

Introductory Note by Francis Bennion

The topic is also dealt with on this website in:

[2000.020 'In Parliament 22 Red Ken and hunting pink', 150 NLJ p.568](#)

(www.francisbennion.com/2000/020.htm)

[2000.048 'In Parliament 43 Lord Donaldson of Lymington and the Parliament Acts', 150 NLJ p.1789](#)

(www.francisbennion.com/2000/048.htm)

[2004.028 'Why the Hunting Bill is Unconstitutional', 168 JPN p.754, 25 Sep 2004](#)

(www.francisbennion.com/2004/028.htm)

[2004.034 'Is the Parliament Act invalid?', The Times Law, 9 Nov 2004](#)

(www.francisbennion.com/2004/034.htm)

[2004.037 'Is the New Hunting Act Valid?', 168 JPN \(27 Nov 2004\) 928](#)

(www.francisbennion.com/2004/037.htm)

[2004.042 DT036 - 'Delaying the hunting ban', Daily Telegraph, 27 Dec 2004](#)

(www.francisbennion.com/2004/042.htm)

[2004.134 'Is the Parliament Act valid?', NLJ \(26 Nov 2004\) 1746](#)

(www.francisbennion.com/2004/134.htm)

[2004.138 "Is the 'The Parliament Act 1949' unconstitutional?" - Fb interviewed by Stephen Ward LexisNexis Butterworths Internet comment by FB, 2 Dec 2004](#)

(www.francisbennion.com/2004/138.htm)

[2005.013 'Curious behaviour of the Attorney General', 169 JPN \(5 Mar 2005\) 168](#)

(www.francisbennion.com/2005/013.htm)

[2005.015 'Does the Attorney General Know His Job?', 173 JPN \(2 Apr 2005\) 248](#)

(www.francisbennion.com/2005/015.htm)

[2005.061 Objections to the Hunting Act 2004 \('Hunting: necessary action, and high time to take it'\), 8 CI \(Christmas 2005\) 122](#)

(www.francisbennion.com/2005/061.htm)

Lord Donaldson of Lymington and the Parliament Acts

Lord Donaldson of Lymington, former Master of the Rolls, has a bee buzzing in his noble bonnet. The discomfort that brings can afflict any elderly gentleman (Lord Donaldson is eighty). We do not know whether this particular baronial buzzer is a homophobic bee or a constitutional bee, but it does seem to be one or the other (possibly both). Out of its hive came Lord Donaldson's Parliament Acts (Amendment) Bill, introduced by him into the House of Lords on November 8.

What woke up the Donaldson bee from its dozy slumbers and started it buzzing was the Blair Government's threat to use the Parliament Acts to force into law, against the desires of the

majority of His Lordship's noble House, a measure that will if passed become the Sexual Offences (Amendment) Act. It is based on Blair's notion that . . . and here I must pause.

This Blair notion can be expressed in various ways. One is that young men of sixteen and seventeen must have the same legal right to engage in sexual commerce with willing males as they have to engage in sexual commerce with willing females, which puts it as an equality issue.

Another way to describe it is that Blair aches to give disgusting perverts the legal right morally to debauch, and physically to injure, inexperienced boys by thrusting sodomitically into their chaste childish bodies. Which of these descriptions commends itself to Lord Donaldson of Lynton I have no means of knowing and do not presume to guess.

Professedly, the Donaldson worry was that if the Government did use the Parliament Acts to force through this Bill they might come unstuck. His Lordship wishes to save Blair from this dismal fate by removing what he fancies is a doubt about the validity of such a procedure.

Here I must get down to technicalities. The Parliament Acts consist of the original Act of 1911 and the amending Act of 1949. The former said that, in relation to a Bill introduced into the Commons, that House would prevail against Lords disagreement, and the Bill would become law, if it were passed *three times* by the Commons. The 1949 Act substituted two times (or twice, as we used to say). At the time the Lords disagreed with this change, so the 1911 Act in its unamended form was used to effect it.

In explanatory notes to his Bill Lord Donaldson says doubts have been raised by, amongst others, the constitutional lawyers Sir William Wade, Professor Zelic and Professor Hood Phillips. He ought to have added the references, so that those interested could have inspected for themselves the arguments deployed by these noted authorities. I will not attempt to guess what they were.

Lord Donaldson explained what he was up to in an article published in the *Daily Telegraph* on November 14. Here he showed how chummy he intended to be by signing it with the plebeian name "John Donaldson". It was chummily headed (with scant justification) "The muddle and fuddle of the Parliament Acts".

Donaldson accepted that on a literal construction the 1911 Act permitted the 1949 amendment, but insisted that in constitutional law "a literal construction of a statute may well be rejected if to accept it would conflict with the statute's purpose". This is very dodgy territory, for who can be sure when the purpose requires the literal meaning to be rejected? What court would engineer such a crass conflict with the Government and Parliament?

My 1000-page textbook *Statutory Interpretation* was originally published in 1984 and has gone through three editions and half a dozen supplements. It deals exhaustively with the Parliament Acts but does not mention these supposed doubts. The various editions have been reviewed worldwide, but no reviewer has mentioned them either.

The Donaldson Bill seeks to validate the Acts that have previously been passed under the 1949 Parliament Act procedure, namely the War Crimes Act 1991 and the European Parliamentary Elections Act 1999. It asks the House of Lords now to signify agreement to these measures, which it rejected at the time. Why would it do that?

It is highly likely that before Lord Donaldson's Bill can proceed any further the Sexual Offences (Amendment) Bill will have passed into law by use of the Parliament Acts procedure. So that too would need, by an amendment to his Bill, also to be validated. What

chance is there that the House of Lords, having so recently bitterly opposed that reduction in the age of male consent, would agree to validate it?

The House of Lords Information Office tells me that no date has been set for the second reading of this Bill. With the end of the Session upon us it will proceed no further. So why did Lord Donaldson bother?

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2000.048 150 NLJ 1789 (1 December).