

What is a fair and effective Act of Parliament?

The criminal law in our country has for long been a mixture of common law principles and decisions by judges, and Statute law where Parliament legislates to clarify and guide common law practice.

There have been various disagreements between the courts and Parliament over the law. In the end Parliament can legislate to change the law for the future despite a previous pattern of judgements or in place of established court principles. In that sense Statute law is superior law.

In effect though courts still retain powers especially if the law may be unclear as drafted by Parliament or it may be unenforceable. Whilst Statute law is usually supreme, both courts and Parliament have to recognise there are limits to their respective powers to move the law in the way they wish.

Today given the fluid and uncertain constitutional background created by Remain campaigners and lawyers, we need to ask are there any limits on what laws Parliament can pass? Let us take three prospective cases of possible Acts of Parliament.

The first, "The Sunny Sundays Act" would widely be recognised as bad law. This Act states the government must ensure every Sunday is sunny so people can enjoy their day off. Any such idea would be void as it is unenforceable, as government does not have the power to ensure it happens.

The second, "The reduction of rough sleeping Act" is a bit more difficult. This Act says that the Prime Minister has to sleep rough once a week until Parliament thinks he or she has done enough to curb rough sleeping and passes a motion accordingly. Surely this too should be void, as it infringes the human rights of the Prime Minister and puts that office holder at security risks out on the streets.

The third is "The breaking of the Prime Minister's promises Act" which requires the Prime Minister to reverse certain specified policies he had set out and campaigned for, because opposition forces in Parliament do not like them. The opposition with a small temporary majority got this through in order to undermine the Prime Minister's popularity. Is this a fair and enforceable Act? Isn't our constitutional way of dealing with a PM who no longer commands a majority to remove him by a vote of No Confidence?

These hypothetical proposals show the difficulties of having a minority government and taking away from it the sole right to initiate legislation. The country can become ungovernable with a headstrong Parliament that cannot supply a majority government yet refuses an election.