

# **APOLOGIES (SCOTLAND) ACT 2016**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Parliament's Non-Government Bills Unit in order to assist the reader of the Apologies (Scotland) Act 2016 ("the Act"). They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act gives legal protection to an apology, in certain circumstances. It provides that an apology (as defined in terms of the Act) is inadmissible in certain civil proceedings as evidence of anything relevant to the determination of liability, and cannot otherwise be used to the prejudice of the person making the apology (or on whose behalf it is made). The Act has the broader purpose of encouraging a cultural and social change in attitudes towards apologising.

### **COMMENTARY ON SECTIONS**

#### *The structure of the Act*

4. [Sections 1 to 3](#) comprise the main provisions of the Act. In turn, those provisions deal with the effect of an apology in legal proceedings, then set out the proceedings which are covered, and provide a definition of an apology for the purpose of the Act. [Section 4](#) provides that the Act only applies to apologies made after [section 1](#) of the Act has come into force, and only in relation to legal proceedings begun after that time. [Section 5](#) deals with commencement and [section 6](#) sets out the short title of the Act.

#### *[Section 1](#) – Effect of apology in legal proceedings*

5. [Section 1](#) sets out the effect of an apology made outside the legal proceedings to which the Act applies (namely, the proceedings referred to in [section 2](#)). An apology, as defined in [section 3](#) of the Act, is not admissible as evidence of anything relevant to the determination of liability and cannot be used in any other way to the prejudice of the person by or on behalf of whom the apology was made. [Section 1\(b\)](#) would not prevent an apology being used as evidence where to do so would have a favourable effect on the person making such an apology.

#### *[Section 2](#) – Legal proceedings covered*

6. [Section 2](#) sets out the legal proceedings which are covered by the Act.
7. Under subsection (1) all civil proceedings are covered, with the exception of certain types of inquiry under the Inquiries Act 2005, proceedings under the Children's

*These notes relate to the Apologies (Scotland) Act 2016  
(asp 5) which received Royal Assent on 23 February 2016*

Hearings (Scotland) Act 2011, fatal accident inquiries (FAIs) or other inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, and defamation proceedings.

8. The exception of inquiries (including joint inquiries) which the Scottish Ministers cause to be held under section 1 of the Inquiries Act 2005, or which they convert (under section 15 of that Act) into inquiries under that Act, means that an apology will continue to be admissible as evidence in these proceedings.
9. The exception of proceedings under the Children’s Hearings (Scotland) Act 2011 means that an apology will continue to be admissible in, and capable of being relied on as evidence in, proceedings (under that Act) before a children’s hearing, a pre-hearing panel or a court.
10. Under subsection (2) a further exception applies to apologies made in the context of the duty of candour procedure set out in Part 2 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill, introduced on 4 June 2015 and, at the time these Notes were published, still before the Scottish Parliament (SP Bill 73, Session 4 (2015)). Under Part 2 of that Bill, an apology made in the context of the duty of candour procedure does not of itself amount to an admission of negligence or a breach of a statutory duty. The inclusion of this exception avoids any overlap between this procedure and the Act in terms of how apologies made in the context of the duty of candour procedure are treated.
11. While the Act applies to most civil proceedings, it does not cover criminal proceedings and this is confirmed by subsection (3).
12. Subsection (4) enables the Scottish Ministers, by regulations, to modify the exceptions in subsections (1) and (2). The power can be used to add an exception, vary the description of an exception or remove an exception.
13. Regulations made under subsection (4) are subject to the affirmative procedure (subsection (5)): that is, any such regulations require the approval of the Parliament by resolution.
14. By virtue of subsection (6), those regulations can include transitional, transitory or saving provision.

### ***Section 3 – Definition of apology***

15. **Section 3** sets out what is meant by “apology” for the purposes of the Act.
16. This provides that an apology is a statement (which could be written or oral) made either by the person who is apologising (whether a natural person, or a legal person such as a company), or by someone else on their behalf (e.g. a spokesperson or agent). The core element is an indication that the person is sorry about, or regrets, an act, omission or outcome. Where the statement includes an undertaking to look at the circumstances with a view to preventing a recurrence, that qualifies as part of the apology itself. The definition of apology for the purpose of the Act does not include statements of fact or admissions of fault. In any statement that includes both an apology and a statement of fact and/or admission of fault, only the apology is inadmissible as evidence of liability.

### ***Section 4 – No retrospective effect***

17. **Section 4** provides that the Act only applies to apologies made after section 1 of the Act comes into force, and only to legal proceedings which began after section 1 was commenced (even if the matters apologised for took place earlier). As such, the Act will have no retrospective application.

**Section 5 – Commencement**

18. **Section 5** provides that it and section 6 come into force on the day after Royal Assent. The Scottish Ministers may make commencement regulations bringing the remaining provisions of the Act into force on a day or days they specify in the regulations. Commencement regulations may include transitional, transitory or saving provision and may appoint different days for different purposes.

**PARLIAMENTARY HISTORY**

19. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the Official Report of those proceedings. It also shows the dates on which Committee reports and other papers relating to the Bill were published, and gives references to those reports and other papers.

<i><b>PROCEEDINGS AND REPORTS</b></i>	<i><b>REFERENCE</b></i>
<b>INTRODUCTION</b>	
Bill as introduced – 3 March 2015	SP Bill 60 – Session 4 (2015)
SPICe briefing on Bill (as introduced) – published 4 June 2015	SPICe briefing SB 15/29
<b>STAGE 1</b>	
<b>(a) Lead committee – Justice Committee</b>	
Stage 1 report – published 11 September 2015	15 <sup>th</sup> Report, 2015 (Session 4)
<b>(b) Delegated Powers and Law Reform Committee</b>	
14th meeting, 28 April 2015	Col 14
Stage 1 Report – published 28 April 2015	26 <sup>th</sup> Report, 2015 (Session 4)
<b>Consideration by the Parliament</b> Stage 1 debate – 27 October 2015	Cols 33 - 58
<b>(c) STAGE 2</b>	
Consideration of amendments by Justice Committee – 8 December 2015	Cols 2 - 13
Bill (as amended at Stage 2) – published 9 December 2015	SP Bill 60A – Session 4 (2015)
<b>AFTER STAGE 2</b>	
Consideration of the Bill (as amended at Stage 2) by Delegated Powers and Law Reform Committee - 12 January 2016	Col 10

*These notes relate to the Apologies (Scotland) Act 2016  
(asp 5) which received Royal Assent on 23 February 2016*

<b>PROCEEDINGS AND REPORTS</b>	<b>REFERENCE</b>
Report published 12 January 2016	5 <sup>th</sup> Report 2016 (Session 4)
SPICe briefing on Bill (Stage 3) – published 18 January 2016	SPICe briefing SB 16/04
<b>STAGE 3</b>	
<b>Consideration by the Parliament</b>	
Stage 3 proceedings – 19 January 2016	Cols 12 - 35
<b>ROYAL ASSENT</b>	
23 February 2016	Apologies (Scotland) Act 2016 (asp 5)