

DEFAMATION ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Operators of websites

36. This section creates a new defence for the operators of websites where a defamation action is brought against them in respect of a statement posted on the website.
37. *Subsection (2)* provides for the defence to apply if the operator can show that they did not post the statement on the website. *Subsection (3)* provides for the defence to be defeated if the claimant can show that it was not possible for him or her to identify the person who posted the statement; that they gave the operator a notice of complaint in relation to the statement; and that the operator failed to respond to that notice in accordance with provision contained in regulations to be made by the Secretary of State. *Subsection (4)* interprets *subsection (3)(a)* and explains that it is possible for a claimant to “identify” a person for the purposes of that subsection only if the claimant has sufficient information to bring proceedings against the person.
38. *Subsection (5)* provides details of provision that may be included in regulations. This includes provision as to the action which an operator must take in response to a notice (which in particular may include action relating to the identity or contact details of the person who posted the statement and action relating to the removal of the post); provision specifying a time limit for the taking of any such action and for conferring a discretion on the court to treat action taken after the expiry of a time limit as having been taken before that expiry. This would allow for provision to be made enabling a court to waive or retrospectively extend a time limit as appropriate. The subsection also permits regulations to make any other provision for the purposes of this section.
39. *Subsection (6)* sets out certain specific information which must be included in a notice of complaint. The notice must specify the complainant’s name, set out the statement concerned and where on the website the statement was posted and explain why it is defamatory of the complainant. Regulations may specify what other information must be included in a notice of complaint.
40. *Subsection (7)* permits regulations to make provision about the circumstances in which a notice which is not a notice of complaint is to be treated as a notice of complaint for the purpose of the section or any provision made under it.
41. *Subsection (8)* permits regulations under this section to make different provision for different circumstances.
42. *Subsection (11)* provides for the defence to be defeated if the claimant shows that the website operator has acted with malice in relation to the posting of the statement concerned. This might arise where, for example, the website operator had incited the poster to make the posting or had otherwise colluded with the poster.
43. *Subsection (12)* explains that the defence available to a website operator is not defeated by reason only of the fact that the operator moderates the statements posted on it by others