

# **APOLOGIES (SCOTLAND) BILL**

## **[AS AMENDED AT STAGE 2]**

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### **REVISED EXPLANATORY NOTES**

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1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Apologies (Scotland) Bill (“the Bill”) (introduced to the Scottish Parliament on 3 March 2015) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

#### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Parliament’s Non-Government Bills Unit on behalf of Margaret Mitchell MSP, the member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

#### **THE BILL**

4. The Bill gives legal protection to an apology, in certain circumstances. It provides that an apology (as defined in terms of the Bill) 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 Bill has the broader purpose of encouraging a cultural and social change in attitudes towards apologising.

#### **COMMENTARY ON SECTIONS**

##### **The structure of the Bill**

5. Sections 1 to 3 comprise the main provisions of the Bill. 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 Bill. Section 4 provides that the Bill only applies to apologies made after section 1 of the Bill 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 Bill.

*Section 1 – Effect of apology in legal proceedings*

6. Section 1 sets out the effect of an apology made outside the legal proceedings to which this Bill applies. The civil legal proceedings covered by this legislation are detailed in section 2. An apology given, as defined in section 3 of the Bill, 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*

7. Section 2 sets out the legal proceedings which are covered by the Bill.

8. 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 Hearings (Scotland) Act 2011, fatal accident inquiries (FAIs) or other inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill (passed by the Parliament on 10 December 2015) and defamation proceedings.

9. 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. The exception does not apply to inquiries under the 2005 Act that are caused to be held (or converted into inquiries) by UK Ministers or by UK Ministers acting jointly with “a Minister” (as defined in section 1(2) of that Act) other than the Scottish Ministers.

10. 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 the Children’s Hearings panel and the court.

11. Under subsection (1A) 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 in the Parliament on 4 June 2015. By virtue of section 23(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 Bill in terms of how apologies made in the context of the duty of candour procedure are treated.

12. While the Bill applies to most civil proceedings, it does not cover criminal proceedings and this is confirmed within subsection (2).

13. Subsection (3) enables the Scottish Ministers, by subordinate legislation, to modify the exceptions in subsections (1) and (1A). Regulations made under subsection (3) are subject to the

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Stage 2 (SP Bill 60A)*

affirmative procedure (subsection (4)): that is, any such regulations require the approval of the Parliament by resolution.

*Section 3 – Definition of apology*

14. Section 3 sets out what is meant by “apology” for the purposes of the Bill.

15. 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 Bill 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*

16. Section 4 provides that the Bill only applies to apologies made after section 1 of the Bill 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 Bill will have no retrospective application.

*Section 5 – Commencement*

17. 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 Bill 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.

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