



Apologies (Scotland) Bill

Bill Number:	SP Bill 60
Introduced on:	3 March 2015
Introduced by:	Margaret Mitchell MSP
Passed:	19 January 2016
Royal Assent:	23 February 2016

Passage of the Bill

The Apologies (Scotland) Bill (the Bill) is a Member's Bill which was introduced in the Scottish Parliament on 3 March 2015 by Margaret Mitchell MSP.

The Justice Committee took Stage 1 evidence at its meetings on [9 June](#), [16 June](#) and [23 June](#) 2015. On May 1 2015, the Scottish Government provided the Justice Committee with a [memorandum](#) to assist it in its consideration of the Bill. On [17 June 2015](#), the Minister for Community Safety and Legal Affairs submitted additional written evidence.

The Finance Committee issued a [call for written evidence on the Bill's financial memorandum](#) which closed on 8 May 2015, receiving seven responses. The Finance Committee agreed not to take any further evidence or to formally report on the financial memorandum.

The Delegated Powers and Law Reform Committee published its [report](#) on the Bill's Delegated Powers Memorandum on 28 April 2015, in which it approved the only delegated power in the Bill without further comment.

The Justice Committee published its [Stage 1 Report](#) on 11 September 2015 and [the Stage 1 debate took place on 27 October 2015](#).

The Justice Committee considered amendments to the Bill at [Stage 2 on 8 December 2015](#) and the Bill as amended at Stage 2 was published on [9 December 2015](#)

The Stage 3 debate took place on [19 January 2016](#). The Bill received Royal Assent on 23 February 2016 to become the Apologies (Scotland) Act 2016 (asp 5).

Purpose and objectives of the Bill

The Bill proposed legislation which would stop apologies from being used as evidence of liability in most civil legal proceedings in Scotland (for example damages actions), the aim also being to encourage a change in people's attitudes towards apologising (Policy Memorandum, para. 4). The Bill follows similar legislation adopted in certain other common law jurisdictions –for example the USA, Canada and Australia.

Provisions of the Bill

The main provisions in the Bill included:

- Rules restricting the use of apologies in civil legal proceedings (except for defamation proceedings and Fatal Accident Inquiries) by:
 - making them inadmissible as evidence of liability; and
 - prohibiting them from being used to the prejudice of the person making the apology.
- A wide definition of 'apology' going beyond simple statements of regret and also covering admissions of fault, factual statements, and undertakings taken to prevent problems recurring.

The Bill was drafted in very general terms and the Policy Memorandum suggested that the Scottish Ministers draw up separate guidance on the use of the legislation. According to the Policy Memorandum, this could be prepared in the six months following Royal Assent before the legislation comes into force (para 12).

Parliamentary consideration

The wide definition of apology received particular attention in Parliament. In its Stage 1 Report, the Justice Committee noted the views of witnesses that the definition could result in individuals' rights to bring court actions being compromised as the evidence available to them might be reduced (see para. 66 of the report). The definition was amended at Stage 2 so that it no longer includes admissions of fault or statements of fact (undertakings to prevent problems recurring are, however, still covered).

The scope of the civil legal proceedings covered was also raised during the passage of the Bill. In its Stage 1 Report, the Committee considered that there were strong arguments for a number of other proceedings to be added to the list of exceptions to the Bill (i.e. in addition to defamation proceedings and Fatal Accident Inquiries). At Stage 2 the Bill was amended so that public inquiries and proceedings under the Children's Hearings (Scotland) Act 2011 were added to the list of exceptions.

There was also a focus on the interaction between the rules in the Bill and the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (the Health Bill). The Health Bill included a 'duty of candour procedure' whereby health and social care organisations have to inform people when they have been harmed as a result of the care or treatment they have received. It also provided that apologies given as part of this procedure would not amount to an admission of negligence or a breach of a statutory duty. In this regard 'apology' was defined narrowly to cover statements of sorrow or regret – i.e. not admissions of fault or statements of fact. During the Committee's evidence sessions, the potential inconsistency between the definition of apology in the Health Bill and in the Apologies Bill was raised. In its Stage 1 Report the Committee indicated that it was difficult to see how the provisions in the Apologies Bill and the Health Bill could co-exist without some form of exception for health matters. The Bill was duly amended at Stage 2 so that it no longer applies to an apology made under the duty of candour procedure.

The Scottish Government brought forward two technical amendments at Stage 3 which were aimed at clarifying the powers of the Scottish Ministers to modify the exceptions to the legal proceedings that are covered by the Bill. These amendments were agreed to at Stage 3.

Angus Evans

Senior Researcher

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