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Apologies (Scotland) Bill: Stage 3

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This briefing looks at Stage 1 and Stage 2 consideration of the Apologies (Scotland) Bill which was introduced in the Scottish Parliament on 3 March 2015 by Margaret Mitchell MSP. The Bill is intended to stop apologies being used as evidence of liability in most civil legal proceedings in Scotland, with the aim of bringing about social and cultural change in relation to apologising.

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INTRODUCTION

The Apologies (Scotland) Bill is a Member's Bill which seeks to legislate so that apologies cannot be used as evidence of liability in civil legal proceedings in Scotland.

The Policy Memorandum argues that, in many cases, people who are complaining about a particular situation simply want an apology and an assurance that the situation will be improved in future (para.3).

The Policy Memorandum indicates, however, that obstacles exist to apologising in Scotland. It argues that there is:

- “an entrenched culture in Scotland and elsewhere that offering an apology when something has gone wrong is perceived as a sign of weakness”; and
- “also a fear that an acknowledgment of fault can ... lead to litigation” (para.3).

The Bill therefore proposes 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 initial scope of the Bill covered apologies which contain admissions of fault and factual statements in relation to matters about which a person apologises. Undertakings to prevent recurrence were also covered. Admissions of fault and factual statements in relation to matters about which a person apologises were, however, removed from the definition of apology at Stage 2 thus narrowing the scope of the Bill. For details of this and other key issues, see the table below.

PARLIAMENTARY CONSIDERATION

The Bill was introduced in the Scottish Parliament on 3 March 2015 by Margaret Mitchell MSP. It follows a [consultation and draft proposal](#) which was lodged on 29 June 2012 in accordance with the Scottish Parliament's Standing Orders on Members' Bills (Chapter 9, Rule 9.14) and a [final proposal lodged on 2 April 2014](#).

The Justice Committee was designated as lead committee for the purposes of Stage 1 scrutiny of the Bill. The Justice Committee issued a [Call for Evidence](#), which closed on Friday 8 May 2015. It 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 also submitted additional evidence to the Convener of the Committee by letter.

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 (i.e. the power to modify the list of exceptions to civil proceedings covered by the Bill).

The Justice Committee published its [Stage 1 Report](#) on 11 September 2015. Its recommendations are discussed in more detail below. On 22 October 2015, Margaret Mitchell wrote to the Minister for Community Safety and Legal Affairs setting out her current position on the Bill in advance of the Stage 1 debate. This letter was copied to the Justice Committee for information. Consideration of the Bill at Stage 1 concluded with the [debate in the Chamber of the Scottish Parliament on 27 October 2015](#).

Stage 2 consideration took place on [8 December 2015](#) and, in advance of this, the Scottish Children's Reporter Administration (SCRA) wrote to the Convener of the Committee on [4 December 2015](#) setting out its position on the Bill and its application to the children's hearings system.

The Bill as amended at Stage 2 was published on [9 December 2015](#).

KEY ISSUES AT STAGE 1 AND STAGE 2

The table below outlines the Justice Committee’s main recommendations on the Bill at Stage 1, and how the issue was addressed at Stage 2. It is designed to provide a summary of the main issues associated with the Bill during its passage through the Scottish Parliament so far. It is not a comprehensive discussion of all the issues raised or all amendments tabled.

Issue	Stage 1 Report	Action at Stage 2
Definition of apology		
<p>The definition of ‘apology’ in the Bill as introduced was a relatively wide one (section 3). It went beyond simple apologies (i.e. the act of apologising) and also covered apologies which contain admissions of fault, factual statements, or undertakings to prevent problems recurring.</p> <p>According to the Policy Memorandum (para. 15), the decision to include statements of fact and admissions of liability in the Bill’s definition of an apology was based on assessing legislation in other jurisdictions during the consultation – in particular the New South Wales Civil Liability Act 2002 (NSW Act), which covers admissions of fault. The core rationale behind the inclusion of such statements being that recipients of apologies normally expect to be given explanations as to why something occurred and whose fault it was.</p>	<p>The Committee noted the views of witnesses that the definition of apology could lead to individuals’ rights to pursue civil action being compromised. It therefore took the view that Margaret Mitchell should consider how best a balance could be struck to ensure that there are no unintended consequences for victims, whilst ensuring that the legislation remains meaningful (see para.66 of the Stage 1 Report).</p>	<p>The definition of apology was amended at Stage 2 so that it no longer covers admissions of fault or statements of fact in relation to an apology. Undertakings to prevent problems recurring are, however, still covered (see section 3).</p>

Issue	Stage 1 Report	Action at Stage 2
Legal proceedings covered - exceptions		
<p>The Bill as introduced (see section 2) applied to all civil proceedings (including inquiries, arbitrations and proceedings before tribunals) with the exception of:</p> <ol style="list-style-type: none"> 1. Fatal Accident Inquiries (FAIs); and 2. Defamation proceedings <p>Criminal proceedings are not covered</p> <p>According to the Policy Memorandum, the reason for the exclusion of FAIs is to take account of the public interest in ensuring that all relevant evidence is led at such inquiries and that the sheriff's determination is able to set out in full the circumstances of the death (see para 11).</p> <p>The Policy Memorandum explains that defamation proceedings are not covered to protect the offer to make amends procedure in the Defamation Act 1986, which allows a person who has published a defamatory statement to make a suitable correction of this statement and a sufficient apology to the aggrieved party. It goes on to state that the making of an offer of amends can be relevant to court proceedings as it can be used as a defence to an accusation of defamation and can be taken into account when awarding damages (see para 11).</p>	<p>In its written submission, the Scottish Children's Reporter Administration (SCRA) urged the Committee to exclude court proceedings under the Children's Hearings (Scotland) Act 2011 from the scope of the Bill on the basis that it could inhibit the Children's Reporter from being able to establish grounds for referral to bring a child to a children's hearing. It also provided examples of where, under the Bill, apologies made by an adult for assaulting a child or by a child for committing an offence would be inadmissible in evidence at a children's hearing.</p> <p>The Scottish Government's memorandum to the Committee on the Bill argued that consideration should be given to adding public inquiries under the Inquiries (Scotland) Act 2005, arbitration proceedings and tribunal proceedings to the list of exceptions.</p> <p>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 in section 2(1), in particular, court proceedings under the Children's Hearings (Scotland) Act 2011 (see para. 79).</p>	<p>The Bill was amended at Stage 2 so that it no longer covers public inquiries or proceedings under the Children's Hearings (Scotland) Act 2011 (see sections 2(1)(za) and (zb) of the Bill as amended).</p>

Issue	Stage 1 Report	Action at Stage 2
Duty of candour - Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill		
<p>The Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (the Health Bill) which was introduced in the Scottish Parliament on 4 June 2015 introduced a duty of candour whereby health and social care organisations have to inform people (and their families) when they have been harmed as a result of the care or treatment they have received.</p> <p>The Health Bill also provided that an apology taken in accordance with the duty of candour procedure does not of itself 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 (section 23).</p> <p>During the Committee’s evidence sessions issues were raised concerning the potential inconsistency between the definition of apology in the Health Bill and in the Apologies Bill. Questions were also asked as to how the two regimes would interact in practice. (For example, see Justice Committee. Official Report, 9 June 2015, Cols 19-20.)</p>	<p>In its Stage 1 Report the Committee noted that it was difficult to see how the provisions in the Apologies Bill and the duty of candour provision in the Health Bill could co-exist without some form of exception for health matters. It encouraged Margaret Mitchell to discuss with the Minister how the Bill might be amended at Stage 2 with a view to resolving the concerns raised in evidence regarding the definition (see para. 66).</p>	<p>The Bill was amended at Stage 2 so that it no longer applies to an apology made in accordance with the duty of candour procedure set out in Part 2 of the Health Bill (see section 1A of the Bill as amended).</p>

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RELATED BRIEFINGS

[SB 15-29 Apologies \(Scotland\) Bill \(554KB pdf\)](#)

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