

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

DEFAMATION, ENGLAND AND WALES

The Defamation (Operators of Websites) Regulations 2013

Made

Coming into force in accordance with regulation 1(1)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 5 of the Defamation Act 2013(a).

A draft of these Regulations was laid before Parliament in accordance with section 5(9) of that Act and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Defamation (Operators of Websites) Regulations 2013 and come into force at the same time as section 5 of the Defamation Act 2013.

(2) In these Regulations—

“the Act” means the Defamation Act 2013;

“the poster” means the person who posted the statement complained of on the website referred to in the notice of complaint;

“the operator” means the operator of the website on which the statement complained of in the notice of complaint is posted.

(3) In these Regulations, where action is to be taken by the operator within 48 hours of any point in time, any period of time which falls on Saturday, Sunday, Good Friday, Christmas Day or any day which is a bank holiday under the Banking and Financial Dealings Act 1971(b) in England and Wales is to be disregarded.

Notice of complaint: specified information

2. Subject to regulation 4, a notice of complaint must (as well as including the matters referred to in section 5(6)(a) to (c) of the Act)—

(a) specify the electronic mail address at which the complainant can be contacted;

(b) set out the meaning which the complainant attributes to the statement referred to in the notice;

(a) 2013 c. 26.

(b) 1971 c. 80.

- (c) set out the aspects of the statement which the complainant believes are—
 - (i) factually inaccurate; or
 - (ii) opinions not supported by fact;
- (d) confirm that the complainant does not have sufficient information about the poster to bring proceedings against that person; and
- (e) confirm whether the complainant consents to the operator providing the poster with—
 - (i) the complainant's name; and
 - (ii) the complainant's electronic mail address.

Actions of operator in response to notice of complaint

3. Subject to regulation 4, for the purposes of section 5(3)(c) of the Act the claimant must show that the operator failed to respond to a notice of complaint in accordance with the provisions of the Schedule.

Defective notices to be treated as notice of complaint

4.—(1) Where a notice given to the operator contains a complaint that a statement on the operator's website is defamatory of the complainant but does not contain all the information required by section 5(6)(a) to (c) of the Act and by regulation 2, that notice is to be treated as a notice of complaint for the purposes of section 5(3)(b) and (c) of the Act.

(2) Where the operator receives a notice which is to be treated as a notice of complaint by virtue of paragraph (1)—

- (a) regulation 3 does not apply; and
- (b) for the purposes of section 5(3)(c) of the Act the claimant must show that the operator failed to send to the complainant, within 48 hours of receiving the notice, notification in writing—
 - (i) that the notice does not comply with the requirements set out in section 5(6)(a) to (c) of the Act and regulation 2; and
 - (ii) what the requirements of those provisions are.

Time limits: court discretion

5. Where in any action for defamation—

- (a) an operator relies on the defence in section 5(2) of the Act; and
- (b) a question arises as to whether any action required to be taken by the operator in response to a notice of complaint took place within the time limit specified in regulation 4(2)(b) or in the Schedule for taking that action,

the court may, if it considers it in the interests of justice to do so, treat any action taken after the expiry of the time limit as having been taken before the expiry.

SCHEDULE

Regulation 3

Actions to be taken by operator in response to notice of complaint in order to maintain section 5(2) defence

Response to notice of complaint: initial steps

1.—(1) Unless paragraph 2 or 8 applies, the operator must, within 48 hours of receiving a notice of complaint, send the poster—

- (a) a copy of the notice of complaint, altered to conceal the complainant's name and address if the operator has received confirmation that the complainant does not consent to the operator providing this information to the poster;
 - (b) notification in writing that the statement complained of may be removed from the locations on the website which were specified in the notice of complaint unless—
 - (i) the operator receives a response in writing from the poster by midnight at the end of the date specified in the notification as the deadline for responding (which must be the 5th day after the day on which the notification is sent); and
 - (ii) that response complies with sub-paragraph (2); and
 - (c) notification in writing that the information mentioned in sub-paragraph (2)(b)(i) or (ii) will not be released to the complainant unless—
 - (i) the poster consents; or
 - (ii) the operator is ordered to do so by a court.
- (2) To comply with this sub-paragraph the response must—
- (a) inform the operator whether or not the poster wishes the statement to be removed from the locations on the website which were specified in the notice of complaint; and
 - (b) where the poster does not wish the statement to be removed from those locations—
 - (i) provide the poster's full name;
 - (ii) provide the postal address at which the poster resides or carries on business; and
 - (iii) inform the operator whether the poster consents to the operator providing the complainant with the details mentioned in paragraphs (i) or (ii).

2.—(1) Where the operator has no means of contacting the poster paragraph 1 does not apply and the operator must, within 48 hours of receiving a notice of complaint, remove the statement from the locations on the website which were specified in the notice of complaint.

(2) The operator is not to be taken as having a means of contacting the poster unless the means available to the operator include private electronic communication (for example electronic mail or other means of private electronic messaging).

3.—(1) Unless paragraph 8 applies, the operator must, within 48 hours of receiving a notice of complaint, send the complainant an acknowledgement in writing of the notice.

- (2) The acknowledgement must—
- (a) where paragraph 1 applies, state that the operator has acted in accordance with that paragraph;
 - (b) where paragraph 2 applies, inform the complainant that the statement has been removed from the locations on the website which were specified in the notice of complaint.

Response to notice of complaint: poster fails to respond

4.—(1) This paragraph applies where the operator acts in accordance with paragraph 1 in respect of a notice of complaint and the poster fails to respond within the period specified in paragraph 1(1)(b)(i).

- (2) Where this paragraph applies the operator must, within 48 hours of the end of that period—
- (a) remove the statement from the locations on the website which were specified in the notice of complaint; and
 - (b) send the complainant notice in writing that the statement has been removed from those locations on the website.

Response to notice of complaint: response does not include all required information

5.—(1) This paragraph applies where—

- (a) the operator acts in accordance with paragraph 1 in respect of a notice of complaint;
 - (b) the poster responds to the operator within the period specified in paragraph 1(1)(b)(i); and
 - (c) the response does not comply with paragraph 1(2).
- (2) Where this paragraph applies the operator must, within 48 hours of receiving the response—
- (a) remove the statement from the locations on the website which were specified in the notice of complaint; and
 - (b) send the complainant notice in writing that the statement has been removed from those locations on the website.
- (3) For the purpose of this paragraph a response does not include the information mentioned in paragraph 1(2)(b) if a reasonable website operator would consider the name or postal address provided under paragraph 1(2)(b)(i) or (ii) to be obviously false.

Response to notice of complaint: poster wishes statement to be removed from website locations

- 6.—(1) This paragraph applies where—
- (a) the operator acts in accordance with paragraph 1 in respect of a notice of complaint;
 - (b) the poster responds to the operator within the period specified in paragraph 1(1)(b)(i); and
 - (c) the poster wishes the statement to be removed from the locations on the website specified in the notice of complaint.
- (2) Where this paragraph applies the operator must, within 48 hours of receiving the response—
- (a) remove the statement from the locations on the website which were specified in the notice; and
 - (b) send the complainant notice in writing that the statement has been removed from those locations.

Response to notice of complaint: poster does not wish statement to be removed from website locations

- 7.—(1) This paragraph applies where—
- (a) the operator acts in accordance with paragraph 1 in respect of a notice of complaint;
 - (b) the poster responds to the operator within the period specified in paragraph 1(1)(b)(i); and
 - (c) the poster does not wish the statement to be removed from the locations on the website specified in the notice of complaint.
- (2) Where this paragraph applies the operator must, within 48 hours of receiving the response—
- (a) inform the complainant in writing—
 - (i) that the poster does not wish the statement to be removed; and
 - (ii) that the statement has not been removed from the locations on the website specified in the notice of complaint; and
 - (b) where the poster—
 - (i) has consented to the operator providing the poster's name or address to the complainant, provide that information to the complainant in writing; or
 - (ii) has not so consented, notify the complainant in writing of that fact.

Response to notice of complaint: persistent re-posting of same or substantially the same material

- 8.—(1) This paragraph applies where—
- (a) a notice of complaint has been received by the operator in relation to a relevant statement on two or more previous occasions;

- (b) on each occasion the operator has removed the statement from the website in accordance with this Schedule;
 - (c) the operator receives a further notice of complaint in relation to the statement; and
 - (d) the complainant informs the operator at the same time as sending the notice of complaint that a notice of complaint has been sent on two or more previous occasions in relation to the statement.
- (2) Where this paragraph applies paragraphs 1 to 7 do not apply and the operator must remove the statement from the locations on the website which were specified in the notice of complaint within 48 hours of receiving the notice of complaint.
- (3) A statement is a relevant statement for the purposes of this paragraph if—
- (a) the statement to which the notice of complaint relates conveys the same or substantially the same imputation as that to which each of the previous notices of complaint referred to in sub-paragraph (1)(a) relate;
 - (b) it was posted on the same website; and
 - (c) it was posted on that website by the same person.

Signed by authority of the Secretary of State

xx month 2013

Name
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 5 of the Defamation Act 2013 (“the Act”) (c.26) provides a defence for the operator of a website where a defamation action is brought in respect of a statement posted on that website if it was not the operator who posted the statement. The defence can be defeated if the claimant can show that it was not possible for them to identify the person posting the statement, the claimant gave the operator a notice of complaint in relation to that statement and the operator did not respond to the notice of complaint in accordance with these regulations.

Regulation 1 makes provision in paragraph (3) about the calculation of the time limits which apply to actions which must be taken by the website operator under the Schedule. Its effect is to exclude from the calculation of the 48 hour period any time which occurs on a weekend or public holiday in the place where the action is being taken.

Regulation 2 sets out the information which must be contained in a notice of complaint in order for it to be valid. These requirements are additional to the requirements set out in section 5(6)(a) to (c) of the 2013 Act.

Regulation 3 and the Schedule provide for the steps which a website operator must take on receiving a valid notice of complaint in order to benefit from the defence provided by section 5 of the Act.

Regulation 4 applies where a website operator receives a notice alleging that a statement on the operator’s website is defamatory but that notice does not comply with section 5(6) of the Act and these regulations. In such a case these provisions provide that, in order to benefit from the defence in section 5 of the Act, the website operator must notify the person making the complaint of the requirements of the Act and these regulations.

Regulation 5 gives the court discretion to treat any action which was taken outside the time required by regulation 4 and the Schedule to be treated as though it was taken within that time limit. The court may exercise this discretion if it considers it in the interests of justice to do so.

An impact assessment has not been produced for these regulations but an impact assessment was produced for the relevant part of the Defamation Bill and the relevant section is available alongside this instrument on www.legislation.gov.uk.