

Child Rights and Wellbeing Impact Assessment

Defamation and Malicious Publication (Scotland) Bill

December 2019

**CRWIA Stage 1
Screening - key questions**

1. Name the policy, and describe its overall aims.

Defamation and Malicious Publication (Scotland) Bill

The Bill implements in large part the legislative recommendations contained in the Scottish Law Commission's ("the Commission") 2017 Report on Defamation. In 2019, the Scottish Government published a consultation that sought further views on some of the Commission's reform proposals and some issues not previously consulted on.

The overarching policy objectives of the Bill are to modernise and simplify the law of defamation (and the related action of malicious publication).

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

In general, the law of defamation is capable of impacting any person or organisation in Scotland involved in communicating a statement about someone to a person other than the person who is the subject of the statement complained of. It does not affect certain groups disproportionately.

Specifically, with regards to children and young people, the age of capacity to commit delictual acts such as communicating a defamatory statement, is considered to be 12 years old. Further, given that a child does not have legal capacity under the age of 16, the Bill is most likely to affect children aged 16-18, and makes no provision that alters this current situation as set out.

The proposals in the Bill apply equally to all persons, regardless of age.

3. What likely impact – direct or indirect – will the policy/measure have on children and young people?

The provisions of the Bill directly affect the right to freedom of expression (Article 13) and protection of individual reputation (Article 16). These rights adhere in all individuals regardless of age. Overall, the Bill seeks to re-calibrate the current balance in Scots law.

The Bill may have an indirect impact upon those groups of children and young people to the extent that they are liable or have title to sue. Individuals are now content creators. This has the potential to bring them into contact with defamation law.

According to the Office of National Statistics, young adults (aged 16-24 years) are more likely to use social media and upload user generated content than older generations.¹ They are also just as likely to read news online but at the same time less likely to post on civic or political issues. Given this, defamation law reform

¹ See <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/datasets/internetaccesshouseholdsandindividualsreferencetables>

could affect children and young persons to the extent that they are liable or have title to sue.

The range of provisions contained in this Bill provides protection for individual reputation and freedom of expression. Overall, the Bill more appropriately balances these two sometimes competing rights by enabling those who have been defamed to protect their reputations, but equally ensures that freedom of expression is not unjustifiably interfered with by defamation actions or the threat of them where little is at stake; or where there has been no damage to *reputation*, as opposed to self-esteem.

Given the proposed reforms, we do not anticipate any direct impact on children and young people, and any potential indirect impact is likely to be offset by the protections afforded freedom of expression in our proposals.

4. Which groups of children and young people will be affected?

There are no particular groups of children and young people who are more likely to be affected than others.

5. Will this require a CRWIA?

No. A CRWIA is not required as, overall, the Bill does not alter the current law on children and young people's liability and title to sue in delictual actions. Further, any increased contact with defamation law is likely to be offset by the protections for freedom of expression proposed –including communication to a third party, threshold test of serious harm and the reduced limitation period.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

No – not required.

Authorisation

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20 November 2019

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20 November 2019



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