

DEFAMATION AND MALICIOUS PUBLICATION (SCOTLAND) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Defamation

Offers to make amends

Section 14: Acceptance and enforcement of offer to make amends

87. Section 14 makes provision for enforcement in the situation where an offer to make amends has been accepted.
88. Subsection (1) sets out the parameters of the section. It applies only where an offer to make amends made under section 13 has been accepted by the person to whom it is made.
89. Subsection (2) makes clear that a person who has accepted an offer to make amends may not bring or continue defamation proceedings against the person who made the offer. In the case of a qualified offer, the bar on bringing or continuing proceedings will apply only in relation to the specific defamatory meaning set out in the offer. It will not apply to any other meanings that could be drawn from the statement. In the case of any other offer, the bar on bringing or continuing proceedings is in respect of the statement complained of as a whole.
90. Subsection (3) empowers the person who has accepted the offer to apply to the court for an order requiring the person who made the offer to take the steps agreed between the parties in fulfilment of the offer. It is not, however, compulsory that an order be obtained. The person accepting the offer may rely simply on the fact that agreement has been reached.
91. Subsection (4) deals with the situation where the offer of amends is accepted in principle but the parties cannot reach agreement as to the steps to be taken by way of correction, apology, and publication. A possible example may be lack of consensus as to where exactly in a newspaper the correction and apology should appear. In that event, it is open to the person making the offer to take such steps as they consider appropriate towards its implementation. In particular, they may make the correction and apology in open court, in such terms as are approved by the court and give an undertaking to the court as to the manner in which the correction and apology will be published subsequently. In effect, the person making the offer is, in this situation, asking the court to fill gaps left in the offer of amends process by lack of consensus between the parties.
92. Subsections (5) and (6) provide for the scenario where the parties do not agree on the amount to be paid by way of compensation, as part of the offer of amends. As mentioned above, it then falls to the court to determine the amount of compensation payable. This is to be done, in terms of subsection (5), by applying the same principles as apply in determining the level of damages payable in defamation proceedings. Subsection

*These notes relate to the Defamation and Malicious Publication (Scotland)
Act 2021 (asp 10) which received Royal Assent on 21 April 2021*

(6) sets out practical factors to be taken into account in determining the amount of compensation payable. These include any steps taken to fulfil the offer and, so far as these matters have not been agreed between the parties, the suitability of the correction, sufficiency of the apology and whether the manner of the publication of the correction and apology was reasonable in the circumstances. A court may reduce or increase the amount paid by way of compensation from that offered (if any) accordingly.

93. Subsection (7) requires the court to determine the amount of expenses payable, in the event that the parties do not reach agreement, on the same principles as expenses are awarded in court proceedings.
94. Subsection (8) makes clear that there is to be no jury involvement in proceedings relating to offers to make amends.
95. Subsection (9) provides a definition of “qualified offer” for the purposes of the section. It is an offer to make amends, made under section 13, relating only to a specific defamatory meaning which the person making the offer accepts that the statement conveys.