

*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

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).

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.