

Introductory Note by Francis Bennion

The article below is a further addition to my writings on hunting. Others are included within the Topic 'Hunting Act 2004'. The Topic can be found on this website at www.francisbennion.com/topic/huntingact2004.htm.

Countryside Alliance members have lodged papers with the High Court seeking a judicial review of the use of the 1949 Parliament Act to bypass opposition in the Lords and force through the hunting ban. Francis Bennion, a barrister expert in constitutional law, talks to Stephen Ward about their chances of success...

Supporters of foxhunting are hoping to use the courts to argue that the Act banning their sport is unconstitutional because the Parliament Act 1949, used to bypass opposition in the Lords, has never itself been passed by the Lords. As a strong supporter of the Countryside Alliance, Francis Bennion, author of *Statutory Interpretation*, and a barrister expert in constitutional law says he takes no pleasure in saying he can see little prospect of success.

The dispute will revolve around the Parliament Act 1911, which ended the Lords powers to block all legislation, and substituted just a delaying power. Peers had passed the 1911 Act after a long fight, under threat from George V that he would create enough new titles to swamp the chamber and defeat them if they refused. The 1949 Act, reducing the Lords' powers to delay, was passed after the required delay by using the 1911 Act.

Bennion says: "There's a very simple argument. The 1911 Act says quite clearly that anything that is passed in accordance with its procedure will be an Act of Parliament. "If it is an Act of Parliament it has certain features which are well-recognised. You can do anything under an Act passed under the 1911 procedure you can do under any other Act of Parliament."

Members of the Countryside Alliance have lodged papers with the High Court in London seeking a judicial review. They argue the 1949 Parliament Act, used to force through the ban, is itself invalid because it was never approved by the House of Lords. This means the Hunting Bill, which was passed using the 1949 Act, is also unconstitutional.

Their argument, which has the backing of the former Master of the Rolls Lord Donaldson, is that by the 1911 Act Parliament delegated its powers under certain conditions to the Commons alone, and that a delegate cannot enlarge the powers that have been delegated to it, as the Commons did with the 1949 Act. Lord Donaldson relies as his main authority on Professor Sir William Wade's book *Administrative Law* which argued that legislation passed under the 1911 Act was delegated, not sovereign legislation.

But Bennion disagrees: "It's a pure question of statutory interpretation of the 1911 Act," he says. "There is no suggestion of 'delegation' to the house of commons. In fact the Act says the opposite, it says they are 'curtailing' the powers of the House of Lords. That's written in the Act. That's all it needs. If you give effect to those words which say that what you pass under this procedure is an Act of Parliament, that's an end to the matter."

He says in his opinion the 1911 Act was not delegation but a remodelling of the constitution, and under the British constitution as accepted by the courts, Parliament has unlimited legislative sovereignty. This means it can remodel the constitution in any way it chooses by Act of

Parliament.

If it wished, the Commons has the power to abolish the Lords altogether, he says. "I think the Countryside Alliance have a better prospect with a challenge under the Human Rights Act," Bennion says.

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