant's reputation. This might help to filter out claims where very little is at stake. The paper also considers whether the defences of truth, fair comment and publication on a matter of public interest should be clarified and expressed in modern form.

A further issue considered is where responsibility for online publication should lie. The paper asks if the courts should be given power to order removal of a defamatory statement from a website. It also examines whether it should be possible for defamation claims to be brought where the reputation of a deceased person has been unfairly attacked after his or her death. At present this is not possible.

Lord Pentland, leading the project, said:

"Defamation law potentially affects everyone. It is at the cutting edge of freedom of expression and protection of reputation; two important human rights. The law in this area must be in tune with the values of modern society. We hope that as many people as possible will read our discussion paper and give us their views on the questions we ask.

That will allow us to recommend changes to ensure that the law is up to date and in line with current thinking and practice.”

## NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Caroline Drummond, David Johnston QC, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Dr Heike Gading, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)).
3. The paper may be viewed on our website at <http://www.scotlawcom.gov.uk>.