
EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 5 of the Defamation Act 2013 (“the Act”) (c.26) provides a defence for the operator of a website where a defamation action is brought in respect of a statement posted on that website if it was not the operator who posted the statement. The defence can be defeated if the claimant can show that it was not possible for them to identify the person posting the statement, the claimant gave the operator a notice of complaint in relation to that statement and the operator did not respond to the notice of complaint in accordance with these regulations.

Regulation 1 makes provision in paragraph (3) about the calculation of the time limits which apply to actions which must be taken by the website operator. Its effect is to exclude from the calculation of the 48 hour period any time which occurs on a weekend or public holiday.

Regulation 2 sets out the information which must be contained in a notice of complaint in order for it to be valid. These requirements are additional to the requirements set out in section 5(6)(a) to (c) of the Act.

Regulation 3 and the Schedule provide for the steps which a website operator must take on receiving a valid notice of complaint in order to benefit from the defence provided by section 5 of the Act.

Regulation 4 applies where a website operator receives a notice alleging that a statement on the operator’s website is defamatory but that notice does not comply with section 5(6) of the Act and these regulations. In such a case these provisions provide that, in order to benefit from the defence in section 5 of the Act, the website operator must notify the person making the complaint of the requirements of the Act and these regulations.

Regulation 5 gives the court discretion to treat any action which was taken outside the time required by regulation 4 and the Schedule to be treated as though it was taken within that time limit. The court may exercise this discretion if it considers it in the interests of justice to do so.

An impact assessment has not been produced for these regulations but an impact assessment was produced for the relevant part of the Defamation Bill and the relevant section is available alongside this instrument on www.legislation.gov.uk.