

# Reviving the constitutional crisis between the executive and the judges

by Francis Bennion

It is regrettable that the Home Secretary Theresa May should seek to revive the 2005-2006 constitutional crisis between the executive and the judges.<sup>1</sup> On 17 February 2013, choosing to address readers of *The Mail on Sunday* rather than Members of the House of Commons, she published an article which many will find unseemly. It says that some judges think Article 8 of the European Convention on Human Rights gives certain convicted criminals ‘an absolute, unqualified right’ to remain in the UK. Since Article 8 expressly and clearly states that the right it confers is qualified in a number of ways, I am sure no judge actually thinks that.

Then the article states that following its debate on 19 June 2012 the House of Commons unanimously adopted her new Immigration Rules. This is inaccurate. The House agreed with the rules, but this made no difference to their efficacy. They were delegated legislation made by the Home Secretary under powers conferred on her by the Immigration Act 1971 and laid before Parliament as required by law. They were subject to being annulled by Parliamentary resolution, but no such resolution was moved.

Ms May showed misunderstanding of the law by threatening to introduce primary legislation in order to get her way, not apparently realising that this is no more (and no less) effective as law than secondary legislation is. Finally she insulted the judiciary by saying that judges are subverting our democracy.

Francis Bennion, retired Parliamentary Counsel, Budleigh Salterton, Devon.

Najma Ali, Head of Immigration, LexLaw Solicitors & Advocates.<sup>2</sup>

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Any footnotes are shown at the bottom of each page  
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## References:

None

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<sup>1</sup> See ‘Government v Judiciary - Constitutional Crisis: Special Report 1’ 169 JP (2005) 651, [www.francisbennion.com/2005/050.htm](http://www.francisbennion.com/2005/050.htm); ‘Government wish to instruct judges on interpretation - Constitutional Crisis: Special Report 2’ 169 JP (2005) 812, [www.francisbennion.com/2005/056.htm](http://www.francisbennion.com/2005/056.htm); ‘Detaining Fanatics Without Trial - Constitutional Crisis: Special Report 3’ 169 JP (2005) 913, [www.francisbennion.com/2005/060.htm](http://www.francisbennion.com/2005/060.htm); ‘Evidence Obtained By Torture - Constitutional Crisis: Special Report 4’ 169 JP (2005) 989, [www.francisbennion.com/2005/062.htm](http://www.francisbennion.com/2005/062.htm); The Crisis Deepens – and Widens - Constitutional Crisis: Special Report 5 170 JP (2006) 326, [www.francisbennion.com/2006/017.htm](http://www.francisbennion.com/2006/017.htm); Human Rights Act May Be Amended - Official - Constitutional Crisis: Special Report 6 170 JP (2006) 368, [www.francisbennion.com/2006/018.htm](http://www.francisbennion.com/2006/018.htm)

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