

*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 42: Contempt of Court

Purpose and Effect

This section disapplies the rule of strict liability for contempt of court in relation to publications made in, or in reports of, proceedings of the Scottish Parliament in relation to a Bill or subordinate legislation.

General

The proceedings of the Scottish Parliament, unlike those of Westminster, are subject to the law of contempt of court. No express provision is needed for this because the law of contempt of court and particularly the strict liability rule in the Contempt of Court Act 1981 will apply automatically unless expressly disapplied.

The strict liability rule is defined by section 1 of the Contempt of Court Act 1981 as that whereby conduct may be treated as a contempt of court regardless of intent to interfere with the course of justice in particular legal proceedings. In terms of section 2 of that Act the rule only applies to a publication which creates a substantial risk that the course of justice in active legal proceedings will be seriously impeded or prejudiced. Section 5 of the Act provides that the rule does not apply to publications made during a discussion in good faith of public affairs if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

Paragraph 1 of Schedule 3 requires standing orders to include provision “for preventing conduct which would constitute ... a contempt of court” and a *sub judice* rule. This is contained in the Standing Orders of the Parliament.

The present section is intended to ensure that the Scottish Parliament is not prevented from legislating on any matter simply because anything said or done in the proceedings for the purposes of considering a Bill or subordinate legislation might be treated as a contempt of court under the “strict liability rule”.

This section forms part of a group of sections which afford some protection to proceedings in the Parliament. It is possible for the Parliament to modify sections 40-43 and to make its own provision about such protections - see paragraph 4(2) of Schedule 4.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
LC	28-Jul-98	1449
LC	28-Jul-98	1450

Details of Provisions

Subsection (1) provides that the strict liability rule shall not apply to any publication:

- (a) made in the proceedings of the Scottish Parliament in relation to a Bill or subordinate legislation; or
- (b) to the extent that it consists of a fair and accurate report of such proceedings made in good faith.

Subsection (1)(a) is necessary to ensure that the Scottish Parliament is able to consider and pass legislation about any matter even if that matter may be the subject of proceedings before a court which are active. Subsection (1)(b) is designed to protect those who report such proceedings in good faith.

The note on section 41 sets out what is meant by proceedings in the Parliament.

Subsection (2) provides that the “strict liability rule” and “publication” have the same meanings as in the Contempt of Court Act 1981. Section 1 of that Act states that “the strict liability rule means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so”. Section 2 of the 1981 Act states that for the purposes of the rule, “publication” includes any speech, writing, programme in a cable programme service, or other communication in whatever form, which is addressed to the public at large or any section of the public.