

DEFAMATION AND MALICIOUS PUBLICATION (SCOTLAND) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Defamation

Offers to make amends

Section 16: Rejection of unqualified offer to make amends

100. Section 16 applies where an offer of amends has been made covering the whole of a statement which is alleged to be defamatory, and that offer has been rejected. It may have been rejected expressly or deemed to have been rejected as a result of the passage of time.
101. Subsection (1) sets out the parameters of the section. It applies where a person has rejected an offer to make amends relating to the whole of a statement which is alleged to be defamatory, or is deemed to have done so. It does not, however, apply to the rejection or deemed rejection of a qualified offer (which is dealt with in section 17).
102. Subsections (2) to (5) deal with the effect of the making of an offer which is rejected, from the point of view of the person making the offer. In general, that person can rely on the fact of rejection of the offer as a defence to any defamation proceedings which subsequently go ahead. This applies whether the rejection is actual or deemed. Such a course does, however, exclude the opportunity to rely on any other defence (see subsection (4)). Also, the rejection does not operate as a defence if the person making the offer knew or had cause to believe that the statement referred, or was likely to be understood as referring, to the recipient of the offer and that it was both false and defamatory of them. The key consideration is the state of knowledge at the time the statement which is alleged to be defamatory was made (see subsection (3)). It is, however, presumed that the person making the offer did not know of these matters, meaning that the burden falls on the recipient of the offer to prove otherwise. Under subsection (5), the fact that the offer has been made and rejected, or deemed to have been rejected, may be relied upon in mitigation of the level of damages payable, regardless of whether it has been relied upon as a defence.
103. Subsection (6) 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 which is the subject of the proceedings conveys.