

Introductory Note by Francis Bennion

My letter below was in reply to an alarmist letter signed by the following Cambridge law professors: J R Spencer, Sir John Baker QC, David Feldman, Christopher Forsyth, David Ibbetson, and Sir David Williams QC. This said that the Bill would 'create a major shift of power within the state, which in other countries would require an amendment to the constitution; and one in which the winner would be the executive, and the loser Parliament'.

The Bill was duly passed as the Legislative and Regulatory Reform Act 2006. It introduced sweeping powers for carrying out legislative and regulatory functions by statutory instrument which had hitherto required the passing of an Act of Parliament. The 2006 Act, which was based on findings of the Better Regulation Task Force (see its report 'Less is More: Reducing Burdens, Improving Outcomes', published in March 2005) and the 'Principles of Good Regulation' of the Better Regulation Commission or BRC (the BRC is an independent body whose terms of reference are to advise the Government on action to reduce unnecessary regulatory and administrative burdens; and to ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted).

In parliamentary proceedings on the Bill for the 2006 Act Mr Jim Murphy MP, Parliamentary Secretary in the Cabinet Office, gave 'a clear undertaking . . . that orders will not be used to implement highly controversial reforms' (Commons Hansard, 9 Feb 2006, cols 1058-1059). This undertaking is enforceable by executive estoppel (see F A R Bennion, 'Executive estoppel: *Pepper v Hart* revisited', *Public Law,* Spring 2007 p 1, [See http://www.francisbennion.com/2007/003.htm]

On the 2006 Act see further the article on the 2006 Act by Dr Duncan Berry published in *The Loophole* (CALC journal), March 2007, pp 64-70, See also Mr Lamming's letter following mine below.

FB's letter

Legislative and Regulatory Reform Bill

It would be unconstitutional for a government to use in the extreme manner suggested (letter, Feb 16) the powers to be conferred by the Legislative and Regulatory Reform Bill. It would not get away with it.

The Bill opens the door to much-needed reforms in what is called lawyer's law. It is half a century since I helped to draft the Act that set up the Law Commission. The commission has not achieved what was hoped largely because of difficulty in obtaining a place in the legislative programme for its reform Bills.

Having spent nearly 60 years drafting, teaching and writing about legislation I warmly support this facilitating Bill.

Francis Bennion

The following is a letter on this topic published (with minor editorial changes) in *The Times* on 23 February 2006 as the lead letter under the heading "Legislative reform Bill grants powers too great for government". (The passage in square brackets was omitted by *The Times*.)

Francis Bennion (letter, Feb 20) is right to draw attention to the failure—of successive governments—to bring forward legislation to implement sensible law reforms recommended by the Law Commission. What needs to be recognised, however, is that the "difficulty in obtaining a place in the legislative programme for its reform Bills" is largely due to the preference of Governments (especially the present one) to introduce "popular" measures, frequently under the mantra of "modernisation" but which do little to effect real change.

[That said, the distinguished academic lawyers who wrote to you on February 16 were right to point out the real danger in enacting a measure containing the very wide "Henry VIII clause" that is clause one of the Legislative and Regulatory Reform Bill.]

But it is not only this Bill that demonstrates an arrogance on the part of Government to bypass or railroad Parliament. In answering questions at last week's PMQs, the Prime Minister sought to justify restoring an offence of "glorifying terrorism" to the Terrorism Bill on the basis that "if we remove any reference to glorification from the Bill, people outside will infer that we have decided to dilute our law at the very moment when we should strengthen it" and that "by weakening our law on terrorism at this time from what was proposed, we would send the wrong signal to the whole of the outside world."

So, does this mean that if the Government proposes a new law, however ill-judged or authoritarian, it is the moral duty of Parliament to support it for fear of the 'wrong signal' it would send to do otherwise? Thankfully, the proposed 90-day detention law was struck down, but there is a continuing need for our MPs to remember that the price of freedom is eternal vigilance.

Yours faithfully,

DAVID J. LAMMING

Groton, Suffolk.

Previously this page contained merely the first paragraph of Mr Lamming's letter, with the misleading indication that it was the whole of the letter and that it was a "supporting letter". Moreover this was included without Mr Lamming's consent. He has quite understandably objected, and Francis Bennion has tendered him an unqualified apology. Mr Lamming has accepted this apology, and has kindly consented to the inclusion of his entire letter.