

Defamation review bids to make law 'fit for the internet age'

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SCOTLAND's defamation law is to be overhauled to make it "fit for the internet age".

A major review of legislation has been launched amid concerns the country's failure to match English libel reform is having a chilling effect on free speech.

The Scottish Law Commission, which advises Holyrood on legislative reform, will look at laws drafted decades before the rise of Twitter, Facebook and mass electronic publication.

Its chairman, Paul Cullen, the judge Lord Pentland, said the Commission wanted to ensure the law was "fit for the internet age".

He added: "Freedom of speech and the right to privacy are fundamental values in our society; the law of defamation has a central part to play in safeguarding both these rights."

Scotland has failed to follow reforms in England and Wales, much of which came into force last year.

This legislation introduced a test of "substantial harm" designed to limit the exposure of publishers to defamation actions – and provided a new public interest defence for whistleblowers.

It was also designed to end "libel tourism" which had seen Russian oligarchs and Indian magnates sue in London courts, claiming the internet meant publication was global.

The Libel Reform Campaign – which led the drive for the new English law – now fears such libel tourists are heading north to Edinburgh.

Robert Sharp, of freedom of expression group English PEN and the Libel Reform Campaign, said: "The worrying gap between protections in England and Wales and Scotland is allowing a chilling loophole to exist."

The internet, and in particular social media, means that defamatory statements published in England, for example, could almost certainly be deemed to have been published in Scotland.

So somebody who believes they have been defamed online – in, for example, the electronic version of a newspaper, story can now choose where to sue.

A spokesman for freedom of expression group Scottish PEN, welcoming the Commission review, said: "The current disparity between Scottish and English

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law causes confusion for publishers on both sides of the border. It forces publishers, journalists and writers throughout the UK to be more risk averse to avoid being sued in Scotland.

"In particular, newer online media outlets face significant challenges with defamation law as it currently

stands. They are less easily able to contest defamation cases because of the legal fees involved, so cannot be as daring in what they publish.

"We're not just campaigning on this to plug a loophole – we're trying to put in place a structure that supports a healthier media landscape in Scotland.

"If the law is changed it could positively affect smaller

campaigning organisations and individuals. While the internet allows them to more easily discuss issues, distribute information and organise campaigns, unless they are well-tutored in defamation case law, it's too easy for them to fall prey to cease and desist orders or gags."

The Scottish Government, which has said its position on defamation is "under review".