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The Parliament Acts

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Summary

The Parliament Acts 1911 and 1949 together limit the powers of the House of Lords in relation to primary legislation.

Provisions of the Acts

Under the provisions of the Acts, the House of Lords is unable to delay certified money bills for more than one month, or to exercise an absolute veto over other public bills.

The *Parliament Act 1911*, as amended by the 1949 Act, provides that a public bill (other than a money bill or a bill extending the maximum duration of a parliament) introduced originally in the House of Commons and passed by the Commons in two successive sessions, with at least one year between the first Commons second reading and the Commons third reading in the second session, can be presented for Royal Assent by the Commons.

Any bill certified by the Speaker as a money bill, which is not then passed by the House of Lords unamended within one month after they receive it, can be presented for Royal Assent without the Lords' agreement, unless the Commons direct that it should not be presented.

The *Parliament Act 1911* also amended the *Septennial Act 1715*, reducing the maximum duration of a parliament from seven to five years. The *Septennial Act 1715* has since been repealed by the *Fixed-term Parliaments Act 2011.*

Application and procedure for using the Acts

While the Parliament Acts are fairly short, simple statutes, there are various aspects of the procedure that are open to interpretation. The following conditions *must* be satisfied in order for a bill to be enacted under the Parliament Acts:

- The Bill must be sent to the Lords at least one month before the end of the first session in which it is considered.
- The Bill must be rejected by the House of Lords in that first session. "Rejected" has a wide meaning. If a bill fails to pass through all of its stages in the Lords, it is deemed to have been rejected.
- The Bill must then be sent from the Commons to the Lords in the next Session of Parliament. One year has to elapse between the date of Second Reading in the Commons in the first session, and the date on which it is sent to the Lords in the second session.
- The Bill in the second session must be identical to the Bill sent from the Commons in the first session, with the exception of amendments either made necessary by the passage of time or made by the Lords in the first session.
- It must be sent from the Commons to the Lords at least one month before the end of the second session.
- It must be rejected by the Lords in the second session. "Rejected" has the same wide meaning as in the first session.
- Finally, before the Bill can receive Royal Assent, the Speaker of the House of Commons has to certify that the conditions set out in section 2 of the *Parliament Act 1911*, as amended, have been complied with.

Use of the Acts to date

Three acts were passed into law under the terms of the original 1911 *Parliament Act* without the agreement of the Lords. These were:

- the *Government of Ireland Act 1914*;
- the *Welsh Church Act 1914*; and
- the *Parliament Act 1949*.

Four acts have been passed since the 1949 Act:

- the *War Crimes Act 1991*;
- the *European Parliamentary Elections Act 1999*;
- the *Sexual Offences (Amendment) Act 2000*; and
- the *Hunting Act 2004*.

Challenges to the validity of the Acts

Doubts have been expressed about the validity of the *Parliament Act 1949* by some constitutional lawyers although this is not a view not shared by all expert academics.

Arguments about the extent of the rights of the House of Commons to legislate without the agreement of the House of Lords were central to the legal arguments considered by the courts in the judicial review brought by Jackson and others (the "Jackson case"), following the *Hunting Act 2004.* The case was heard first in the High Court on 28 January 2005. Lord Justice Maurice Kay concluded that he was "not persuaded that the [*Parliament Act*] 1949 is invalid", and Mr Justice Collins agreed with him. The claimants were granted permission to appeal to the Court of Appeal. The case was heard by the Court of Appeal on 16 February 2005. Although the Court of Appeal dismissed the appeal, it questioned whether the Parliaments Acts could be used to fundamentally change the relationship between the House of Commons and the House of Lords. Consequently, when the case was heard by the House of Lords, both parties wanted clarification. The nine Law Lords who heard the case dismissed the appeal, and a number of Law Lords disagreed with the approach taken by the Court of Appeal

1. Introduction

Summary

The Parliament Acts 1911 and 1949 transformed the House of Lords' legal power in relation to legislation. With the exception of Bills to extend the life of Parliament, the House of Lords does not have a sustainable "veto" over primary public legislation originally introduced in the House of Commons.

1.1 The Acts in Brief

The long title of the *Parliament Act 1911* reads:

> An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament.

Under the provisions of the 1911 Act, the House of Lords was unable to delay certified money bills for more than one month, or to exercise an absolute veto over other public bills. If a public bill (other than a money bill or a bill extending the maximum duration of a parliament) was passed by the Commons in three successive sessions, with at least two years between the first Commons second reading and the Commons third reading in the third session, it could be presented for Royal Assent by the Commons. The Act also amended the *Septennial Act 1715*, reducing the maximum duration of a parliament from seven to five years. The provisions were introduced following the Lords' rejection of the Finance Bill 1909.

The *Parliament Act 1949* amended the 1911 Act reducing the time periods specified in the execution of the procedure: replacing references to "three sessions" with "two sessions", and to "two years" with "one year".[1]

Box 1: What kind of legislation cannot be subject to Parliament Act procedures?

The Parliament Acts do not apply to:

- Bills originating in the House of Lords;
- Bills to extend the maximum duration of a Parliament beyond five years;
- Provisional order bills;
- Private bills;
- Delegated legislation.

With the exception of Bills to extend the life of Parliament, the House of Lords does not have a sustainable 'veto' over primary public legislation introduced originally in the Commons.[2] The exercise of the House's legislative power in these circumstances, in practice, can be regarded as

1 *Parliament Act 1949* (cap 103)

2 The House of Lords retains equal powers with the Commons over private legislation. The *Parliament Acts* do not affect Bills introduced in the Lords

being generally of a revising and delaying nature.[3] Until the passing of the 1911 Act, the House of Lords had not been subject to any statutory restriction on its powers, but conventions had placed some limits on its authority for example over financial matters. The Liberal Government considered the Lords to have disregarded these conventions by their treatment of the Lloyd George 'People's Budget' of 1909.

1.2 Money Bills

When the House of Commons passes a public bill, the Speaker decides whether the bill is a "money bill" as defined in the *Parliament Act 1911*:

> A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the, expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.[4]

Any bill certified by the Speaker as a money bill, which is not then passed by the House of Lords unamended within one month after they receive it, can be presented for Royal Assent without the Lords' agreement, unless the Commons direct that it should not be so presented.[5]

1.3 Bills other than money bills

With regard to bills other than money bills, the procedure is set out in section 2(1) of the 1911 Act, as amended by the 1949 Act:

> If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons [in two successive sessions] (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection [for the second time] by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless [one year has elapsed] between the date of the second reading in the first of those sessions of the Bill in the House of Commons

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3 For further discussion on this issue, see Library Research Paper 98/103 *Lords Reform: the Legislative Role of the House of Lords*, Dec 1998 - http://www.parliament.uk/commons/lib/research/rp98/rp98-103.pdf

4 *Parliament Act 1911* (cap 13), s 1(2)

5 See, for example, proceedings on the *Ministerial and other Salaries Bill 1997-1998*, on 5 November 1997 [HC Deb 5 November 1997 c365]

and the date on which it passes the House of Commons [in the second of those sessions].[6]

Box 2: Description of the *Parliament Act* procedures from the House of Lords *Companion to the Standing Orders*

8.196 Under the Parliament Acts 1911 and 1949 certain public bills may be presented for Royal Assent without the consent of the Lords. The Acts do not apply to bills originating in the Lords, bills to extend the life of a Parliament beyond five years, provisional order confirmation bills, private bills or delegated legislation. The conditions which must be fulfilled before a bill can be presented for Royal Assent under the Acts vary according to whether or not the bill is certified by the Speaker of the House of Commons as a money bill.

MONEY BILLS

8.197 A money bill is a bill endorsed with the signed certificate of the Speaker of the House of Commons that it is a money bill because in the Speaker's opinion it contains only provisions dealing with national, but not local, taxation, public money or loans or their management. The certificate of the Speaker is conclusive for all purposes. If a money bill, which has been passed by the Commons and sent up to the Lords at least one month before the end of a session, is not passed by the Lords without amendment within a month after it is sent to them, the bill shall, unless the Commons direct to the contrary, be presented for Royal Assent without the consent of the Lords. This does not debar the Lords from amending such bills provided they are passed within the month, but the Commons are not obliged to consider the amendments. On a few occasions minor amendments have been made by the Lords to such bills and have been accepted by the Commons.

OTHER PUBLIC BILLS

8.198 If the Lords reject any other public bill to which the Acts apply which has been sent up from the Commons in two successive sessions, whether of the same Parliament or not, then that bill shall, unless the Commons direct to the contrary, be presented for Royal Assent without the consent of the Lords. The bill must be sent up to the Lords at least one calendar month before the end of each session; and one year must elapse between second reading in the Commons in the first session and the passing of the bill by the Commons in the second. The Lords are deemed to have rejected a bill if they do not pass it, either without amendment or with such amendments only as are acceptable to the Commons. The effect of the Parliament Acts is that the Lords have power to delay enactment of a public bill until the session after that in which it was first introduced and until at least 13 months have elapsed from the date of second reading in the Commons in the first session.[7]

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6 *Halsbury's Statutes*, 4th ed, Vol 32, 1996 reissue, p 714

7 House of Lords, Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 2013, paras 8.196-8.198

2. Application and procedure

Summary

The following conditions must be satisfied in order for the Parliament Acts to apply:

- The Bill must be sent to the Lords at least one month before the end of the first session in which it is considered.
- The Bill must be rejected by the House of Lords in that first session. "Rejected" has a wide meaning. If a bill fails to pass through all of its stages in the Lords, it is deemed to have been rejected.
- The Bill must then be sent from the Commons to the Lords in the next Session of Parliament. One year has to elapse between the date of the Second Reading in the Commons in the first session and the date on which it is sent to the Lords in the second session.
- The Bill in the second session must be identical to the Bill sent from the Commons in the first session, with the exception of amendments either made necessary by the passage of time or made by the Lords in the first session.
- It must be sent from the Commons to the Lords at least one month before the end of the second session.
- It must be rejected by the Lords in the second session. "Rejected" has the same wide meaning as in the first session.
- Finally, before the Bill can receive Royal Assent, the Speaker of the House of Commons has to certify that the conditions set out in section 2 of the *Parliament Act 1911,* as amended, have been complied with.

2.1 Timescale

To be eligible for the Parliament Acts procedure, a bill (other than a money bill) must be passed[8] by the House of Commons "in two successive sessions … and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the second time by the House of Lords" be presented for Royal Assent, provided that "one year has elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the second of these sessions".[9]

The exact interpretation of "one year" and "one month" has never been tested.

The Office of Parliamentary Counsel, in their guidance note on Section 2 of the *Parliament Act 1911,* state that in for the purposes of the Act,

8 A bill is recorded in the *Journal* of the House as having been passed once it has been given a third reading.

9 *Parliament Act 1911* (chapter 13), section 2(1) (as amended)

"'month' means calendar month (the definition of "month" in the *Interpretation Act 1978* applies)".[10]

The safest assumption is likely to be to count "one year" from the day after the bill receives its second reading in the Commons in the first session (i.e., one calendar year and one day). To allow for any unforeseen circumstances and guarantee that at least one month elapses before the end of the session, the Commons wait for one further month from the date of sending the bill to the Lords before presenting it for Royal Assent, even if the bill has clearly been rejected by the Lords before that time.[11] Again, in practice, this would mean one calendar month exclusive of the two dates. It is likely, therefore, that the minimum period of time that could elapse between the Commons second reading in the first session and the bill receiving Royal Assent is, in fact, thirteen months and two days (assuming there is no gap between the Commons passing the bill and the Lords receiving it).

The Office of Parliamentary Counsel states that the overall effect of these provisions:

> …is that the period from second reading in the Commons in the first Session to Royal Assent under the Parliament Acts must be, at the least, something over 13 months even if the second session is a short session. The period may be getting on for two years if the second session runs its normal course.[12]

The Office of Parliamentary Counsel considered how the provisions might apply to a carry-over bill:

> Although there is no precedent, it would seem that if a bill was carried over in the Commons from one session to the next, then the session into which the bill was carried over would be the first session for the purposes of applying section 2 of the 1911 Act. And the various time limits would apply from the reintroduction of the bill in that session. The other time limit to bear in mind would be that in Commons Standing Order No 80A(13) which provides for proceedings on a carried over bill to lapse 12 months after the bill's first reading in the session in which the bill was first introduced unless that period is extended.[13]

Box 3: How the procedures would operate: a hypothetical example

A Public Bill, which is not a money bill, is given a Second Reading in the Commons on 1 June 2012, in session 2012-13; it is sent up to the Lords at least a month before the end of the session, but does not get Royal Assent; it is sent up to the Lords again, unchanged, in session 2013-14 on or after 2 June 2013. This Bill may then be given Royal Assent, whether the Lords pass it or not. The timing depends on the actions of the Lords.

If the Lords reject the Bill outright, Royal Assent may be given under the Parliament Acts thirteen months and two days after Second Reading in the Commons in the first session, that is not before 3 July 2013 (or one month after its receipt from the Commons). If the Lords did not reject it outright, Royal Assent could not be given until the session ends.[14] The Lords can therefore delay Royal Assent by

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10 Office of the Parliamentary Counsel, *Section 2 of the Parliament Act 1911,* para 2.31
11 See Speaker's ruling on *European Parliamentary Elections Bill1998-99* [HC Deb 16 Dec 1998 Vol 322 c984], quoted in section 2.3, below
12 Office of the Parliamentary Counsel, *Section 2 of the Parliament Act 1911,* para 2.61
13 Office of the Parliamentary Counsel, *Section 2 of the Parliament Act 1911,* para 2.33
14 see example of *Sexual Offences (Amendment) Bill,* below

protracting their consideration and by sending messages back and forth to the Commons. To ensure Royal Assent before May 2014 the session would have to be ended early with the consequent disruption of the legislative programme.

2.2 Speaker's rulings on applying the Parliament Acts

The timing of the submission for Royal Assent of a bill that has been subjected to the *Parliament Acts* is affected by whether or not it is rejected outright in the House of Lords. In 1998, following the Lords rejection of the *European Parliamentary Elections Bill 1998-99*, the Speaker ruled:

> The rejection of the European Parliamentary Elections Bill for the second time by the other place now brings into play the provisions of the Parliament Acts. The House of Lords will be asked to return the Bill to this House, where it will be prepared for the Royal Assent. The Parliament Acts require that, before a Bill is presented for the Royal Assent under this procedure, it has been sent to the House of Lords at least one month before the end of the Session in which it was rejected for the second time. The Bill was sent to the Lords on 3 December. In order to comply strictly with the requirements of the Parliament Acts - and I certainly intend to interpret the Acts strictly - it cannot be submitted for Royal Assent until a month after that date.[15]

But, in the case of the *Sexual Offences (Amendment) Bill 1999-2000*, which the House of Lords amended in Committee, the Speaker made the following statement to the House of Commons, on the last day of the 1999-2000 session:

> It is now clear that the House of Lords will not pass the Sexual Offences (Amendment) Bill in the current Session. That will constitute rejection of the Bill for the purposes of the Parliament Acts. The House has not directed that the Bill should not be passed for Royal Assent. It is therefore my duty to follow the procedure laid down. Accordingly, the House of Lords was asked to return the Bill to this House. In strict compliance with the requirements of the Parliament Acts, I have certified the Bill and I will ensure that it is submitted for Royal Assent at the time of prorogation.[16]

2.3 Rejection of a bill

The *Parliament Acts* set out the procedures which are available should the House of Lords "reject" a bill; and section 2(3) of the 1911 Act states that for this purpose a bill is deemed to be rejected by the House of Lords "if it is not passed by that House either without amendment or with such amendments only as may be agreed to by both Houses". The clearest case is when the House of Lords declines to give a bill a second reading, (as with the *European Parliamentary Elections Bill 1998-99*). With the *War Crimes Bill 1990-91* (the Bill presented in the second session) the Lords agreed an amendment that delayed the bill being read a second time by six months (as it happened, beyond the

15 HC Deb 16 Dec 1998 Vol 322 c984
16 HC Deb 30 Nov 2000 Vol 357 c1137

prospective end of the session.) Amendments such as this are tantamount to rejection in both Houses, and a Speaker's statement was made the following day which indicated that what had been done in the Lords was regarded as rejection of the Bill. The Lords took the same action with the *Criminal Justice (Mode of Trial) (No 2) Bill 1999-2000*.

What if the Lords agree to second reading but amend the bill substantially during committee stage, as with the *Sexual Offences (Amendment) Bill 1999-2000*? The proceedings on this Bill further clarified the issue of how the *Parliament Acts* operate in circumstances where outright rejection has not taken place, but the Bill has simply not been received back in the Commons when the end of the second session approaches.

Further details on each of the bills mentioned here appear below, in section 3.

2.4 Text of a bill

In order for the *Parliament Acts* procedure to be invoked, the Bill sent to the Lords in the second session has to be identical to the Bill sent to the Lords in the first session, not to the Bill as initially presented. However, the following exceptions apply:

a. The session 2 Bill may contain amendments made necessary by the passage of time, and certified by the Speaker as such: "… only such alterations as are certified by the Speaker as being necessary owing to the time which has elapsed since the date of the former Bill".

b. The session 2 Bill can include any amendments made by the Lords to the session 1 Bill.

c. The Commons can suggest amendments in session 2 and send them to the Lords for their agreement. This is done separately and does not prejudice the Commons' right to insist on the enactment of the session 1 Bill in its original form under the *Parliament Acts*.[17]

The Commons can choose whether to make use of (a), (b) or (c). The Lords may make amendments to the session 2 Bill, which the Commons can accept or reject. The Commons can also direct that the Parliament Acts shall not apply at all if they wish.

Erskine May describes the procedures to be followed if amendments are suggested by the House of Commons:

> Provision is also made by which the House of Commons may, on the passage of such a bill through that House in the second session, suggest further amendments without inserting them in the bill. Such amendments must be suggested before the third reading of the bill, each suggested amendment being moved as a separate resolution. Suggested amendments can be moved only if they are included among the effective orders of the day. The Speaker has ruled that suggested amendments cannot be moved without notice. An order has been made for the consideration of any government motion for a suggested amendment. A motion

[17] set out in s 2(4) of the *Parliament Act 1911*

> for a suggested amendment has been amended. If agreed to, suggested amendments are sent to the House of Lords with the bill after it has passed the House of Commons. Any such suggested amendments are to be considered by the House of Lords, and if agreed to by that House, are to be treated as amendments made by the House of Lords and agreed to by the House of Commons. It is also provided that the exercise of this power by the House of Commons shall not prejudice the position of the bill in the event of its rejection by the House of Lords.[18]

If the House of Commons suggests amendments to the Bill but they are not agreed to by the House of Lords or if the House of Lords rejects the bill, the original bill (i.e. as it left the House of Commons) would still be passed if the Parliament Acts were invoked.

2.5 Devolution

An interesting situation arose with regard to the application of the Parliament Acts procedure to the *Sexual Offences (Amendment) Bills*. The provisions of the 1998-99 Bill, which was presented before power was devolved to the Scottish Parliament, extended to Scotland. By the time the provisions in the 1999-2000 Bill would have come into force, the Scottish Parliament had come into existence and the matter had been devolved to the Scottish Parliament. The issue of Scottish devolution had to be addressed in relation to the use of the *Parliament Acts*. In order that the *Parliament Acts* procedure could be invoked, the Bill to be reintroduced had to be exactly the same as the one defeated by the Lords, and therefore it would not have been possible to remove Scotland from the Bill's scope.[19] The Scottish Executive decided that the Bill should be considered unfinished Westminster business, but that the Scottish Parliament would debate the issue and could subsequently amend or repeal any provisions relating to Scotland once the Bill had become law.

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18 Erskine May, *Parliamentary Practice*, 24th edition, 2011, p650-651

19 This is because Scottish devolution was regarded as too significant to be covered by the "passage of time" provisions in the *Parliament Acts*. Those provisions are strictly interpreted, and past Speakers have only certified amendments which involve changes of year and date or similar technical adjustments.

3. Use of the Parliament Acts to date

Summary

Three acts were passed into law under the terms of the original 1911 *Parliament Act* without the agreement of the Lords. These were:

- *Government of Ireland Act 1914*
- *Welsh Church Act 1914*
- *Parliament Act 1949*

Four acts have been passed using since the 1949 Act:

- *War Crimes Act 1991*
- *European Parliamentary Elections Act 1999*
- *Sexual Offences (Amendment) Act 2000*
- *Hunting Act 2004*

There was speculation that the Government might seek to invoke the *Parliament Acts* procedure on three other bills – the *Criminal Justice (Mode of Trial) Bill 1999-2000*; the *Hunting Bill 2000-01*; and the *Fraud (Trials without a Jury) Bill 2006-07*. During the 2010 Parliament the Prime Minister, David Cameron, indicated that he might use the Parliament Act for the *European Union Referendum Bill,* introduced as a private Member's Bill in both 2013-14 and 2014-15. In the event the Bill did not progress past second reading in the Commons in the second session it was introduced.

Questions have been raised about whether a bill to reform the House of Lords could be given Royal Assent under the Parliament Acts procedures.

3.1 Passage of the *Parliament Act 1949*

The *Parliament Act 1949* was achieved only by a special method. The Act of 1911 referred to "sessions" as the unit of permitted delay, but did not define the length of a session. In view of the Lords' obstruction of the Bill of 1947-48, the Labour Government instituted a special short session (1948),[20] with a King's Speech on 14 September 1948, and prorogation on 25 October, though sittings in fact lasted only until 24 September. The Lords rejected the second reading of the *Parliament Bill* by 204 votes to 34 on 23 September. This expedient prevented extended delay to the Bill, though in fact a little over two years elapsed between its first presentation and Royal Assent.

[20] See, for instance, Herbert Morrison's speech on 14 September 1948, HC Deb vol 456 c 22, in which he states "This Bill was brought in for sound constitutional reasons ... not for the purpose of safeguarding any particular legislative measure. But even if this had been the purpose, it would not necessarily have been an illegitimate thing to do".[21] HC Deb 19 Mar 1990 Vol 169 cc 887ff. Bill 95 1989-90

3.2 Bills certified by the Speaker but subsequently passed by the Lords

There have been occasions where Bills were rejected by the House of Lords in the first session, subsequently certified by the Speaker under the *Parliament Acts* and sent to the Lords, but then received Royal Assent in the final session with the agreement of the Lords as a result of compromise amendments.

The procedure prescribed by the *Parliament Act 1911* was used in the *Temperance (Scotland) Bill 1913*. The procedure under the Acts of 1911 and 1949 was used in the cases of the *Trade Union and Labour Relations (Amendment) Bill 1975-76* and the *Aircraft and Shipbuilding Industries Bill 1976-77.*

3.3 *War Crimes Act 1991*

The *Parliament Acts* were used to enact the *War Crimes Act 1991*. This was the first (and, to date, only) time the procedure had been used for a Bill introduced by a Conservative government. The Government introduced the Bill (which was not a measure contained in the Conservative election manifesto of 1987) in the Commons on 8 March 1990. It received its second reading on 19 March.[21] Following three days in standing committee,[22] and remaining stages on 25 April,[23] the Bill was sent to the Lords on 26 April.[24] It was negatived on a division by 207 to 74 on second reading on 4 June.[25]

The Bill was re-introduced in the Commons in the following session on 7 March 1991,[26] and the House agreed on a division (177 to 17), after a debate on a procedure motion on 12 March on how to deal with the Bill.[27] It received its second reading on 18 March, by 254 to 88.[28] It was given a third reading on 25 March, without debate, but on a division, 211 to 57.[29] The next day it was introduced in the Lords,[30] and was debated for over nine hours on second reading on 30 April.[31] Lord Houghton of Sowerby proposed an amendment to the second reading, that the Bill be read a second time not "now" but "this day six months". Lord Waddington, then Leader of the House, emphasised that Lord Houghton's amendment would be treated as a rejection of the Bill, under the House's general practice.[32]

Following the Lords' support for the "six months" amendment, by 131 to 109, the provisions of the *Parliament Acts* could then be invoked. The following day, the Speaker made a statement in which he said that

21 HC Deb 19 Mar 1990 Vol 169 cc 887ff. Bill 95 1989-90
22 SC A, 29 March 1990 and 3 April 1990
23 HC Deb 25 Apr 1990 Vol 171 cc429ff
24 HL Bill 64 1989-90
25 HL Deb 4 June 1990 Vol 173 cc1080ff
26 Bill 105 1990-91
27 HC Deb 12 March 1991 Vol 187 cc901-13
28 HC Deb 18 March 1991 Vol 188 cc23-115
29 HC Deb 25 March 1991 Vol 188 c738
30 HL Bill 48 1990-91
31 HL Deb 30 April 1991 Vol 190 cc619-744
32 HL Deb 30 April 1991 Vol 190 c622

the House of Lords would be asked to return the Bill to the Commons where it would be prepared for Royal Assent. No further proceedings were required in the Commons.[33] This was supported by the two front benches.[34] The Bill received Royal Assent, pursuant to the *Parliament Acts*, on 9 May, as the *War Crimes Act 1991* (cap 13).

The debate on the Bill is considered in greater detail in Library Research Paper 98/103.[35] The implications of the passage of the Bills are considered in Shell's *The House of Lords.*[36]

3.4 *European Parliamentary Elections Act 1999*

The *European Parliamentary Elections Bill 1997-98* was presented in the House of Commons on 29 October 1997.[37] It provided for voters to choose between parties, rather than individual candidates, in elections to the European Parliament. The introduction of a regional list form of election for the European Parliament elections for 1999 was the first time that proportional representation had been used throughout Great Britain (Northern Ireland uses the single transferable vote for the European Parliament, the Assembly and local elections).

Despite Conservative opposition to the proposed "closed list system", the House of Commons agreed to the Bill on 12 March 1998.[38] In the Lords debates on the Bill, attempts to introduce either an ordered list or a completely open list system were ultimately successful at Third Reading when an amendment to introduce an open list system on the Finnish model was passed despite the Government's opposition.[39] The Lords sent the Bill back to the Commons with amendments,[40] to which the Commons disagreed. Although the Government secured agreement in the Commons to an amendment requiring a review of the system of election, following the 1999 election, this was rejected as inadequate in the Lords. On 18 November the Lords refused to back down on its Finnish open list amendment: the fourth time that Commons reasons for disagreeing with Lords amendments had been debated. Baroness Jay immediately announced that the Bill would be introduced in the next session under the Parliament Acts.[41] She also stated that to hold the elections under a regional list system a new Bill would have to achieve Royal Assent by mid-January 1999. (This was to allow the necessary administrative work to be carried out in time and regulations governing nomination of candidates, counting procedures, expense limits to be passed before the elections on 10 June 1999.) In response, Lord Cranborne, for the Conservatives, said: "we are aware of

33 HC Deb 1 May 1991 Vol 190 c315
34 HC Deb 1 May 1991 Vol 190 cc315, 317
35 Library Research Paper 98/103, *Lords Reform: The Legislative Role of the House of Lords,* pp17-27
36 2nd ed, 1992, pp132-3 and pp251-3
37 HC Deb 29 Oct 1997 Vol 299 c914, Bill 65 1997-98
38 HC Deb 12 Mar 1998 Vol 308 c763-830
39 HL Deb 20 Oct 1998 Vol 593 c1331
40 HL Deb 20 Oct 1998 Vol 593 cc1316-36
41 HL Deb 19 Nov 1998 Vol 594 c1360

the limitations of the rights of this House…and I hope we will behave accordingly when the Bill is reintroduced".[42] William Hague gave no indication of backing down on the Conservative opposition to the Bill and, in his response to the Queen's speech, reiterated his argument that there had been no manifesto commitment to closed lists.[43]

The Bill introduced in the 1998-99 session was identical in form to the previous bill (as sent to the Lords) and did not include any requirement for a review of the new electoral system, as this Commons amendment had not been accepted by the Lords. The closed regional list system remained. The *European Parliamentary Elections Bill 1998-99* was presented on 27 November 1998 and taken through all its stages in the Commons on 2 December.[44] The Lords declined to give the Bill a second reading on 15 December, and it was subsequently presented for Royal Assent under the Parliament Acts procedure on 14 January 1999, as the *European Parliamentary Elections Act 1999*.

3.5 *Sexual Offences (Amendment) Act 2000*

The *Sexual Offences (Amendment) Bill* was first presented to Parliament in the 1998-99 session.[45] The Bill was intended to fulfil the Government's undertaking to the European Court of Human Rights that it would bring forward legislation to equalise the age of consent for homosexual and heterosexual acts. (An amendment to this effect had been dropped from the *Crime and Disorder Bill 1997-98* when the Lords rejected it.) It was also intended to strengthen the protection of young people from abuse by someone in a position of trust. The Bill was passed in the Commons on a free vote with the Second Reading debate taking place on 25 January 1999. The Bill went to the House of Lords where it was debated on second reading on 13 April 1999.[46] Baroness Young, a backbench Conservative peer, tabled an amendment to block the Bill's second reading for six months, which was intended as in previous cases, as a way of rejecting the bill. She said she felt entitled to do so, as the age of consent was not part of the Government's election manifesto. Baroness Young based her arguments against the Bill on the need to protect children, and felt that the provisions on abuse of trust did not go far enough. Her amendment was passed on a free vote, by 222 to 146 votes, and the Bill was therefore lost in that session.

The same bill was subsequently presented in the 1999-2000 session.[47] The new Bill was exactly the same as the one sent to the Lords in the previous session – in other words it included the amendments which had been made in the Commons to the original bill in that session. It had its second reading in the Commons on 10 February 2000 and third reading on 28 February. It was presented in the Lords on 29 February and received a second reading on 11 April. In Committee on 13 November the Lords agreed to a series of Opposition amendments,

42 *ibid*, c1361
43 HC Deb 24 Nov 1998 Vol 321 c20
44 HC Deb 2 Dec 1998
45 HC Deb 16 Dec 1998 Vol 322 c985, HC Bill 10 1998-99
46 HL Deb 13 April 1999 Vol 599 cc647-761
47 HC Deb 28 Jan 2000, HC Bill 55 1999-2000

which would have allowed homosexual acts other than anal intercourse at the age of 16, but would have kept the age for anal intercourse at 18 years for boys and girls.[48] In a further exchange in the House of Lords on 23 November, the Leader of the House of Lords, Baroness Jay of Paddington, confirmed that the Bill would not proceed any further in the House of Lords and that the Government intended to use the *Parliament Acts* procedure to secure its passage.[49] On the last day of the 1999-2000 session the Speaker made the following statement to the House of Commons:

> It is now clear that the House of Lords will not pass the Sexual Offences (Amendment) Bill in the current Session. That will constitute rejection of the Bill for the purposes of the Parliament Acts. The House has not directed that the Bill should not be passed for Royal Assent. It is therefore my duty to follow the procedure laid down. Accordingly, the House of Lords was asked to return the Bill to this House. In strict compliance with the requirements of the Parliament Acts, I have certified the Bill and I will ensure that it is submitted for Royal Assent at the time of prorogation.[50]

The Bill accordingly received Royal Assent on 30 November as the *Sexual Offences (Amendment) Act 2000* (cap 44).

3.6 *Hunting Act 2004*

Hunting Bill 2002-03

The *Hunting Bill 2002-03* was introduced on 3 December 2002.[51] It was given its Second Reading on 16 December 2002, and completed its committee stage on 27 February 2003. This Bill would have allowed hunting with dogs to continue subject to registration and two tests based upon utility and least suffering. On 30 June 2003, during the Bill's Report Stage, a new clause which provided for a ban on hunting was inserted. Following the insertion of the new clause, the Bill was then re-committed to its original standing committee to make necessary amendments.[52] A revised programme motion for the Bill was tabled to ensure that the Bill would be sent to the Lords on 9 July 2003.[53] The Bill returned to the floor of the House on 9 July, when it completed all its remaining stages.[54]

The Bill was introduced into the House of Lords on 10 July,[55] and on 16 September 2003, it received its Second Reading and was committed to a Committee of the Whole House.[56] The House of Lords spent two days considering the Bill in Committee (on 21 and 28 October) but did not consider all the amendments that had been tabled. As the debate on hunting continued in the following session, there were arguments

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48 HL Deb 13 Nov 2000 Vol 619 cc18 ff
49 HL Deb 23 Nov 2000 Vol 619 cc947-51
50 HC Deb 30 Nov 2000 Vol 357 c1137
51 Details on the Bill are available in Library Research Paper 02/82
52 HC Deb 30 June 2003 cc54-144
53 HC Deb 1 July 2003 c341
54 HC Deb 9 July 2003 cc1281-1341
55 HL Deb 10 July 2003 c477
56 HL Deb 16 September 2003 cc769-894

about whether the Government had been prepared to allocate further time to the debate in the Lords in 2002-03.[57] Lord Carter, a former Government Chief Whip in the House of Lords, said that:

> In my five years as Chief whip, we never spent so long on groups of amendments. Those who wished to kill the Bill in this House have succeeded.[58]

Hunting Bill 2003-04: Commons consideration

In advance of, and following, the Bill's reintroduction in the 2003-04 session, there was debate about whether the Parliament Acts procedure could be applied to the Bill. On 8 September 2004, Alun Michael, a Minister of State in the Department for Environment, Food and Rural Affairs announced, by way of a written answer, that the Government considered that the Parliament Acts procedure could be used to implement the provisions of the *Hunting Bill*. He also indicated that the Government would suggest amendments to the existing Bill:

> It will be matter for this House to decide, but the Government believes that the provisions of the Parliament Acts will be available if an unaltered Bill is sent to the Other Place.
>
> In addition to the Bill, I shall ask the House to agree a motion to commence the Bill's provision in relation to hunting, but not hare-coursing events, two years after its enactment. Special procedures exist under the Parliament Act 1911 for changes to be made if agreed to by both Houses. This period will give those involved in hunting more than adequate time to cease the activities which are to be banned, for humane arrangements like the dispersal of re-homing of dogs, and for re-focusing any business activities on alternatives like drag-hunting or disposal of fallen stock if they wish to do so.[59]

On 15 September 2004, the Government secured agreement to a procedure motion that allowed the *Hunting Bill 2003-04* to complete all its Commons stages in one day and also allowed the House to debate and pass a resolution to send a suggested amendment to the Bill to the House of Lords (see section 2.4).

The Procedure Motion moved on 15 September 2004 allowed for five hours' discussion on it and the Bill's second reading. Once proceedings on second reading were completed, the Bill was to be treated as if it had been reported from a Committee of the whole House. Then a further three hours were to be allowed for consideration of suggested amendments (only Motions in the name of a Minister were to be so considered). A further half hour was to be allowed for third reading.[60]

During the debate on the procedure motion, there were criticisms that the only suggested amendments that would be debated were those tabled by Ministers;[61] and one argument against the use of the Parliament Acts was that the Bill passed by the Commons in 2002-03

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57 For example, HC Deb 15 September 2004 c1273; HL Deb 12 October 2004 c129, c165, cc224-226, c229
58 HC Deb 28 October 2003 c251
59 HC Deb 8 September 2004 cc1239W-1241W
60 HC Deb 15 September 2004 c1272
61 *Ibid* c1273

was different to the Bill as introduced.[62] The Opposition tabled amendments that would have allowed more time for the second reading debate, other suggested amendments to the Bill and more time for the third reading debate.[63] The Conservatives also opposed in principle:

> We oppose the procedure motion because even if the strict statutory conditions for the Parliament Act are fulfilled, the circumstances do not warrant the use of our most draconian procedures. If we are to maintain our right to debate in this place, the guillotine should be used sparingly and the Parliament Act reserved for rare circumstances in which there is no other way forward. The Parliament Act has been used when legislation is of high or constitutional importance, when there is genuine urgency and when the other place is clearly unreasonably blocking the will of the elected House.[64]

Amendments to the procedure motion were rejected and the procedure motion was passed.[65] The House then proceeded to the Second Reading debate. This debate was interrupted by an invasion of the Chamber by protesters opposed to the ban on hunting.[66] But the Bill was given its second reading by 356 votes to 166.[67]

The suggested amendment tabled in Alun Michael's name proposed that the hunting ban should come into force two years after the Act came into force.[68] An amendment to the suggested amendment to bring the ban into force on 31 July 2006 was tabled by Tony Banks.[69] This was supported by 342 votes to 15,[70] and then the amended suggested amendment – proposing that the ban would come into force on 31 July 2006 – was passed by 329 votes to 8.[71]

The Bill then received its third reading.[72]

Hunting Bill 2003-04: Lords consideration

The Bill was introduced into the House of Lords on 16 September 2004, and it was noted that the Speaker had certified that the Bill met the requirements of the *Parliament Act*:

> Brought from the Commons, endorsed with the certificate from the Speaker (pursuant to the Parliament Acts 1911 and 1949) that the Bill as compared with the Hunting Bill of last Session contains only such alterations as are necessary owing to the time which has elapsed since the date of that Bill; read a first time, and ordered to be printed.

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62 *Ibid* c1277
63 *Ibid* c1279
64 *Ibid* c1280
65 *Ibid* cc1312-1323
66 *Ibid* cc1335-1336
67 *Ibid* cc1351-1356
68 *Ibid* c1356
69 *Ibid* c1362
70 *Ibid* cc1404-1406
71 *Ibid* cc1406-1409
72 *Ibid* cc1410-1420

> A suggested amendment was brought from the Commons pursuant to Section 2(4) of the Parliament Act 1911, and ordered to be printed.[73]

On 12 October 2004, the House of Lords gave the Bill an unopposed second reading and also agreed a motion to allow it to consider the House of Commons suggested amendment.[74]

The Bill was considered by a Committee of the Whole House on 26-28 October 2004. During the Committee stage in the Lords, peers amended the Bill to allow all forms of hunting with dogs to continue, as long as hunts were registered.

During the debate on its report stage, on 11 November 2004, further amendments were considered. Changes to the commencement provisions were agreed: registration would be required only from 1 December 2007, at the earliest, to allow research into "the relative pain, suffering or distress caused to wild mammals by hunting with dogs compared to other methods of managing the wild mammal populations".[75]

The Bill received its third reading in the House of Lords on 15 November 2004.

Hunting Bill 2003-04: consideration of Lords amendments and Commons messages

The Commons considered and rejected the Lords' amendments on 16 November 2004. On 15 November 2004, the Prime Minister's Official Spokesman had announced that the Prime Minister was still seeking a compromise.[76]

As well as tabling a motion to disagree with the Lords in their amendments, Huw Irranca-Davies tabled amendments in lieu that would permit registered hunting. During the debate, Huw Irranca-Davies explained that his amendments would again create "the original Government Bill", i.e. as introduced in the 2002-03 Session.[77] While the Commons rejected the Lords amendments by 343 to 175,[78] it also rejected Huw Irranca-Davies' proposals by 321 to 204.[79]

On 17 November 2004, the Lords considered Commons amendments and a motion on the suggested amendment. The Lords insisted on its amendments, with some small changes.[80] The Lords then considered and rejected the suggested amendment from the Commons.[81]

On the final day of the Session, the House of Commons was again asked to consider the Lords amendments. Two motions were tabled at 12.05pm for consideration immediately after a timetable motion that

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73 HL Deb 16 September 2004 c1294
74 HL Deb 12 October 2004 cc124-260
75 HL Deb 11 November 2004 c1059
76 10 Downing Street, *Press Briefing*, 11am Monday 15 November 2004,
77 HC Deb 16 November 2004 c1269
78 A second set of amendments was rejected by 344 to 173, and a third by 334 to 170
79 HC Deb 16 November 2004 cc1264-1326
80 HL Deb 17 November 2004 cc1554-1596
81 *Ibid*, cc1596-1600

was to be taken at 12.30pm.[82] Both motions called on the House to disagree with the Lords amendments but at the same time suggested new commencement arrangements. A motion in the name of Alun Michael proposed a commencement date of 31 July 2007, while Peter Bradley's motion proposed 31 July 2006. With the exception of the date in Alun Michael's motion all the other provisions were identical to those in the suggested amendment that the Commons had previously made and the Lords had rejected.

Before the timetable was decided, the Speaker dealt with a number of points of order. He declined to suspend the sitting to allow Members to "familiarise themselves with the new proposals" but said that he would consider manuscript amendments.[83] Following agreement to the timetable motion, the Speaker announced that, as a result of the number of manuscript amendments, he would suspend the sitting for approximately 40 minutes.[84]

On resumption, there were further points of order and, in response to one, the Speaker outlined the procedure for invoking the *Parliament Act*:

> …The Parliament Act is applicable if agreement on the Bill as a whole is not achieved. That will not be affected if the House agrees to either of the two motions that are being proposed today. Beyond that, I do not want to be drawn into ruling on hypothetical situations, because it might be thought that I was trying to influence the debate. It is up to the Minister to explain the effect of the motion that he is bringing before the House.[85]

Alun Michael moved a motion setting out the Commons consideration Lords amendments.[86] The effect of Alun Michael's motion would have been to restrict the way in which the House of Lords could consider the Commons amendment in lieu.

James Gray tabled a manuscript amendment, which the Speaker selected. He explained that his amendment, if agreed to, would have allowed the House, subsequently, to vote on whether they agreed or disagreed with the Lords without the commencement provisions in a package of amendments.[87]

In the event, James Gray's amendment and Alun Michael's motion were both defeated (by 146 to 286 votes and 46 to 345 votes, respectively).[88] Alun Michael then moved Peter Bradley's motion, which was passed, by 283 to 132 votes.[89].

The House of Commons had rejected the Lords amendments, again, but its amendment in lieu allowed the Lords to consider only the rejected amendments and the proposed commencement provisions as a

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82 HC Deb 18 November 2004 c1470
83 HC Deb 18 November 2004 c1470
84 *Ibid*, c1477
85 *Ibid*, c1478
86 HC Deb 18 November 2004 c1479
87 HC Deb 18 November 2004 c1487
88 HC Deb 18 November 2004 cc1496-1503
89 HC Deb 18 November 2004 cc1503-1507

package. Lord Strathclyde, in criticising this, pointed to a statement of 21 July 2004 from the Leader of the House of Lords:

> … the Clerk of the Parliaments will invite the Lords Procedure Committee to consider changes to the practice of the House, to allow more flexibility in dealing with Commons amendments which have been packaged.[90]

The Lords then debated the Commons amendment, and agreed to Baroness Mallelieu's amendment, which she said meant that "the House will insist on its amendments and disagree with the Commons amendment in lieu".[91] Her motion was agreed by 153 to 114.[92]

Royal Assent

At 9.01pm, the Speaker informed the House of Commons of the Lords' insistence on their amendments, and announced that he was satisfied that the bill could be enacted under the provisions of the *Parliament Act 1911*:

> I have to inform the House that a message has been brought from the Lords as follows:
>
> "The Lords insist on their amendments to the Hunting Bill, to which the Commons have insisted on their disagreement, for which insistence they assign their reasons. They insist on their amendments to which the Commons have disagreed, for which insistence they assign their reasons, and they disagree to the amendment proposed by the Commons in lieu of the Lords amendments, for which disagreement they assign their reasons."
>
> […]
>
> As the Minister made clear to the House in his remarks earlier today, a rejection on these lines has brought us to the end of the road. I am satisfied that all the provisions of the Parliament Acts have been met. [Hon. Members: "Hear, hear."] Accordingly, I have to tell the House that I have certified the Hunting Bill under section 2 of the Parliament Act 1911, as amended by the Parliament Act 1949. The Bill endorsed by me will be sent for Royal Assent at the time of prorogation in compliance with the provisions of the Parliament Acts.[93]

At 9.59pm, he announced that the Hunting Bill had received Royal Assent.[94]

3.7 *Fraud (Trials without a Jury) Bill 2006-07* – a potential use

This Bill was introduced in the Commons and had its Second Reading on 29 November 2006, and passed its Third Reading on 25 January 2007. On 20 March 2007, on the second reading of the *Fraud (Trials without a Jury) Bill*, the House of Lords agreed to an amendment, moved by Lord

90 HL Deb 18 November 2004 c1645
91 HL Deb 18 November 2004 c1648
92 HL Deb 18 November 2004 c1651
93 HC Deb 18 November 2004 c1518
94 HC Deb 18 November 2004 c1518

Kingsland, the Shadow Lord Chancellor, to read the Bill a second time "this day six months", by 216 Contents to 143 Not Contents.[95]

Lord Goldsmith, the Attorney-General, outlined the implications of the House accepting Lord Kingsland's amendment in his opening speech:

> … my noble friend is absolutely right that if the Motion by way of amendment, which is to be moved by the noble Lord, Lord Kingsland, were to succeed, there would be no opportunity for this House to amend the Bill.[96]

He subsequently confirmed that the Parliament Act procedure could be used to pass the Bill in the 2007-08 Session.[97] In the event, a *Fraud (Trials without a Jury) Bill* was not presented to Parliament in the 2007-08 Session.

3.8 *European Union (Referendum) Bill 2013-14* – a potential use

The *Daily Telegraph* reported that, at a meeting of the Conservative backbench 1922 Committee, the Prime Minister "pledged to use the Parliament Act" to ensure that the *European Union (Referendum) Bill* was enacted.[98]

This private Member's Bill was introduced to the Commons on 19 June 2013 and was designed to require the holding of a referendum on the UK's continued membership of the European Union (EU) before the end of 2017. It was a Conservative-backed Bill but did not have the support of the Conservative's Coalition partners, the Liberal Democrats.

On 31 January 2014 (the second day in Committee), Committee stage in the House of Lords was brought to a close before all amendments had been considered.[99] Baroness Anelay told the House that:

> … if the Motion is agreed, I will not be able to offer my noble friend Lord Dobbs more time for the Bill because the House itself will have collectively indicated that it no longer wishes to consider the Committee stage. If the House disagrees the Motion, I will take that as a desirable, clear indication that we should complete the remainder of the Committee stage today.[100]

The Lords agreed to resume, on a division (180 Contents to 130 Not-Contents).[101] Following this decision, it was reported that David Cameron said that:

> We are going to try to re-introduce the same Bill in the next session of parliament and, if necessary, rely on the provisions in

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95 HL Deb 20 March 2007 cc1146-1204
96 HL Deb 20 March 2007 c1148
97 HL Deb 20 March 2007 cc1150-1151
98 Matthew Holehouse and Peter Dominiczak, "David Cameron prepares 'nuclear option' on EU referendum", *Daily Telegraph*, 18 December 2013
99 Lord Lipsey moved "That the House do now resume"just after 3pm [HL Deb 31 January 2014 c1542]. The expected time of the rise of the House on a Friday is 3pm [House of Lords, Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 2013, para 3.01]
100 HL Deb 31 January 2014 c1544
101 HL Deb 31 January 2014 c1545

> the Parliament Act to stop Labour and Liberal Democrat peers killing the Bill once again.[102]

At Prime Minister's Questions on 5 February 2014, he said that he hoped the Bill could "be resuscitated if one of my colleagues is fortunate enough to win the private Member's Bill ballot".[103]

In the event, the Bill was reintroduced in the 2014-15 session. The Bill had its second reading but no money resolution was brought forward by the Coalition Government so the Bill could not progress to detailed scrutiny by a Public Bill Committee. As the Bill was not passed by the Commons in two successive sessions, the Parliament Act procedures could not be used. In the 2015-16 Session, the Conservative Government brought forward the *European Union Referendum Bill* which received Royal Assent on 17 December 2015.

3.9 House of Lords Reform and the Parliament Acts

There were suggestions that the Parliament Acts could not be used to enforce the reforms of the House of Lords proposed in the summer of 2011, though the legal basis for such a claim is unclear. Lord St John of Fawsley stated, on 21 June:

> I listened with very great interest to the contribution of the noble and learned Lord, Lord Morris of Aberavon, who said that the first thing that should be done is to take the issue of principle raised by the Parliament Acts, particularly the *Parliament Act 1949*, before the Select Committee and ask, "What is the truth about this? Can this Act be used to subvert one House of the constitution?". I firmly believe that it cannot. The shade of Dicey is hovering over us in considering these matters. I do not believe that it can be done and I do not believe that it should be done.[104]

Likewise, Lord Lee stated:

> Any attempt to use the Parliament Act to drive the Bill through for an elected House would be a gross abuse and stretch party loyalties to the limit.[105]

In evidence to the Joint Committee on the Draft House of Lords Reform Bill, following some of the comments made about the use of the Parliament Acts in the *Jackson* case, Lord Morris of Aberavon expressed doubts that a Bill to reform the House of Lords could be presented for Royal Assent under the Parliament Acts. The Joint Committee sought the advice of the Attorney General but he declined to provide that advice on the grounds that it was inappropriate for the Law Officers to advise Parliament on the Government's legislative programme.[106]

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[102] "Tories to force through referendum bill", *Independent*, 1 February 2014
[103] HC Deb 5 February 2014 c272
[104] HL Deb 21 Jun 2011 c1209
[105] HL Deb 21 Jun 2011 c1213
[106] Joint Committee on the Draft House of Lords Reform Bill, Draft House of Lords Reform Bill, HL Paper 284, HC Paper 1313 2010-12, 23 April 2012, para 361

The Joint Committee did receive evidence from Lord Pannick and Lord Goldsmith, a former Attorney General. The Committee reported that both Lord Pannick and Lord Goldsmith

> … considered that the Parliament Acts could properly be used to reform the House of Lords, and that the courts would uphold such a decision, despite the remarks by some of the judges in *Jackson*. In oral evidence, Lord Pannick set out the reasons why he considered the Parliament Acts could be used in such a way:
>
> The first is that the 1911 Act makes very clear the circumstances in which it does not apply. It lists exceptions; constitutional reform—reform of the upper House—is not one of them. As Lord Bingham said in the Hunting Act case, the word used in Section 2 of the 1911 Act is "any", and any Bill means any Bill, subject to the defined exceptions. The second reason is that the whole point of the 1911 Act was to provide a mechanism by which disputes between the two Houses could be resolved without the appointment of a large number of new Peers. It would be very surprising if the courts were to interpret the 1911 Act so that it could not resolve a dispute between the two Houses. The third reason is that it is absolutely clear that the reason why the 1911 Act was passed in the first place was to enable the House of Commons to have its way, if there were a dispute, on issues of major constitutional reform. ... The fourth reason, if one needs to go this far, is that there are ample statements in Hansard indicating that it was very much the intention of the Government to have the ability to use the 1911 Act to secure fundamental constitutional reform, in particular reform of the House of Lords.[107]

[107] Joint Committee on the Draft House of Lords Reform Bill, Draft House of Lords Reform Bill, HL Paper 284, HC Paper 1313 2010-12, 23 April 2012, para 361

4. Challenges to validity of the Parliament Act 1949

4.1 Introduction

Doubts have been expressed about the validity of the *Parliament Act 1949* by some constitutional lawyers, particularly Sir William Wade, Professor Hood Phillips and Professor Zellick. It was Sir William Wade (then HWR Wade) who first argued that acts passed under the *Parliament Acts* are delegated, not primary, legislation.[108] It should be added that not all constitutional lawyers agree on this point. In the High Court case discussed below, Lord Justice Maurice Kay referred to de Smith and Brazier, and ECS Wade and AW Bradley, among others.[109] Arguments about the extent of the rights of the House of Commons to legislate without the agreement of the House of Lords were mentioned by judges in the "Jackson case", following the *Hunting Act 2004* (see below).

Lord Donaldson of Lymington presented a Private Member's Bill in January 2001 – the *Parliament Acts (Amendment) Bill (HL) 2000-01*[110] – which addressed these concerns, and sought to settle doubts as to the validity of the 1949 Act and the three Acts passed under its provisions. The Bill would also have excluded from the scope of the 1911 Act any bill containing provisions to vary the constitution or powers from the House of Lords. The Bill received a second reading in the House of Lords on 19 January 2001, but made no further progress.[111]

A similarly titled bill was introduced in the 2001-02 session,[112] and received its second reading on 16 January 2002.[113] This Bill sought to disapply the Act of 1949 except to bills introduced in the third or subsequent session of a Parliament, from the date on which the first election to the reformed House of Lords took place, as well as to confirm Acts passed before that date under the authority of the 1911 and 1949 Acts. In other words, after the House of Lords became wholly or partly elected, the suspensory veto would be two years for bills introduced in sessions 1 or 2 of a Parliament, and one year only for others. The Bill made no further progress.

4.2 The Countryside Alliance's challenge (Jackson and others v Her Majesty's Attorney General)

This case was brought by Jackson and two other members of the Countryside Alliance to challenge the legality of the *Hunting Act 2004.*

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108 "The basis of legal sovereignty", *Cambridge Law Journal*, 1955, pp 172-97
109 [2005] EWHC 94 (Admin), para 21
110 HL Bill 5 2000-01
111 HL Deb 19 Jan Vol 15 cc308-32; for further background on this Bill and the concerns it sought to address, see the House of Lords Library Note LLN 2001/001
112 HL Bill 23, 2001-02
113 HL Deb 16 January 2002 Vol 631 cc1154-76

Box 4: The "Jackson case" in brief

Jackson and others v Her Majesty's Attorney General was heard first in the High Court on 28 January 2005. Lord Justice Maurice Kay concluded that he was "not persuaded that the [*Parliament Act*] 1949 is invalid", and Mr Justice Collins agreed with him.[114] The claimants were granted permission to appeal to the Court of Appeal.[115]

The case was heard by the Court of Appeal on 16 February 2005. The Court of Appeal dismissed the appeal, and accepted that the 1911 Act could be used to amend itself "to the extent contained in the 1949 Act". The Court of Appeal was not prepared to go further, and questioned whether the Parliament Acts could be used to fundamentally change the relationship between the House of Commons and the House of Lords.[116]

Consequently, when the case was heard by the House of Lords, both parties wanted clarification. The nine Law Lords dismissed the appeal, and a number of Law Lords disagreed with the Court of Appeal's on the extent of the limits on the ability to use the Parliament Acts to fundamentally change the relationship between the Houses.

High Court

On 28 January 2005, the case was heard in the High Court before Lord Justice Maurice Kay and Mr Justice Collins. The three claimants were all members of the Countryside Alliance, but brought their case in a personal capacity. Lord Justice Maurice Kay summarized their arguments in the following way:

> … the Hunting Act is not a lawful statute because its validity depends on the 1949 Act and that Act was not lawfully passed by Parliament. On this basis, the 1911 Act has not been amended and the Hunting Act was not passed in accordance with its unamended requirements because it was passed by the House of Commons in only two and not three sessions and within a relevant temporal span of one and not two years. The grounds of challenge mount the attack on the 1949 Act on three bases. First, it is said that, as a matter of construction, the 1911 Act cannot be used to achieve amendments to itself and that, accordingly, it was unlawful for the 1949 Act to reach the statute book without the approval of the House of Lords. Secondly, the claimants seek to characterize the procedure prescribed by the 1911 Act as one of delegated legislation, such that it was unlawful for the delegated body, namely the Sovereign and the House of Commons, to enlarge the scope of its own authority without the approval of the parent body, which includes the House of Lords. Thirdly, even if legislation passed under the 1911 Act is not delegated legislation in the strictest sense, it nevertheless emanates from a subordinate legislature which, in the absence of an express power, cannot modify or amend the conditions upon which its power to legislate was granted. There is an inevitable overlap between these three grounds.[117]

In response to the first of the grounds of appeal, Lord Justice Maurice Kay concluded that "properly constructed, the words 'any public Bill' are sufficient to embrace a Bill to amend the 1911 Act".[118] On the

[114] [2005] EWHC 94 (Admin), paras 34-35
[115] *Ibid*, para 51
[116] [2005] EWCA Civ 126
[117] [2005] EWHC 94 (Admin), para 9
[118] [2005] EWHC 94 (Admin), para 19

second ground, he rejected the "delegated legislation argument".[119] On the third ground, he stated that "What section 2 permits is what it says it permits. … For the reasons I gave when rejecting the first ground of challenge, I consider that the formulation used in section 2(1) is wide enough to embrace a Bill which amends section 2 itself".[120]

Mr Justice Collins agreed with Lord Justice Maurice Kay's conclusions and outlined his reasons.[121] Both judges supported the claimants' application to appeal to the Court of Appeal.[122]

Court of Appeal

On 8 February 2005, the appeal was heard in the Court of Appeal by the Lord Chief Justice of England and Wales (Lord Woolf), the Master of the Rolls (Lord Phillips of Worth Matravers) and Lord Justice May.

In this Court, the judges provided the following summary of the Appellants' submission:

> … the 1911 Act could only be lawfully amended with the consent of the House of Lords. Accordingly, as the Hunting Act was enacted relying upon the 1911 Act as amended by the unlawful 1949 Act, the Hunting Act is also unlawful.[123]

The Court of Appeal first considered whether it was appropriate to hear the case. After noting that it was rare for Courts to be asked to rule on the validity of legislation that has received Royal Assent, the judges stated that they "were concerned to satisfy ourselves that the issue before us was justiciable". They reported that they had asked the Attorney-General why he took no point on justiciability and that he gave "no convincing answer", simply saying that "it was desirable that the Courts should decide the issue". The judges continued:

> When we suggested that this might not be a valid basis for assuming jurisdiction, he asserted that there was no absolute rule that the Courts could not consider the validity of a statute. Here the Courts had jurisdiction because the issue was one of statutory interpretation and because the Appellants were contending that the 1949 Act was not a statute at all.[124]

They concluded that the Courts did have a role to play:

> The determination of questions of interpretation and ascertaining the effect of legislation is part of the diet of the courts. … The circumstances in which it will be appropriate for the Courts to become involved in issues of this nature are limited, but in this case it is perfectly appropriate for the Courts to be involved. If the courts did not adjudicate on the issue, there would be great uncertainty as the legal situation … In exercising this role, the Administrative Court and this Court are seeking to assist Parliament and the public by clarifying the legal position when such clarification is obviously necessary.[125]

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119 [2005] EWHC 94 (Admin), para 25
120 [2005] EWHC 94 (Admin), para 27
121 [2005] EWHC 94 (Admin), paras 35-46
122 [2005] EWHC 94 (Admin), paras 49-51
123 [2005] EWCA Civ 126, para 9
124 [2005] EWCA Civ 126, para 11
125 [2005] EWCA Civ 126, para 13

In addition to the three grounds they stated in the Administrative Court, the Appellants made two further complaints about the contentions made by the Attorney-General in the court below:

> … two further contentions were relied upon by the Attorney General in the court below and the claimants also complain about the views of the Administrative Court as to these contentions. The complaints are:
>
> "(iv) expressing the views that (a) ministerial statements made during the passage of the Bill which became the 1911 Act were admissible in support of the Attorney General's construction and (b) such statements disclose that 'the central issue in this case was in the minds of Parliamentarians in both Houses';
>
> "(v) expressing the view that legislation passed after the 1911 and 1949 Acts could be used as an aid to construction of the 1911 Act." [126]

The Court of Appeal concurred with the lower court in rejecting the Appellants' first three grounds.[127] Unlike the court below, the Court of Appeal decided the case rested on more than statutory interpretation:

> Unlike the court below, we do not approach this case on the basis that it turns simply on statutory interpretation and on established principles as to how statutes should be interpreted. We have been referred to parliamentary material that gives a clear indication of how the House of Lords and the House of Commons viewed the effect of the 1911 Act, both at the time that it was passed, and at the time of passing the 1949 Act. The manner in which both Houses have acted, with the assent of the monarch, from 1911 up to the present day, demonstrates a consistent approach to the nature of the change made to the constitution by the 1911 Act. We have concluded that this, of itself, is a most material factor in deciding whether the Hunting Act 2004 is a valid Act of Parliament.[128]

The Court of Appeal then considered whether the 1911 Act imposed any restrictions on its use:

> … We have accepted the Attorney General's submission that there was no express restriction on the subject matter of the statutes that could be passed under the 1911 Act other than those specified within brackets in section 2(1). We were, however, persuaded by Sir Sydney that it was at least strongly arguable that, the 1911 Act having conferred powers on the Commons subject to express restrictions, it was implicit, as a matter of basic principle, that those powers should not be used to sweep away the express restrictions.
>
> 77 The respective arguments in respect of the true interpretation of the 1911 Act would, in the absence of further assistance, have left us in doubt as to what Parliament intended in respect of its scope. Having regard to the unusual nature of the 1911 Act, this is not a question to be resolved on the basis of the wording of the Act alone, without considering the circumstances in which it was passed and what was said in the course of debating its provisions.[129]

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126 [2005] EWCA Civ 126, para 29
127 [2005] EWCA Civ 126, paras 30-71
128 [2005] EWCA Civ 126, para 72
129 [2005] EWCA Civ 126, paras 76-77

The Court of Appeal, after examining the record of the debate on the *Parliament Act 1911* and Parliament's subsequent understanding of the Act, accepted that the *Parliament Act 1911* could be used to amend its own provisions.[130] But despite dismissing the appeal, it ended its conclusion with the following reservation:

> 98 For the reasons we have given we have accepted that there was power to amend the 1911 Act to the extent of the amendment contained in the 1949 Act. We have not been prepared to go further than that. This is because, to an extent, we have been prepared to accept part of the argument that Sir Sydney advanced so eloquently. Once the 1911 Act had made the fundamental change of allowing the consent of the House of Lords to be dispensed with as long as the conditions in section 2(1) of the 1911 Act were complied with, the reduction of the period referred to in section 2(1) in its original form to those contained in the 1949 Act, was a relatively modest and straightforward amendment.
>
> 99 However, accepting a power of amendment of this nature exists is quite different to allowing the power of amendment to extend to making changes of a fundamentally different nature to the relationship between the House of Lords and the Commons from those which the 1911 Act had made. The 1949 Act left the relationship between the House of Lords and the House of Commons substantially the same as it was before the 1949 Act. It reduced the length of the period for which the House of Lords could delay legislation proposed by the Commons.
>
> 100 What, if any, further power of amending the 1911 Act that Act authorises should not be determined in advance of an attempt to make a more significant amendment than that contained in the 1949 Act. It is, however, obvious that, on our approach, the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in the 1911 Act. Our decision is limited to indicating that if what is involved is properly described as a modification of the 1911 Act it is legally effective. We dismiss the appeal.[131]

House of Lords

The Appeal was heard by nine Law Lords. The House of Lords issued its judgement in October 2005, on the Appellants' claim that:

> 1. The Parliament Act 1949 is not an Act of Parliament and is consequently of no legal effect.
>
> 2. Accordingly, the Hunting Act 2004 is not an Act of Parliament and is of no legal effect.[132]

Lord Bingham of Cornhill outlined the context of the case, reviewed the relevant legislation and the appellants' submissions before considering the constitutional background and historical context of the 1911 Act.[133] He argued that the Divisional Court was right to reject the argument

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130 [2005] EWCA Civ 126, para 87
131 [2005] EWCA Civ 126, paras 98-100
132 [2005] UKHL 56, para 2, http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd051013/jack-1.htm
133 [2005] UKHL 56, paras 2-20

that legislation made under the 1911 Act was not primary legislation for two reasons:

- the 1911 act provides that legislation made in accordance with it shall "become an Act of Parliament on the Royal Assent being signified" and that "The meaning of the expression "Act of Parliament" is not doubtful, ambiguous or obscure".
- the effect of the Act is to restrict the power of the House of Lords, not to give power to the Commons.[134]

He noted the difference of opinion between the two lower courts on the question of whether section 2 of the Act precluded change to other legislation and to the 1911 Act itself. He noted that section 2 did not apply to money bills; to bills to extend the life of a Parliament beyond five years; or to bills for confirming provisional orders. He concluded:

> Subject to these exceptions, section 2(1) applies to "any" public bill. I cannot think of any broader expression the draftsman could have used. Nor can I see any reason to infer that "any" is used in a sense other than its colloquial, and also its dictionary, sense of "no matter which, or what". The expression is repeatedly used in this sense in the 1911 Act, and it would be surprising if it were used in any other sense … "Any" is an expression used to indicate that the user does not intend to discriminate, or does not intend to discriminate save to such extent as is indicated.
>
> [...]
>
> The Court of Appeal concluded (in paras 98-100 of its judgment) that there was power under the 1911 Act to make a "relatively modest and straightforward amendment" of the Act, including the amendment made by the 1949 Act, but not to making "changes of a fundamentally different nature to the relationship between the House of Lords and the Commons from those which the 1911 Act had made". This was not, as I understand, a solution which any party advocated in the Court of Appeal, and none supported it in the House. I do not think, with respect, that it can be supported in principle. The known object of the Parliament Bill, strongly resisted by the Conservative party and the source of the bitterness and intransigence which characterised the struggle over the Bill, was to secure the grant of Home Rule to Ireland. This was, by any standards, a fundamental constitutional change. So was the disestablishment of the Anglican Church in Wales, also well known to be an objective of the government. Attempts to ensure that the 1911 Act could not be used to achieve these objects were repeatedly made and repeatedly defeated (paras 15 and 20 above). Whatever its practical merits, the Court of Appeal solution finds no support in the language of the Act, in principle or in the historical record. Had the government been willing to exclude changes of major constitutional significance from the operation of the new legislative scheme, it may very well be that the constitutional Conference of 1910 would not have broken down and the 1911 Act would never have been enacted.[135]

Lord Bingham also rejected the argument that the House of Commons had enlarged its powers. Therefore, the House of Commons could change the conditions of the *Parliament Act*.

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[134] [2005] UKHL 56, paras 24-25
[135] [2005] UKHL 56, paras 29 and 31

Lord Bingham disagreed with the Court of Appeal's description of the change made by the 1949 as "relatively modest". He agreed that "the breadth of the power to amend the 1911 Act in reliance on section 2(1) cannot depend on whether the amendment in question is or is not relatively modest".[136]

He concluded that the appeal be dismissed,[137] as did the other eight Law Lords (Lord Nicholls of Birkenhead, Lord Steyn, Lord Hope of Craighead, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Carswell and Lord Brown of Eaton-under-Heywood, all dismissed the appeal[138]).

Some of the Law Lords commented on the wider question of whether there were limits on the House of Commons using the *Parliament Acts* procedure. In his opinion, in the House of Lords judgment, Lord Steyn considered the question "what Parliament may do by legislation", which he said involved "the domain of the supremacy of sovereignty of Parliament". In identifying this question, he accepted that it was "not directly in issue on this appeal".[139] He disagreed with the Court of Appeal's conclusion that "the greater the scale of constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers of contained in the 1911 Act".[140] But he did review the Court of Appeal's analysis of the consequences of its decision:

> Rightly, the Court of Appeal was intensely aware of the consequences of its decision. That is the context in which the Court of Appeal held that abolishing the House of Lords would be a constitutional change so fundamental that it could only be enacted by Parliament as ordinarily constituted and not by the attenuated process.[141]

He then considered the Attorney General's comments on using the 1949 Act to bring about constitutional change. Lord Steyn wrote:

> The logic of this proposition is that the procedure of the 1949 Act could be used by the government to abolish the House of Lords. Strict legalism suggests that the Attorney General may be right. But I am deeply troubled about assenting to the validity of such an exorbitant assertion of government power in our bi-cameral system. It may be that such an issue would test the relative merits of strict legalism and constitutional legal principle in the courts at the most fundamental level.[142]

He then said that "But the implications are much wider" and came back to his question about the supremacy of Parliament. He stated "We do not in the United Kingdom have an uncontrolled constitution as the Attorney General implausibly asserts". He cited Factortame (No2), where the House of Lords ruled that the UK had voluntarily accorded supremacy to what was then EC law through the *European*

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136 [2005] UKHL 56, para 38
137 [2005] UKHL 56, paras 39-41
138 [2005] UKHL 56, paras 42-70, paras 71-13; 104-128; 129-140; 141-166; 167-179; and 180-195, respectively
139 [2005] UKHL 56, para 73
140 [2005] UKHL 56, para 96
141 [2005] UKHL 56, para 100
142 [2005] UKHL 56, para 101

Communities Act 1972 ; the "divided sovereignty" resulting from the *Scotland Act 1999* settlement; and the *Human Rights Act 1998*. He posited that:

> … the supremacy of Parliament is still the general principle of our constitution. It is a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism.[143]

For a brief discussion of Lord Steyn's views, see Professor Jeffrey Jowell QC's Justice Tom Sargant memorial lecture, 2006.[144]

A further case came before the House of Lords on 29 November 2007 (2 All ER 95), but the arguments in that hearing revolved around whether the hunting ban breached the *Human Rights Act 1998*. The issue of the *Parliament Acts* was not mentioned.

4.3 Constitutional aspects of the Challenge to the Hunting Act 2004

On 15 March 2006, the Constitution Committee of the House of Lords published *Constitutional aspects of the challenge to the Hunting Act 2004*. The report consisted of three academic reviews:

- "the genesis, main provisions and use of the Parliament Acts, including recent proposals for their legislative reform … and a discussion of any conventions or practices with regard to their use that may have emerged", by Professor Rodney Brazier;
- "analyses of the decisions of the Administrative Court and the Court of Appeal in rejecting the challenge to the validity of the *Hunting Act 2004*", by Professor Anthony Bradley; and
- an analysis "of the reasons given by the Law Lords", also by Professor Anthony Bradley.[145]

In "Hunting sovereignty: *Jackson v Her Majesty's Attorney-General*", Alison Young, Oxford University, based a discussion of the sovereignty of Parliament on the House of Lords case. She also questioned whether the *Parliament Act 1911* could be described as entrenched – that is that it "binds future Parliaments".[146]

Tom Mullen, University of Glasgow, addressed the question of "whether the orthodox view of sovereignty is likely to be displaced in the foreseeable future by the view that Parliament's legislative power is subject to legal constraints", in his article "Reflections on *Jackson v Attorney General*: questioning sovereignty".[147]

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143 [2005] UKHL 56, para 102

144 Jeffrey Jowell, Politics and the Law: Constitutional Balance or Institutional Confusion?, Justice Tom Sargant memorial annual lecture 2006, 17 October 2007, pp8-9

145 Constitution Committee, *Constitutional aspects of the challenge to the Hunting Act 2004*, 15 March 2006, HL 141 2005-06

146 Alison L Young, "Hunting sovereignty: *Jackson v Her Majesty's Attorney-General*", *Public Law*, Summer 2006, pp187-196

147 Tom Mullen, "Reflections on Jackson v Attorney General: questioning sovereignty", *Legal Studies*, March 2007, Vol 27 No1, pp1-25

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