

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 41: Defamatory statements

Purpose and Effect

This section confers absolute privilege for the purposes of the law of defamation on any statement made in the proceedings of the Parliament and on the publication of any statement under the authority of the Parliament.

General

This section is concerned with the proceedings of the Parliament and is intended to ensure that members are free to debate and the Parliament is free to report on matters of public interest without fear of an action for defamation being raised. The privilege of freedom of speech is part of the law and custom of the Westminster Parliament. It is also reflected in Article 9 of the Bill of Rights Act 1688 which confers on “proceedings in Parliament” protection from being “impeached or questioned” in any court.

No similar privilege is conferred upon proceedings in the Scottish Parliament – see the note on section 40. However, this section and section 42 protect statements made in such proceedings and their publication against proceedings for defamation and contempt of court.

It is possible for the Parliament to modify sections 40-43 and to make its own provision about such protections under paragraph 4(2) of Schedule 4.

There are other provisions which make provision in relation to defamation. For example the amendments made to the Defamation Act 1952 by paragraphs 10 and 11 of Schedule 8 make provision in relation to defamation at elections, and amendments to the Public Order Act 1986 by paragraph 24 of that Schedule make provision in relation to reports of parliamentary proceedings.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	28-Jul-98	1443

Details of Provisions

Subsection (1) provides that for the purposes of the law of defamation any statement made in the proceedings of the Parliament and the publication under the authority of the Parliament of any statement is absolutely privileged. It applies for the purposes of the law of defamation in any part of the UK by virtue of the fact that the Act generally extends throughout UK (see section 131).

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Subsection (1)(a) confers absolute privilege upon any statement made in the proceedings of the Parliament. The expression “statement” is defined in subsection (2).

The expression “proceedings in the Parliament” is defined in section 126(1) to include proceedings of any committee or sub-committee. It is not otherwise defined. It is intended that it should be construed in a similar way as “proceedings in Parliament” has been construed for the purposes of Article 9 of the Bill of Rights Act 1688 - see H.L. *Deb* 28 July 1998 vol 592 cols 1447 - 1448.

Subsection (1)(b) confers absolute privilege upon the publication under the authority of the Parliament of any statement.

The Standing Orders of the Parliament provide that “Any statement which is required or authorised to be published in pursuance of these Rules is published under the authority of the Parliament”. This would cover the publication of the minutes of proceedings, the Official Report and the Journal which are required to be published under Standing Orders and the broadcasting of proceedings which may be authorised under Standing Orders. It would also include the publication of any report or other document which is laid before the Parliament and which the Clerk is required by the Parliament to publish under Standing Orders.

Subsection (2) provides that “statement” for the purposes of this section has the same meaning as in the [Defamation Act 1996 \(c.31\)](#). Section 17 of the 1996 Act defines it as meaning “words, pictures, visual images, gestures or any other method of signifying meaning”. This expression would therefore cover any oral and written statements, motions, papers etc which are made “in proceedings of the Parliament” and the publication of them in the official report of proceedings of the Parliament. It would also cover live radio or television broadcasts and extracts of such broadcasts published with the authority of the Parliament.