



# Defamation and Malicious Publication (Scotland) Act 2021

2021 asp 10

## PART 1

### DEFAMATION

#### *Offers to make amends*

#### **13 Offer to make amends**

- (1) An offer to make amends is an offer made by a person (A) who has published a statement which another person (B) alleges is defamatory to make amends to B by—
- (a) making a suitable correction of—
    - (i) the statement generally, or
    - (ii) a specific defamatory meaning conveyed by the statement,
  - (b) giving a sufficient apology,
  - (c) publishing the correction and apology in a manner that is reasonable and practicable in the circumstances,
  - (d) paying to B such compensation and expenses as may be agreed or determined to be payable (if any), and
  - (e) taking such other steps (if any) as A may propose.
- (2) The offer must—
- (a) be made before A lodges defences in any defamation proceedings brought by B in relation to the statement,
  - (b) be in writing,
  - (c) state that it is an offer to make amends under this section, and
  - (d) if made in relation to a specific defamatory meaning only, state that it is a qualified offer and set out the meaning in relation to which it is made.
- (3) An offer made under this section—
- (a) may be withdrawn before it is accepted,
  - (b) may be renewed (such renewal being treated as a new offer),

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*Changes to legislation:* There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Cross Heading: Offers to make amends. (See end of Document for details)

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- (c) is deemed to have been rejected if not accepted within a reasonable period.

**Commencement Information**

**II** S. 13 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

**14 Acceptance and enforcement of offer to make amends**

- (1) This section applies where a person (B) accepts an offer to make amends made under section 13.
- (2) B may not bring or continue defamation proceedings against the person who made the offer (A) in respect of—
  - (a) in the case of a qualified offer, the specific defamatory meaning set out in the offer, or
  - (b) in any other case, the statement,
 but may enforce the offer in accordance with this section.
- (3) If A and B agree on the steps to be taken in fulfilment of the offer, B may apply to the court for an order requiring A to take the agreed steps.
- (4) If A and B do not agree on the steps to be taken by way of correction, apology and publication, A may take such steps as A considers appropriate, and may in particular—
  - (a) make the correction and apology in open court in terms approved by the court, and
  - (b) give an undertaking to the court as to the manner in which A will publish the correction and apology.
- (5) If A and B do not agree on the amount to be paid by way of compensation, the court must determine the appropriate amount on the same principles as damages in defamation proceedings.
- (6) In determining the appropriate amount to be paid under subsection (5), the court must take account of—
  - (a) any steps taken in fulfilment of the offer, and
  - (b) so far as not agreed between A and B—
    - (i) the suitability of the correction,
    - (ii) the sufficiency of the apology, and
    - (iii) whether the manner of the publication of the correction and apology was reasonable in the circumstances,
 and may reduce or increase the amount to be paid from that offered (if any) accordingly.
- (7) If A and B do not agree on the amount to be paid by way of expenses, the court must determine the appropriate amount on the same principles as expenses awarded in court proceedings.
- (8) Proceedings under this section are to be heard and determined without a jury.
- (9) In this section, a “qualified offer” is an offer to make amends made under section 13 that is made only in relation to a specific defamatory meaning which the person making the offer accepts that the statement conveys.

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**Commencement Information**

**I2** S. 14 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

**15 Offer to make amends: multiple persons responsible for statement**

- (1) This section applies where a person (B)—
  - (a) has a right to bring defamation proceedings against more than one person in respect of an allegedly defamatory statement, and
  - (b) has accepted an offer to make amends under section 13 made by one of the persons (A) in respect of the statement.
- (2) B's acceptance of the offer made by A does not affect any right to bring defamation proceedings that B has against another person in respect of the statement.
- (3) Section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (“the 1940 Act”) (right of one joint wrongdoer as respects another to recover contribution towards damages) applies in relation to compensation paid under an offer to make amends as it applies in relation to damages in an action to which that section applies.
- (4) Where a person other than A is liable in respect of the same damage (whether jointly or otherwise), A is not required to pay by virtue of any contribution under section 3(2) of the 1940 Act an amount greater than the amount of compensation payable under the offer made by A.

**Commencement Information**

**I3** S. 15 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

**16 Rejection of unqualified offer to make amends**

- (1) This section—
  - (a) applies where a person (B) rejects or is deemed to have rejected an offer to make amends made under section 13, but
  - (b) does not apply to the rejection or deemed rejection of a qualified offer (see section 17).
- (2) It is a defence to defamation proceedings brought by B against the person who made the offer (A) that B rejected the offer (or is deemed to have rejected it).
- (3) The defence is not available if (at the time of making the statement complained of) A knew or had reason to believe that the statement—
  - (a) referred to B or was likely to be understood as referring to B, and
  - (b) was both false and defamatory of B,but it is to be presumed, unless the contrary is shown, that A did not know and had no reason to believe that this was the case.
- (4) Where A relies on the defence under this section, A may not rely on any other defence.
- (5) The offer may be relied on in mitigation of damages whether or not it was relied on as a defence.

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- (6) In this section, a “qualified offer” is an offer to make amends made under section 13 that is made only in relation to a specific defamatory meaning which the person making the offer accepts that the statement conveys.

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**Commencement Information**

**I4** S. 16 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

**17 Rejection of qualified offer to make amends**

- (1) This section applies where a person (B) rejects or is deemed to have rejected a qualified offer.
- (2) In so far as relating to the specific defamatory meaning set out in the offer, it is a defence to defamation proceedings brought by B against the person who made the qualified offer (A) that B rejected the offer (or is deemed to have rejected it).
- (3) The defence is not available if (at the time of making the statement complained of) A knew or had reason to believe that the meaning that A accepts the statement conveys—
- (a) referred to B or was likely to be understood as referring to B, and
  - (b) was both false and defamatory of B,
- but it is to be presumed, unless the contrary is shown, that A did not know and had no reason to believe that this was the case.
- (4) Where A relies on the defence under this section, A may not rely on any other defence in respect of the accepted meaning.
- (5) The qualified offer may be relied on in mitigation of damages whether or not it was relied on as a defence.
- (6) In this section, a “qualified offer” is an offer to make amends made under section 13 that is made only in relation to a specific defamatory meaning which the person making the offer accepts that the statement conveys.

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**Commencement Information**

**I5** S. 17 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

**18 Offers to make amends: transitional provision**

Nothing in sections 13 to 17 has effect in relation to defamation proceedings if the right to bring the proceedings accrued before the commencement of the section in question.

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**Commencement Information**

**I6** S. 18 in force at 8.8.2022 by S.S.I. 2022/154, regs. 1(2), 2

**Changes to legislation:**

There are currently no known outstanding effects for the Defamation and Malicious Publication (Scotland) Act 2021, Cross Heading: Offers to make amends.