

*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 40: Proceedings by or against the Parliament etc.

General

Apart from the protection from defamation in section 41, there is no general provision which seeks to exclude judicial proceedings being brought against the Parliament or any MSP in respect of anything said or done in the Parliament. There is nothing similar to the privilege conferred upon the Westminster Parliament by Article 9 of the Bill of Rights Act 1688 which confers upon “proceedings in Parliament” protection from being “impeached or questioned” in any “court or place out of Parliament”.

Against this background, this section makes provision as to how legal proceedings may be taken by or brought against the Parliament. Instead of protecting the Parliament or its proceedings by preventing such judicial proceedings from being brought, this section restricts the remedies which may be granted directly or indirectly against the Parliament. It prevents coercive orders being granted by the Parliament which would require it to do something or prevent it from doing something on the grounds that this could interfere unduly with the proceedings of the Parliament. Instead, it will be open to the courts to make a declarator and it would then be for the Parliament to decide how it should react.

Similar protection is also provided for MSPs, the Presiding Officer and his deputies, the SPCB and staff of the Parliament if the effect of making an order would be to give relief against the Parliament. This is intended to prevent the protection for the Parliament being circumvented by taking action instead against individual members or office-holders. This follows the same approach as is taken in civil proceedings against the Crown in section 21 of the [Crown Proceedings Act 1947 \(c.44\)](#).

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.