MT

PART ONE

NEW FILE COVER

CONFIDENTIAL FILING

Capital Punishment

Sentencing Policy

HOME AFFAIRS

PT 1:
July 1979

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~31.1.86~~							
~~7.2.86~~							
~~11.2.86~~							
17.2.86							
PT 1 ENDS							

PREM 19/1782

PART ONE ends:-

HOME OFFICE to TF U/D

PART TWO begins:-

SPEECH BY HOME SEC. 7/3/86

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(85) 3rd Meeting, item 1	24/01/1985
H(84) 38	02/10/1984
CC(83) 22nd Meeting, item 1	07/07/1983
CC(83) 20th Meeting, item 1	23/06/1983
CC(79) 9th Meeting, item 2	12/07/1979

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 16/9/2014

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

Cmnd. 9658 – CRIMINAL JUSTICE: Plans for Legislation. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty March 1986. Published by HMSO. ISBN 0 10 196580 X

To be published by Cmnd. 9281 – Intermittent Custody. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty June 1984. Published by HMSO.

Criminal Justice: A Working Paper. Prepared by the Home Office by Central Office of Information 1984. Printed in the UK for HMSO. IBSN 0-86252 148-3

Signed D. Gray Date 16/9/2014

PREM Records Team

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

5 March 1986

Mr Flesher

The Home Secretary thought that the Prime Minister and Cabinet Colleagues would wish to have the enclosed copy of the White Paper on Criminal Justice which is to be published at 10.30 am tomorrow 6 March 1986.

Copies of this letter go to the Private Secretaries of Cabinet Members, the Attorney General, the Chief Whip and Sir Robert Armstrong.

Yours sincerely

SUSAN REX

Tim Flesher Esq


05. III.
1886

File

CONFIDENTIAL

JA (55)

cc H. Booth

10 DOWNING STREET

From the Private Secretary

17 February 1986

Dear Stephen

LENIENT SENTENCING

Thank you for your letter of 14 February.

The Prime Minister has noted the Home Secretary's views. She is content that the proposals on lenient sentencing in the draft White Paper on the Criminal Justice Bill 1986/87 should go forward as agreed by H Committee on 4 February.

I am copying this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), David Morris (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), David Beamish (Government Whips' Office, Lords), Henry Steel (Law Officers' Department) and to Michael Stark (Cabinet Office).

Yours ever

Mark Addison

(Mark Addison)

Stephen Boys Smith, Esq.,
Home Office.

CONFIDENTIAL

DSG

E.R.

PRIME MINISTER

LENIENT SENTENCES

You were struck by the parallel between Clause 22 of the Prosecution of Offences Bill (which was thrown out by the Lords) and the existing procedure under Section 36 of the Criminal Justice Act 1972, under which the Attorney General can refer points of law raised by acquittals to the Court of Appeal for opinion. You asked whether this parallel had been drawn forcibly to their Lordships' attention, and for the Home Secretary's views on whether the existing procedure did not constitute a strong precedent for the Government's original proposal in Clause 22.

The Home Secretary's advice is set out in the attached letter from the Home Office. I also attach the earlier papers which you may like to have to hand.

The gist of the Home Secretary's response is that the parallel you draw is a powerful, though not a complete, one, and that a good deal of the opposition to Clause 22 was based on misconception. But he goes on to note H's view that the practical difficulties of securing sufficient support for the original proposal are insuperable.

The Home Secretary sticks by the view agreed by H Committee that his new proposal, for putting the guideline judgements of the Court of Appeal on a more systematic basis, provides the best practicable way forward.

We are, therefore, back to the position whereby you can

i) Rest content with H Committee's recommendation (though you might, as the Policy Unit have suggested, ask him nonetheless to consider the wider question of reviewing minimum and maximum sentences for at least a range of the more serious offences) or

ii) Return to the charge, and seek to persuade colleagues that some other way forward is needed.

Time is short. The Home Office hope to publish the White Paper on the Criminal Justice Bill early next month. If you opt for ii) above, you will I think need an urgent meeting with the Lord President, the Home Secretary, the Lord Chancellor and the Attorney General.

Which would you prefer?

Leave it as now — we can always remove the other clause at committee stage. I suspect my point was not argued at H. MS

Mark Sawer (Duty Clerk)

pp. Mark Addison
14 February 1986

BM2ADH

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

14 February 1986

Dear Mark

LENIENT SENTENCES

Thank you for your letter of 11 February.

There was, as the Prime Minister has pointed out, very real similarities between the proposal in Clause 22 of the Prosecution of Offences Bill and the existing procedure under which the Attorney General may refer points of law raised by acquittals for the opinion of the Court of Appeal under section 36 of the Criminal Justice Act 1972, and consciously so. During the Lords Committee Stage of the Prosecution of Offences Bill the Lord Chancellor made the point with some force that it was as important to get sentencing principles right as it is for principles of law, and observed that the section 36 procedure had been a wholly beneficial change. But other speakers in the Lords debates (including Lord Rawlinson) saw a clear distinction between the two procedures, and there are indeed important differences.

In the first place, it is not the acquittal itself which is referred to the Court of Appeal under section 36, but the particular point of law to which it gives rise. Perhaps more important, though, is the fact that the section 36 procedure does not by its very nature raise the thorny issue of the prosecution's role in sentencing. The critics of Clause 22 argued that, unless he was to rely solely on press clamour in deciding which cases to select for reference, the Attorney General would need to take advice from the prosecution and that this would unacceptably extend the role of the prosecution into the sentencing field.

As he said in his minute of 31 January to the Prime Minister, the Home Secretary believes that these arguments were overdone, but he is in no doubt that opposition in the Lords would still be very strong. Indeed, the view at H was that there was no chance of the old proposal carrying in the Lords. It must also be borne in mind that lawyers on the backbenches in the Commons opposed Clause 22, and would certainly do so again sufficiently vocally to encourage their Lordships to opposition. That is why he favours the new proposal described in his minute and agreed by H Committee colleagues for putting the guideline judgments of the Court of Appeal on a more systematic footing, with publication under statutory authority by the Judicial Studies Board. The target - improving sentencing practice - would be the same, but the method would not be open to the objections, however misconceived, which carried the day in the Lords. He does not agree that this change would be simply cosmetic. It would provide us with a means of making more effective a procedure which is at present somewhat haphazard and unfamiliar to the public, but which if strengthened could go a long way towards solving the problem.

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I am copying this letter to the other recipients of yours.

Yours,

Stephen

S W BOYS SMITH

Mark Addison, Esq.

CONFIDENTIAL

HOME Affairs

Sentencing Policy

July 79

~~CONFIDENTIAL~~

Prime Minister (2)

We are awaiting the Home Secretary's response to put on the A-G's right to refer acquittals to the Court of Appeal. MEA 12/2

PRIME MINISTER

12 February 1986

LENIENT SENTENCING

Lord Justice Tasker-Watkins informs me privately that next week the Lord Chief Justice is going to deliver a guideline judgment on the subject of rape. He is also taking on board, for further discussions with the Lord Chief Justice, proposals that we have been developing with the former Lord of Appeal, Sir James Cumming-Bruce, for possible minimum sentencing legislation for robbery (mugging) and rape.

All this appears to be a constructive way ahead on lenient sentencing.

mrs

HARTLEY BOOTH

~~CONFIDENTIAL~~

CONFIDENTIAL

H(86)2nd
H(86) 3

File JA1AKH

cc: LPO
LCO
LPS
CW
GW
VAG
CO

10 DOWNING STREET

From the Private Secretary

11 February 1986

Dear Stephen

LENIENT SENTENCING

The Prime Minister has noted the proposals contained in the draft White Paper on the Criminal Justice Bill 1986/87 which deal with lenient sentencing (H(86)3 and the associated minutes H(86)2nd refer), and the Home Secretary's minute of 31 January.

The Prime Minister recalls a point which was raised at her meeting with the Home Secretary's predecessor on 3 April last year (my letter to Hugh Taylor of that date refers). She believes that the proposals contained in Clause 22 of the Prosecution of Offences Bill, which the Lords rejected, amounts to a sensible extension of the Attorney General's right to refer an acquittal to the Court of Appeal on a point of law (section 36 of the Criminal Justice Act 1972). This allows the Court of Appeal to give an opinion on that point of law, though this cannot affect the acquittal itself. The Prime Minister considers that this provides a clear parallel with the Government's earlier proposal to allow the Attorney General to refer a sentence to the Court of Appeal, so that guidance on sentencing in that kind of case could be issued, though the individual sentence in the particular case would not be subject to review.

The Prime Minister wonders whether this point was forcefully put to their Lordships when they were debating Clause 22. She thinks it difficult to sustain the argument that such an arrangement can legitimately apply in the case of a point of law on an acquittal, but not in relation to sentence following conviction. It could, after all, be said that the former involved a point of principle more significant than the latter.

The Prime Minister would be grateful for the Home Secretary's views.

JA

CONFIDENTIAL

I am copying this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), David Morris (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), David Beamish (Government Whips' Office, Lords), Henry Steel (Law Officers' Department) and to Michael Stark (Cabinet Office).

Yours ever

Mark Addison

(MARK ADDISON)

Stephen Boys Smith, Esq.,
Home Office.

E. R.

PRIME MINISTER

WP -1113
next week.

LENIENT SENTENCING

You asked to have a look at the earlier papers on this, and I have taken off the relevant documents from the file and put them in the folder at Flag A.

You also asked about the Attorney General's power to refer a point of law to the Court of Appeal following acquittal. Hartley Booth has told me that this power is contained in Section 36 of the Criminal Justice Act 1972 - and a copy is attached. The Section allows the Court of Appeal to give an opinion on a point of law; it cannot affect the acquittal itself.

Would you like to have a word about this tomorrow, or are you content to proceed in the way set out at the end of my earlier minute.

The point is very similar to the former proposals on sentencing. The CA decision would not affect the case which was the cause of the referral.

Amanda Ross
DUTY CLERK
pp Mark Addison

10 February 1986

Poor quality text due to the nature of the material.

Image quality is best available.

PART III

(3) The provisions referred to in subsection (1) of this section are—

1872 c. 94. (*a*) so much of section 12 of the Licensing Act 1872 as relates to persons guilty, while drunk, of riotous or disorderly behaviour;

1902 c. 28. (*b*) section 1 of the Licensing Act 1902 (persons who are drunk and incapable);

1967 c. 80. (*c*) section 91(1) of the Criminal Justice Act 1967 (persons guilty, while drunk, of disorderly behaviour in public place).

Release on licence without recommendation of Parole Board.

35.—(1) If, in any case falling within such class of cases as the Secretary of State may determine after consultation with the Parole Board, a local review committee recommends the release on licence of a person to whom subsection (1) of section 60 of the Criminal Justice Act 1967 applies, the Secretary of State shall not be obliged to refer the case to the Parole Board before releasing him under that subsection and, unless he nevertheless refers it to the Board, may so release him without any recommendation by the Board.

(2) In this section "local review committee" means a committee established under section 59(6) of the said Act of 1967; and in the application of this section to Scotland for any reference to the Parole Board there shall be substituted a reference to the Parole Board for Scotland.

Reference to Court of Appeal of point of law following acquittal on indictment.

36.—(1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the court, and the court shall, in accordance with this section, consider the point and give their opinion on it.

(2) For the purpose of their consideration of a point referred to them under this section the Court of Appeal shall hear argument—

(*a*) by, or by counsel on behalf of, the Attorney General; and

(*b*) if the acquitted person desires to present any argument to the court, by counsel on his behalf or, with the leave of the court, by the acquitted person himself.

(3) Where the Court of Appeal have given their opinion on a point referred to them under this section, the court may, of their own motion or in pursuance of an application in that behalf, refer the point to the House of Lords if it appears to the court that the point ought to be considered by that House.

(4) If a point is referred to section (3) of this section, th and give their opinion on it the Criminal Appeal Act 19 appeals) shall apply also in re House under this section.

(5) Where, on a point being under this section or further re acquitted person appears by co any argument to the court or his costs, that is to say to th of such sums as are reasonably expenses properly incurred by represented on the reference amount recoverable under this as soon as practicable, by the as the case may be, such office of the House of Lords.

(6) Subject to rules of court Criminal Appeal Act 1966 (po of Court of Appeal between the jurisdiction of the Court of be exercised by the criminal d ences in this section to the Co accordingly as references to th

(7) A reference under this sec relation to which the reference i trial.

37.—(1) A magistrates' court Crown Court on committal for indictment shall not sentence to i or to detention in a detention ce represented in that court and ha to that punishment, unless eith

(*a*) he applied for legal aid a on the ground that it c such that he required as

(*b*) having been informed of and had the opportunity to apply.

(2) For purposes of this sectio legally represented in a court if, b of counsel or a solicitor to repres that court at some time after he is sentenced, and in subsection (1) means legal aid for the purposes

PART III

(4) If a point is referred to the House of Lords under subsection (3) of this section, the House shall consider the point and give their opinion on it accordingly; and section 35(1) of the Criminal Appeal Act 1968 (composition of House for appeals) shall apply also in relation to any proceedings of the House under this section. 1968 c. 19.

(5) Where, on a point being referred to the Court of Appeal under this section or further referred to the House of Lords, the acquitted person appears by counsel for the purpose of presenting any argument to the court or the House, he shall be entitled to his costs, that is to say to the payment out of central funds of such sums as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference or further reference; and any amount recoverable under this subsection shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, such officer as may be prescribed by order of the House of Lords.

(6) Subject to rules of court made under section 1(5) of the Criminal Appeal Act 1966 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the court; and references in this section to the Court of Appeal shall be construed accordingly as references to that division of the court. 1966 c. 31.

(7) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

Restrictions on imprisonment etc. of persons not legally represented.

37.—(1) A magistrates' court on summary conviction or the Crown Court on committal for sentence or on conviction on indictment shall not sentence to imprisonment, to Borstal training or to detention in a detention centre a person who is not legally represented in that court and has not been previously sentenced to that punishment, unless either—

(*a*) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance; or

(*b*) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.

(2) For purposes of this section a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced, and in subsection (1)(*a*) and (*b*) above "legal aid" means legal aid for the purposes of proceedings in that court,

PRIME MINISTER

CRIMINAL JUSTICE BILL

H Committee on Tuesday considered the draft White Paper on the Criminal Justice Bill 1986/87. (Minutes and paper attached in case you wish to look through them.) The aim is to publish in early March. The White Paper contains a considerable consultative element. H generally were content with it. The main features of the White Paper will be:

Lenient Sentences	A number of options will be canvassed and comments invited on them. A steer would be given in the direction of the Home Secretary's proposal to put the Court of Appeal's practice of issuing guidelines on to a statutory basis. (There is more on this below.)
Power to Deprive Offenders of Assistance	Comments will be invited on the proposal to extend the arrangements for confiscation on drugs offences to other serious crimes.
Criminal Injuries Compensation Scheme	The White Paper will propose that the scheme should be put on a statutory basis.
Juries	The Home Secretary was minded to abolish the defence right of peremptory challenge while preserving the right of challenge for cause for both defence and prosecution. H thought the arguments on both sides evenly weighted and agreed that the White

Paper should adopt a more neutral stance and seek comments on the options.

Roskill — The White Paper will give a broad welcome to the report, and the Home Secretary will be putting specific proposals to colleagues after Easter. The White Paper will however reserve the Government's position on doing away with juries on complex fraud trials, and comments will be invited on this.

Extradition — The extradition law would be reformed to reduce impediments to proper and legal extradition requests.

Much of the White Paper will therefore be "Green", particularly on lenient sentences, peremptory challenges and doing away with juries in some fraud trials.

LENIENT SENTENCES

The Home Secretary and H had to recognise the following points.

(i) Public concern about over lenient sentences.

(ii) The opposition of the lawyers and the Lords to the earlier proposals, and to many of the other options.

(iii) The hope that his own proposal would command the widest possible support from other Ministers, Parliament and the judiciary.

The Home Secretary's proposal is a modest measure. But he believes it to be more than a purely cosmetic one, in that it would provide an incentive to develop a more coherent system of reviewing and promulgating sentencing guidelines, and would also encourage the judges to pay attention to them.

On the other hand, the Policy Unit (and Lord Chancellor) think (note attached) the Home Secretary's preferred option is essentially cosmetic, though they appreciate the practical difficulties of other options. The Unit conclude that a wholesale review of maximum and minimum sentences, should be undertaken, with the aim of reducing the discretion which judges have to impose light sentences, (eg, the introduction of minimum sentences for rape).

Past experience shows how difficult it is to come up with measures in this area which command enough support to get through both Houses and to be at the same time as full-blooded as many would like. I do not think you will wish to divert the Home Secretary from the fragile way forward he has now found. And it may well be that a review of maximum and minimum sentences, with the objective of limiting judges' discretion, would come up against just the same obstacles as the earlier proposals in this area and consume a great deal of nugatory time and effort as a result. You may, however, wish to seek the Home Secretary's views on whether the Policy Unit proposal has something in it.

Agree:

(i) To note that H were formally content with the draft White Paper and, in particular,

(ii) to note that on lenient sentencing the White Paper will canvass a number of options, that it will give a steer towards the Home Secretary's proposal to put the Court of Appeal guidelines on a statutory basis, and that the hope is that this proposal will

command widespread assent;

(iii) Note that views differ on how effective this latter proposal will be in dealing with the problem of over lenient sentencing and that it will be important to consider carefully the reaction to the proposal after the consultation period is complete.

(iv) Suggest that one option for the longer term might be to review the general maximum and minimum sentences for offences, with a view to restricting the possibility of over lenient sentences being imposed, and that you would be grateful for the Home Secretary's view?

Mark Addison

(MARK ADDISON)
7 February 1986

SRWAOI

Sentencing Policy

MA

APPENDIX D

OFFENCES (INDICTABLE AND TRIABLE EITHER WAY) WHICH CARRY A MAXIMUM PENALTY OF ONE YEAR'S IMPRISONMENT OR MORE ON INDICTMENT

Offence	Maximum Penalty	Statute
Offences against the person		
Infanticide	Life	Infanticide Act 1938
Child destruction	Life	Infant Life (Preservation) Act 1929, Section 1
Assault	Imprisonment	Common Law
Assault with intent to resist apprehension or assault against a person assisting a constable	3 years	Prevention of Offences Act 1851, Section 12
Possession of offensive weapons without lawful authority or reasonable excuse	2 years	Prevention of Crime Act 1953, Section 1
Inciting girl under 16 to have incestuous sexual intercourse	2 years	Criminal Law Act 1977, Section 54
Male member of staff of hospital or mental nursing home committing buggery or act of gross indecency with male patient, or having u.s.i. with female patient	2 years	Mental Health Act 1959, Section 128
Firing on revenue vessels	5 years	Customs and Excise Management Act 1979, Section 85
Master of Ship not waiting to save lives in collision	2 years	Merchant Shipping Act 1894, Section 422
Master of Ship failing to render assistance to persons in danger at sea	2 years	Maritime Conventions Act 1911, Section 6 and Merchant Shipping (Safety Convention) Act 1949, Section 22
Endangering life on shipboard by breach of duty	2 years	Pilotage Act 1913, Section 46
Misconduct of master or member of crew endangering ship or persons on board ship	2 years	Merchant Shipping Act 1970, Section 27

Offence	Maximum Penalty	Statute
Offences against property without violence		
Conspiracy to defraud	Imprisonment	Common Law
Fraudulent issue of money orders by Post Office servant	7 years	Post Office Act 1953, Section 22
Frauds by moneylenders	2 years	Moneylenders Act 1900, Section 4
Frauds in connection with sale of land, etc.	2 years	Law of Property Act 1925, Section 183 Land Registration Act 1925, Sections 115-7 Land Changes Act 1972, Section 10(5)
Fraudulently inducing persons to invest money	7 years	Prevention of Fraud (Investments) Act 1958, Section 13
Frauds by company directors (as statutes)	5 years	Companies Act 1948, Sections 30(4), 44, 187, 188, 328, 332 and 367 Protection of Depositors Act 1963, Sections 1, 16(2) and 22
False accounting	7 years	Protection of Depositors Act 1963, Section 15
Restrictions on moneylending	2 years	Moneylenders Act 1927
Unlicensed dealing with securities	2 years	Prevention of Fraud (Investments) Act 1958, Section 1
Restriction on distribution of circulars, etc.	2 years	Ibid, Section 14
Offences	2 years	Building Societies Act 1962, Sections 13, 14, 22, 48, 51, 55, 57, 58, 59, 109
Falsification of books	2 years	Companies Act 1948, Section 329
Frauds by officers of companies in liquidation	2 years	Ibid, Section 330
Improper accounts kept	1 year	Ibid, Section 331
Offences	2 years	Companies Act 1967, Sections 25, 27, 33, 60, 68, 83, 84, 111, 113, 114
Unlawful advertising	2 years	Protection of Depositors Act 1963, Section 2

Offence	Maximum Penalty	Statute
Dealing on specified days	2 years	Banking and Financial Dealings Act 1971
Offences	2 years	Insurance Companies Act 1974, Sections 11, 61, 62, 63, 64
Purporting to act as a spiritualistic medium for reward	2 years	Fraudulent Mediums Act 1951, Section 1
Taking marks from public stores	7 years	Public Stores Act 1875, Section 5
Fraudulently retaining, secreting, etc. postal packet or mailbag	7 years	Post Office Act 1953, Sections 55 and 57
Fraudulently printing, mutilating or re-issuing stamps	14 years	Stamp Duties Management Act 1891, Section 13
Forgery, alteration, etc. of telegram	1 year	Post Office (Protection) Act 1884, Section 11
Making a statement which is known to be untrue for the purpose of procuring a passport	2 years	Criminal Justice Act 1925, Section 36
Uttering forged document	1 year	Post Office (Protection) Act 1884, Section 11
Frauds by farmers in connection with agricultural charges	1 year	Agricultural Credits Act 1928, Section 11(1)
Cheating at play	2 years	Gaming Act 1845, Section 17, as amended by Theft Act 1968
Deceiving person that goods are made by disabled	2 years	Trading Representations (Disabled Persons) Acts 1958, 1972
Deception, etc.	2 years	Trade Descriptions Acts 1968, 1972
Offences relating to use, etc. of parking ticket	2 years	Road Traffic Regulation Act 1967, Section 86
Custody or control of false documents	2 years	Mental Health Act 1959, Section 125
Melting down coins	2 years	Decimal Currency Act 1969, Section 24
Unlawful advance by building society	2 years	Housing Act 1964, Section 8(8)
Offences of forging, uttering etc. in connection with hallmarks, e.g. applying to an unhallmarked article a description indicating that it is wholly or partly made of gold, silver, or platinum	2 years	Hallmarking Act 1973, Section 1(1)(a)

Offence	Maximum Penalty	Statute
with intent to defraud or deceive making a counterfeit of any die or mark	10 years	Ibid, Section 6(1)(a)
Malicious injuries to property		
telephone	1 year	Post Office Act 1953, Section 60
post box	1 year	Ibid
electric line	5 years	Electric Lighting Act 1882, Section 22
other damage	2 years	Salmon and Freshwater Fisheries Act 1975, Section 5
Offences against public order and the State		
Treason	Death	Treason Acts 1351 and 1814
Misprision of treason	Life	Common Law
Treason felony	Life	Treason Felony Act 1848
Sedition	Imprisonment	Common Law
Incitement to sedition	10 years	Aliens Registration (Amendment) Act 1919, Section 3(1)
Incitement to mutiny	Life imprisonmemt	Incitement to Mutiny Act 1797
Incitement to disaffection	2 years	Incitement to Disaffection Act 1934, Sections 1, 3
Causing disaffection amongst the police	2 years	Police Act 1964, Section 53(1)
Spying, sabotage, etc.	14 years	Official Secrets Acts 1911-39
Offences	2 years	Ibid
Being unlawfully drilled	2 years	Unlawfully Drilling Act 1819
Unlawful training of men	7 years	Ibid
Taking part, etc. in quasi-military organisations	2 years	Public Order Act 1936
Offence	Life	Biological Weapons Act 1974
Placing or despatching articles to cause bomb hoax	5 years	Criminal Law Act 1977, Section 51

Offence	Maximum Penalty	Statute
Communicating false information alleging the presence of bombs	5 years	Criminal Law Act 1977
Corrupt practices at elections	1 year	Representation of the People Act 1949, Section 146, 129
Personation	2 years	Ibid, Sections 146, 47
Incitement to racial hatred	2 years	Public Order Act 1936, Section 5A amended by Race Relations Act 1976, Section 70(2)
Riot	Imprisonment	Common Law
Riotously preventing the sailing, etc. of ships	14 years	Shipping Offences Act 1793
Unlawful assembly	Imprisonment	Common Law
Routs	Imprisonment	Common Law
Unlawful political meetings in Westminster	Imprisonment	Seditious Meetings Act 1817, Section 23
Causing an affray	Imprisonment	Common Law
Keeping disorderly houses	Imprisonment	Disorderly Houses Act 1751
Libel	2 years	Libel Acts 1792 and 1843
Knowingly facilitates or assists entry of an illegal immigrant	7 years	Immigration Act 1971
Betting, gaming and lotteries		
Betting offences, e.g.		
Accepting bets whilst not being the holder of a permit	1 year	Betting, Gaming and Lotteries Act 1963, Section 2(1)
Use of machines at non-commercial entertainments	2 years	Gaming Act 1968, Section 38(10)
Gaming offences, e.g. unlawful gaming, gaming during prohibited hours, admission of persons under 18 years of age, breaches of regulations	2 years	Gaming Act 1968
Offences in connection with gaming by machine	2 years	Ibid
Motoring Offences		
Causing death by reckless driving	5 years	Road Traffic Act 1972, Section 1 as amended by Section 50, Criminal Law Act 1977

Offence	Maximum Penalty	Statute
Reckless driving	2 years	Ibid, Section 2
Driving while disqualified from holding or obtaining a licence	1 year	R.T.A. 1972, Section 99(b)
With intent to deceive, forging, etc. licence; or making document resembling	2 years	R.T.A. 1960, Section 233, as amended by the Transport Act 1968 and R.T.A. 1972, Section 169
Using, lending, etc. an operator's licence with intent to deceive	2 years	R.T.A. 1960, Section 233, as amended by the Transport Act 1968, R.T.A. 1972, Section 169(1)
Fraudulently using, lending, altering test certificate	2 years	R.T.A. 1972, Section 169(2)
Forging, etc. motor vehicle licence or making false declaration, etc.	2 years	Vehicles (Excise) Act 1971 Section 26
Using, lending, etc. with intent to deceive, motor vehicle trade licence or plates		Ibid
Forging, etc. registration document or furnishing false particulars, etc.	2 years	Ibid
Using, lending, etc. with intent to deceive, registration document		Ibid
Forging, etc. registration mark		Ibid
Using, lending, etc. with intent to deceive, registration mark		Ibid
Work record and employment offences		
Falsification of records with intent to deceive		Transport Act 1968, Section 99(5) and R.T.A. 1960, Section 234, as amended by the Transport Act 1968
Customs, Excise, etc.		
Unlawful assumption of character of an officer	2 years	S13, Customs and Excise Management Act 1979
Obstruction of, assault, etc. on officers	2 years	Ibid S.16
Improper importation of goods with intent to evade prohibition, etc.	2 years	Ibid S.50

Offence	Maximum Penalty	Statute
Fraudulent shipment, etc. of goods before entry has been made	2 years	Ibid S.53
Being knowingly concerned in exportation of stores or attempting to evade prohibition or restriction (other than drugs)	2 years	Ibid S.68
Smuggling whilst armed or disguised	3 years	Ibid S.86
Fraudulent removal of imported goods before examination	2 years	Ibid S.159
Untrue statements, etc. made knowingly or recklessly for purpose of assigned matter	2 years	Ibid S.167
Counterfeiting documents, etc. for purpose of assigned matter	2 years	Ibid S.168
Fraudulent evasion of prohibition (other than drugs)	2 years	Ibid S.170
Fraudulent evasion of duty	2 years	Ibid S.170
False statement made knowingly or recklessly for purposes of relief from duty	2 years	S15, Customs and Excise Duties (General Reliefs) Act 1979
Supply of, use of, etc. rebated oil with intent to contravene restrictions	2 years	S10, Hydrocarbon Oil Duties Act 1979
Fraudulent evasion, etc. of Value Added Tax	2 years	S38(1), Finance Act 1972
False documents, information, etc. for purpose of VAT	2 years	Ibid S.38(2)
Conduct involving offences under S.38(1) and/or (2)	2 years	Ibid S.38(3)
Fraudulent evasion, etc. of car tax	2 years	Ibid Schedule 7, para. 22(1)
False documents, information, etc. for purposes of car tax	2 years	Ibid Schedule 7, para. 22(2)
Fraudulent evasion, etc. of, or false statements, etc. relating to Pool Betting Duty and General Betting Duty	2 years	S12, Betting and Gaming Duties Act 1972 and Schedule 1, para. 15
Fraudulent evasion, etc. of, or false statements, etc. relating to Gaming Licence Duty	2 years	Ibid S.16 and Schedule 2, para. 13

Offence	Maximum Penalty	Statute
Fraudulent evasion, etc. of Bingo Duty or promotion, etc. of Bingo	2 years	Ibid S.20 and Schedule 3, para. 17
Knowing or reckless provision of gaming machines in contravention of provisions of S.25	2 years	Ibid S.27 and Schedule 4, para 15
Offences relating to bets outside Great Britain, etc.	1 year	Ibid S.9
Miscellaneous		
Assisting offender	10 years	Criminal Law Act 1967, Section 4
Harbouring escaped criminal	2 years	Criminal Justice Act 1961
Absconding from lawful custody	Imprisonment	Common Law
Ill-treatment of patients	2 years	Mental Health Act 1959, Section 126
Assisting patient to abscond, etc.	2 years	Ibid Section 129
Publication of obscene article	3 years	Obscene Publications Act 1959, Section 2
Obscene performance	3 years	Theatres Act 1968, Section 1
Incitement to racial hatred	2 years	Ibid Section 5
Personating another by use of blood samples	2 years	Family Law Reform Act 1969, Section 24
Offence under the Act	2 years	Marriage Act 1949
Offences	3 years	Marriage (Registrar General's Licence) Act 1970
Promoting, etc. mock auction	2 years	Mock Auctions Act 1961
Convicted person attending auction	3 years	Auctions (Bidding Agreements) Act 1969, Section 2
Sending prohibited article through the post	1 year	Post Office Act 1953, Section 11
Contravention of Post Office monopoly on telecommunications	2 years	Post Office Act 1969, Section 24
Illegal selling, supplying, etc. of medicinal product	2 years	Medicines Act 1968, Sections 7, 8, 31, 32, 34, 40, 52, 58, 63, 64, 85(5), 86(3), 90(2), 96
Unlicensed carriage, etc. by air	2 years	Civil Aviation Act 1971, Sections 21, 26, 62(1)

Offence	Maximum Penalty	Statute
Giving or receiving inducement for procuring honour	2 years	Honours (Prevention of Abuses) Act 1925
Offence against the Act	1 year	Rabies Act 1974, Section 6
Unlawful fishing, etc.	2 years	Salmon and Freshwater Fisheries Acts 1923 and 1972
Demolition of listed building	1 year	Town and Country Planning Act 1971, Section 55
Taking or killing seal in Antarctic	2 years	Antarctic Treaty Act 1967, Section 4(1)
Unlawful Broadcast from ship, etc.	2 years	Marine Broadcasting (Offences) Act 1967
Ship entering area of protected installation	1 year	Continental Shelf Act 1964, Section 2
Refusal of Entry	5 years	Atomic Energy Act 1946, Section 5
Obstructing discovery of mineral	5 years	Ibid Section 6
Some offences relating to the storing, selling, etc. of explosive substances	2 years	Explosives Act 1875
Deposit of poisonous waste	5 years	Deposit of Poisonous Waste Act 1972, Section 1(1)
Some offences	2 years	Health and Safety at Work Act, Section 33
Any misdemeanour	2 years	Merchant Shipping Act 1894, Section 680
Impeding the navigation or progress of a ship by neglect of duty	2 years	Merchant Shipping Act 1970, Section 30
Unable to carry out duties on a fishing vessel due to drink or drugs	2 years	Ibid Section 28
Making false statements, etc.	(Most commonly) 2 years	Various enactments
Contravention of order, notice, regulations, etc.	(Most commonly) 2 years	Various enactments

But ? will be certain use the measure
Thatcher 86

PRIME MINISTER 5 February 1986

SENTENCING AND THE CRIMINAL JUSTICE BILL

H COMMITTEE, 4 FEBRUARY

The Home Secretary introduced his proposal to raise the status and statutory function of the Judicial Studies Board. He described this as the mildest of options to tackle the problem of lenient sentencing. The Attorney approved, but the Lord Chancellor said the exercise was clearly cosmetic. We agree with the Lord Chancellor. The Court of Appeal, of course, already makes guideline judgements and Judges are under duty to consider these decisions that are invariably reported in the criminal appeal reports.

If you would like to do something more on sentencing you might consider:

1. A wholesale review of maximum and minimum sentences. This is the only point in the process when Government can properly influence sentencing. There has been no full-scale review since the 1970s when the Advisory Council on the Penal System was abolished.

2. You could bring back the legislation which allowed the Court of Appeal to increase the sentence on anyone who appealed frivolously. However, this cannot solve the principal problem of lenient sentences. The Lord Chief Justice approves of this suggestion, but the Home Office

officials doubt whether this would be effective or helpful.

3. You could go for the toughest option of all and bring in appeals against sentence by the prosecution. This would be approved by the Judiciary, but the Attorney, the Lord Chancellor, and Conservative lawyers in the Lords and the Commons would reject it.

Conclusion

We recommend you have a full-scale review of sentencing maxima and minima if you want to go further than the Criminal Justice Bill proposal.

HARTLEY BOOTH

H (86) 3

PRIME MINISTER

LENIENT SENTENCES

The Home Secretary's minute, attached, explains the background to his thinking on his proposal on lenient sentences for inclusion in the Criminal Justice Bill, which is the subject of a paper going to H Committee on Tuesday. The Home Secretary proposes that, instead of introducing a power for the Attorney General to refer a specific sentence to the Court of Appeal, he put on a statutory basis the Appeal Court's practice of giving guideline judgments on sentencing in particular classes of cases.

The Home Secretary has had to try and pick his way through the difficulty, on the one hand of meeting genuine public concern on lenient sentencing and, on the other, of meeting the objections of the lawyers who are completely opposed to involving the prosecution in sentencing in any way.

It will be important to take the Lord President's mind on the likely reaction of the Lords, and this can be fully discussed at H on Tuesday. I shall report to you again after that.

You will also wish to note that the Home Secretary proposes that the Criminal Justice Bill should provide for the implementation of most of Roskill and for the abolition of peremptory challenge to jurors.

Mark Addison

(MARK ADDISON)
31 January 1986

CO
HO
Legal Pm office
} agreed.
MEA 3/2

SRWANV

PRIME MINISTER

to request attachment *

LENIENT SENTENCES

As you know, I have been considering how we should deal with the problem of lenient sentences when we come to the Criminal Justice Bill which we shall be introducing in the autumn. In view of your previous interest in the matter, I thought you might like to see the attached paper which H Committee will be discussing at a meeting on Tuesday. Paragraphs 3 - 9 of the paper summarise my current thinking, and the terms on which I propose to open the matter to public discussion can be founds in paragraphs 6 - 11 of the attached White Paper which I plan to publish next month. *

2. I started by thinking that we should simply reintroduce the provision ("clause 22") which was defeated in the House of Lords during the passage of the Prosecution of Offences Act, which would have given the Attorney General a power to refer apparently over-lenient sentences to the Court of Appeal. Having reflected a good deal on the matter over the last few months, I think that it would be unwise to do so. Even if the Bill is introduced in the Commons I am doubtful whether we could carry it in the Lords. Those who voted against us last time (a broad coalition of legal Peers, the Opposition and some of our own supporters) felt strongly that it would be wrong in principle for the prosecution to be involved in sentencing even in the very limited way which clause 22 would have allowed. I believe that argument to have been overdone, but I have no reason to think that feeling on the subject now is any less strong than it was.

3. Part of the difficulty with clause 22 was that the Lords' hostility was not matched by enthusiasm in the Commons. The reason may have been that, under the clause, the Court of Appeal would have been able to give its opinion on the sentence which should have been passed in the case before it, but the offender himself would not have been adversely affected. The provision looked as though it affected the individual case and therefore infuriated the Lords. But in fact it did not, and could therefore be criticised as artificial. In the end, we had the worst of both worlds.

4. We could get round the accusation of artificiality only by giving the Court of Appeal power to increase sentence on a reference by the Attorney General, as has been proposed in a recent Bow Group paper by Michael Stephen. I have thought hard about that possibility. It has the virtue of logic and would be quite acceptable to the Lord Chief Justice. The arguments of substance against it do not seem to me as strong as is often made out. But as is said in the paper for H, it would be genuinely

vulnerable to the criticism of unacceptable prosecution involvement in sentencing, and on that account even less likely to carry in the Lords. The Law Officers have made it clear that they would be strongly opposed in principle, fearing as they do that involvement in such a procedure would put their relationship with the judiciary under great strain. The Lord Chancellor is also opposed. I must give weight to these views.

5. I have also in mind that we may not want to become bogged down in the spring and summer of 1987 with a time-consuming argument between Lords and Commons on this issue.

6. For all these reasons I have looked for a somewhat different way of meeting the genuine concern of the public and ourselves which you articulated to the American Bar Association. I propose to suggest an approach whose purpose, like that of clause 22, would be to ensure that the correct sentencing principles were fully articulated by the Court of Appeal and well known to the lower courts. This could be done by reorganising, strengthening and putting on a statutory basis the practice of the Court, with the Lord Chief Justice's agreement, of giving "guideline" judgments on sentencing in particular classes of cases. The Court's advice would be promulgated under statutory authority by the Judicial Studies Board. It would be embodied in a handbook for judges, which would be available to the public at large. At the moment the Court does give guideline judgments but they tend to be publicised in a rather haphazard way, and few people outside the judiciary (and by no means all judges) seem to be at home with them.

7. A provision in the Criminal Justice Bill establishing a statutory basis for improving sentencing practice would go with the constitutional grain, and would be widely recognised as a real advance in a difficult area. I have had a talk with the Lord Chief Justice, who could accept the proposal just described. If, as I believe will be the case, he is willing to make his support for it known our position will be considerably strengthened.

8. The Criminal Justice Bill will be a massive and far reaching measure which will include, if colleagues accept my recommendations, a number of drastic proposals, for example to implement most of Roskilll, to do away with peremptory challenge to jurors in all cases, and to abolish the prima facie rule in cases of extradition. Whatever decision we take on lenient sentences no-one will be able to describe the Bill as a mouse.

9. I am sending a copy of this minute to the Lord President of the Council, the Lord Chancellor, the Leader of the House of Commons, the Chief Whips in the House of Lords and the House of Commons, the Attorney General and Sir Robert Armstrong.

Douglas Hurd.

31st January 1986


31. I.
PM 86

CONFIDENTIAL

File

Not to be sent now.

10 DOWNING STREET

From the Private Secretary

20 December 1985

CF
Cabinet I see the note of the PM's recent bilateral with the Home Sec plans. MBA 23/12

Dear Stephen

SENTENCING

The Prime Minister has asked for a note from the Home Secretary setting out where matters now stand on the question of over-lenient sentencing. She is concerned that, despite the defeat in the Lords, this matter must not be lost sight of.

I am copying this letter to Richard Stoate (Lord Chancellor's Department).

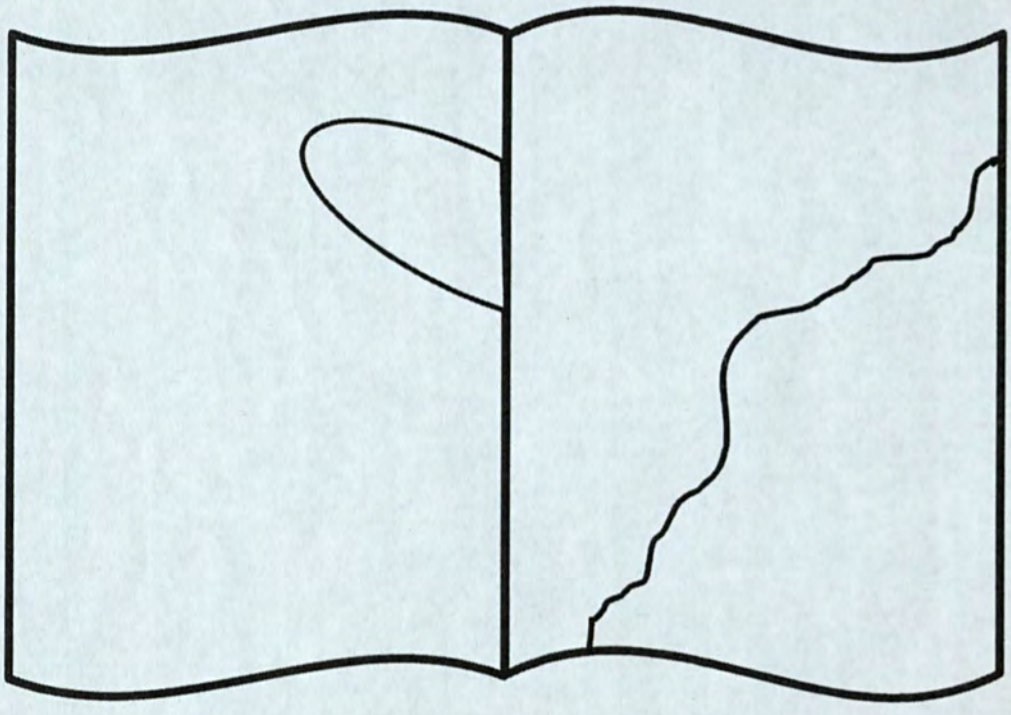
Yours ever

Mark Addison

(MARK ADDISON)

Stephen Boys Smith, Esq.,
Home Office.

SPECIAL NOTICE



DAMAGED TEXT - INCOMPLETE IMAGE

Volume 77
No. 97

CF

Per lenient sentencing file
pm. Mark 17/4

Oral Answers to Questions
Secretary of State for Socia
Prime Minister

Derek Harris (Death) [Col.
Statement—[Mr. Younger]

Political Parties (Income an
Motion for leave to introdu
Bill presented, and read th

Prosecution of Offences Bill
Motion for Second Reading
Money resolution agreed to

Police [Col. 218]
Motion to approve regulati

Industrial Development Bill
Read a Second time
Money resolution agreed to

Written Answers to Questio

[Mr. Ivan Lawrence]

decentralised costs, is my right hon. and learned Friend being serious in suggesting that the costs involved in this measure will not rise substantially above those which would apply if there were a locally based independent prosecution service?

Mr. Brittan: I am saying that, and I gave the reasons why. I went on to talk about a different aspect of costs —the award of costs—but at an earlier stage I said that one was talking only about the extra cost of the small central management function of the Director of Public Prosecutions department, and I indicated that that would be at least partly offset by the increased efficiency which we expect the national service to achieve, including savings from increased delegation of casework. So I do take that view.

The House will recall that the Bill as introduced in another place included a clause empowering the Attorney-General to refer to the Court of Appeal any Crown court sentence which appeared to be excessively lenient. The particular sentence would not have been affected, but the Court of Appeal would have been able to offer an opinion on it. We saw this as a strictly limited but none the less worthwhile change which would have helped to strengthen public confidence in our system of criminal justice. The Court of Appeal already takes the opportunity, when passing judgment in appeals against sentence, to set out principles of sentencing in particular kinds of cases for the guidance of the lower courts, and I very much welcome its willingness to do so. The procedure which we proposed would have widened that role by providing an opportunity for the court to give guidance specifically in the context of cases where the sentence had given rise to public concern. My right hon. and learned Friend the Attorney-General made it clear that the power was one which he would want to use sparingly.

This proposal did not find favour in another place. I must say to the House frankly that my noble and learned Friend the Lord Chancellor, my right hon. and learned Friend the Attorney-General and I were not, and are not, persuaded by the arguments deployed there. It would be difficult to recognise the essentially limited measure which I have described in the apocalyptic visions which were conjured up by some of those who spoke in the debate in another place. Their chief criticism—that the procedure for referring sentences would have breached the principle that the prosecution should not be involved in sentencing decisions—seems to me, with great respect to those who advanced it, misconceived. There is a world of difference between routine prosecution involvement in sentencing decisions—which would, of course, be quite at odds with our traditions—and a procedure under which the Attorney-General, as a law officer, assesses whether a sentence has given rise to genuine public concern and raised issues which could usefully be ventilated in the Court of Appeal. Nevertheless, the strength and breadth of feeling on the subject in another place was considerable, and not to be set aside lightly—certainly not without a wider measure of support for the provision than has so far come forward.

Mr. John Morris (Aberavon) *rose*——

Mr. Brittan: No, I should like to finish. I should accordingly like to reflect on the matter further. I have no

present plans to reintr
remaining stages of this
to let the matter rest.
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Mr. John Morris: I
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22. How would the
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Mr. Brittan: I thi
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public concern. I am not
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Mr. John Ryman
Secretary considered, p
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has increased from 4,00

P.R.

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PRIME MINISTER

LIMITED SENTENCES

Following your recent meeting with the Home Secretary and others to discuss this, the Home Secretary proposes to take the line set out in the attached letter in opening the Second Reading Debate of the Prosecution of Offences Bill tomorrow.

As it stands, the letter suggests the Home Secretary might take a somewhat less robust line than was agreed at the meeting. I have spoken, however, to his office, and they have confirmed that the Home Secretary's speech includes two further points as well:

(i) That the Government does not propose to let the matter rest, particularly in view of the weight of public opinion in favour of the change; and

(ii) that, if the proposal is not carried on to the Statute Book in this Bill, it will be borne very much in mind in preparing the Criminal Justice Bill.

On this basis, the Home Secretary's line seems to reflect the upshot of the meeting.

Content?

S. Addison

Yes MT

pp. MARK ADDISON

15 April 1985

Message passed to HO.
MEA 16/4

From: THE PRIVATE SECRETARY

010

cc/10

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

15 April 1985

Dear Mark,

LENIENT SENTENCES

We had a word on the telephone about the outcome of the meeting held by the Prime Minister on 3 April to discuss the provision contained in what was clause 22 of the Prosecution of Offences Bill. That clause would have empowered the Attorney General to seek from the Court of Appeal an opinion on any Crown Court sentence which appeared to be excessively lenient. I said that the Home Secretary thought it would be helpful if I were to set out in more detail what he intended to say in opening the Second Reading debate tomorrow.

The Home Secretary will begin his speech by confirming that neither he nor the Lord Chancellor were persuaded by the arguments deployed in the House of Lords, and that the criticisms advanced there appeared to be misconceived. He will go on to say that he recognises, nevertheless, that the strength and breadth of the feeling on the subject in the House of Lords was considerable and could not be set aside without a wider measure of support for the provision than has so far been apparent. The Home Secretary will indicate that he would like to reflect upon the matter further, but he has at present no plan to reintroduce the provision in this Bill. This section of the speech will be carefully worded so as not to rule out Government support for a back bench amendment along lines similar to those of clause 22, or even a Government amendment at a later stage of the Bill's progress should a wider measure of support emerge.

I am copying this letter to the Private Secretaries to the Lord President, the Lord Chancellor, the Lord Privy Seal, the Attorney General, the Chief Whip in the House of Commons and the Chief Whip in the House of Lords.

Yours,
Nigel

N A PANTLING

Mark Addison, Esq

CONFIDENTIAL

SUBJECT
cc Master

MJ2AHH

file

10 DOWNING STREET

From the Private Secretary

3 April 1985

Dear [illegible]

Lenient Sentences

The Prime Minister held a discussion this afternoon with the Lord President, the Lord Chancellor, the Home Secretary, the Lord Privy Seal, the Attorney General, the Chief Whip and the Chief Whip (Lords) about how to take forward the Government's intention to deal with over-lenient sentences. Mr. Booth was also present.

The Home Secretary said that he continued to believe Clause 22 of the Prosecution of Offences Bill, which the Lords had rejected, was the right way forward. It was an important measure for the administration of justice. At present, sentences might on appeal be reduced but not increased. There was however provision for appeal in rare circumstances against conviction; there should also be a power to question whether a sentence was too lenient. The question at issue was not whether the policy was right, but how best to pursue it. This was essentially now a matter of political judgment.

In discussion, the Lord Chancellor, Lord President and others at the meeting agreed that the Government's policy was the right one. Parliament had a duty to reflect public opinion and to see that the framework of law was just. But the intense opposition from a united legal lobby had to be recognised. It might be necessary to put the matter to the Lords three times to get it through. It was crucial that at least some lawyers in the Commons were willing to back the measure. It seemed unlikely that lawyers in the Commons, even on the Government's side, would be swayed unless the public's voice was heard. In terms of timing, there was no need for the power to appeal a sentence to go into the Prosecution of Offences Bill, though the Home Secretary needed to decide what should be said at the Second Reading Debate shortly after Easter. The clause might in fact be more appropriately placed in the Criminal Justice Bill.

Summing up the discussion, the Prime Minister noted that she and her colleagues were unanimous that Clause 22 was right in justice. It amounted to a sensible extension of the right to review a false acquittal. It was

CONFIDENTIAL

058

unacceptable for a vested legal interest in the Lords to thwart the wishes of the electorate. Those who opposed the clause should be asked to consider how they thought the problem could be otherwise effectively and fairly tackled. The answer was, it could not. It was vital to have public support for the measure. Individual lawyer MPs be persuaded of the case for it, and the Prime Minister stood ready to write to them accordingly, and to refer to the matter in forthcoming speeches. The maximum amount of lobbying within the House would be required. Meanwhile, the Home Secretary should indicate, during the Second Reading Debate of the Prosecution of Offences Bill, that the Government was not persuaded Clause 22 should be dropped and that it would be considering carefully whether to go ahead with the provision in that Bill or in the Criminal Justice Bill.

I am sending copies of this letter to Janet Lewis-Jones (Lord President's Office), Richard Stoate (Lord Chancellor's Office), David Morris (Lord Privy Seal's Office), Henry Steel (Law Officers' Department), Murdo Maclean (Chief Whip's Office), and David Beamish (Chief Whip's Office, House of Lords).

Yours ever

Mark Addison

Hugh Taylor Esq
Home Office.

PRIME MINISTER 2 April 1985

PROSECUTION OF OFFENCES BILL: MEETING WITH THE LORD CHANCELLOR AND THE HOME SECRETARY, 3 APRIL 1985

1. Section 22

The argument in favour of the Lord Chancellor and the Home Secretary's proposal is that Section 22 of the above Bill will tackle lenient sentencing. The Lord Chancellor's speech elaborates this point (page 400 of Hansard attached). In fact, Section 22 will not empower the Court of Appeal to impose a more severe sentence in a particular case and it will only allow it to lay down sentencing guidelines. Lord Elwyn-Jones best summarises the contrary argument (page 386-7 attached), namely, that the section is unnecessary and wrong in principle.

2. The Old Law

The old law is attached. The Home Secretary will probably say that this could go in the next Criminal Justice Bill in the 1986-7 Session.

3. 'Sentencing Declaration'

The Home Secretary will say that this option needs investigation, but might run in the Criminal Justice Bill in 1986-7 Session (Leon Brittan's minute attached).

This Week

There has been press comment from Peter Utley that the Government should stand its ground.

Conclusion

This battle in Parliament might win the power to obtain sentencing guidelines or might be lost. It would be better to achieve the same by a safer route. We recommend re-enacting the Criminal Appeal Act, 1968, Section 11(3) and considering powers for a sentencing declaration in the Criminal Justice Bill.

HARTLEY BOOTH

CRIMINAL APPEAL ACT, 1907

Section 5(i):

If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of indictment, the court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefore as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the court consider that the appellant has been properly convicted.

Repealed Criminal Appeal Act, 1968, Section 11(3)

QUEEN ANNE'S GATE LONDON SW1H 9AT

2 April 1985

D Hartley,

PROSECUTION APPEALS

Thank you for your minute of 21 March. I am most grateful for the thought you have given to possible alternatives to what was clause 22 of the Prosecution of Offences Bill, and I agree that the options you have put forward deserve consideration.

Your suggestion of "Sentencing Declarations" is an interesting one. If we proposed that it should be open to the Attorney General to seek such a declaration in an individual case, this might well, as you recognise, encounter the same sort of Parliamentary resistance as clause 22 did: it could be said that a power to seek a declaration differed from power to refer a case for the opinion of the Court of Appeal only in wording. (Clause 22 did not in fact use the word "appeal".) It might also be said that the concept of a declaration was not entirely appropriate for our purpose, since in civil proceedings a declaration establishes the rights of the parties, whereas we envisage an opinion delivered by the Court of Appeal which would not alter the original sentence; moreover, an applicant for a declaration in civil proceedings is required not merely to raise an issue but to specify the terms of the declaration sought - which it would be inappropriate for the Attorney General to do in relation to sentencing.

Your other option of a power to seek a declaration in regard to a category of offence would have the advantage of making the formulation of general sentencing principles less dependent on the Court of Appeal's own initiative (or lack of it) and on the ability of the Criminal Appeal Office to find a relevant case which happens to be the subject of an appeal. What the Parliamentary reaction to this proposal might be would, I think, depend to a large extent on how it was received by the Lord Chief Justice and his senior colleagues in the Court of Appeal. Without support from that quarter, I can see the proposal being criticised as giving the Attorney General - and thereby, it would be mistakenly alleged, the

Hartley Booth, Esq

Government - a statutory role in the formulation of sentencing policy which should be a matter for the courts alone. Concern might be expressed over the exercise of the power in relation to offences arising from political or industrial conflict where the level of sentences imposed might be in danger of becoming a political issue. The proposal might also be attacked as contrary to the traditional principle that a court should not be called upon to adjudicate on issues put in an abstract and hypothetical form.

How the proposal would be received by the judges is hard to predict. When Andrew Ashworth put forward in 1982 the idea of a sentencing council charged with drawing up general sentencing guidelines to be promulgated by the Lord Chief Justice (who would be Chairman of the Council) in the form of practice directions, no judicial enthusiasm for this idea was shown; but his proposed council would have been a mixed body of judges and others. I believe that, if we were to bring this proposal forward as an immediate alternative to clause 22, it would be likely to be received with suspicion and criticism which we could not expect to allay in the time available for getting the Prosecution Bill through the House of Commons. What I would like to do instead is to sound judicial opinion more slowly, so that the proposal can be considered as one which might be embodied in the Criminal Justice Bill that I am planning for the 1986-87 session if it is favourably received. I shall need also to consult the Lord Chancellor and the Attorney General.

You also raise the question of returning to the old system of criminal appeals. This is a matter which Lord Justice Watkins, on behalf of the Court of Appeal, has already broached with my officials, and again it is a subject that might appropriately be dealt with in the next Criminal Justice Bill, although the discussions have not yet reached a point at which specific proposals have been put to me. I doubt, however, whether we could present any changes of this sort as a substitute for clause 22, since an offender on whom a manifestly over-lenient sentence has been passed is unlikely himself to submit his case to the judgment of the Court of Appeal.

I hope you may agree that this is the best way in which to pursue your interesting and constructive proposals.

Peter Utley The Daily Telegraph 1.4.5.

LORD HAILSHAM is quite right to complain (as he did on Friday) of inadequate and misleading reports of judicial proceedings which often lead the public to suppose that judges have treated criminals too leniently. But what good will complaining do? I suspect that most of these errors are not deliberate or malicious, but arise simply from the complexity of judicial proceedings and the speed with which often inexperienced reporters have to recount them.

The surest remedy would be to give to the Attorney General the power to apply to the Court of Appeal for a comment on any sentence the justice and reasonableness of which was seriously in dispute. The sentence would remain unchanged, but the reasons for and against it would be publicly ventilated and pronounced on.

This was precisely the proposal, contained in the Prosecution of Offenders Bill, which scandalised the judiciary and was rejected by the Lords last January. If sentences are thought to be too lenient, the public will make its feelings about them known (not least through the Press), and the causes both of the criminal and the community would surely be best served in many cases by having the matter publicly and judicially threshed out.

I have an almost invincible prejudice in favour of lawyers and their quaint traditions; but, on this issue, I think the Government should stand its ground and reintroduce the discarded clause.

E.R.

PRIME MINISTER

GWERTS
12.00
3/4

PROSECUTION APPEALS

Flag A.

The Home Secretary and Lord Chancellor want to reinstate Section 22 of the Prosecution of Offenders Bill (Annex A) which was thrown out by the Lords. The Lords will still oppose it and though it could be whipped through the Commons our lawyers will speak against and the press may reflect this. Lawyers see this as being the first occasion in history that the prosecution has become involved in sentencing in England.

If you do not want a constitutional wrangle but wish to do something bearing in mind the 1983 Conference pledge, there is an alternative course which is sensible.

(i) The Government could re-enact the old rule that where a criminal appeals, he stands a chance of having his sentence increased if he appeals unnecessarily. This is likely to pass easily and was in the 1907 Act which was repealed in 1967 (Annex B).

(ii) Legislate to allow the Attorney General to obtain "sentencing guidelines" which would influence Courts.

On Parliamentary grounds we recommend the two options above rather than perservering with Section 22.

Prime Minister.

The Home Secretary is seeking a meeting early next week to discuss what he should say during the Second Reading of the Prosecution of Offenders Bill (soon after Easter).

Content for me to fix a short (½ hour) meeting on the Home Secretary suggests?

Yes

or Content that the Policy Unit proposals should also be on the agenda?

Yes

Mark Addison 2/3

pp. HARTLEY BOOTH
28 March 1985

PART II

accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and

(*b*) enable the Lord Chancellor to enforce those directions in cases to which they apply.

1979 c. 55.

(5) Subsection (4) of section 61 of the Justices of the Peace Act 1979 (regulations as to accounts of justices' clerks) shall apply in relation to sums payable to the Lord Chancellor by virtue of regulations made under subsection (2) above as it applies in relation to sums payable to the Secretary of State under that section.

(6) Any regulations under this Part may contain such incidental and supplemental provisions as the Lord Chancellor considers appropriate.

(7) Before making any regulations under section 19(1) of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.

(8) In this section "costs order" means an order for the payment of costs made under or by virtue of this Part.

Interpretation, etc.

21.—(1) In this Part—

"defendant's costs order" has the meaning given in section 15 of this Act;

"legal aid order" means an order under any provision of section 28 of the Legal Aid Act 1974 and includes, in relation to proceedings in a Divisional Court of the Queen's Bench Division, any certificate or other instrument under which legal aid is given;

1974 c. 4.

"legally assisted person" means a person to whom aid is ordered to be given by a legal aid order;

"proceedings" includes—

(*a*) proceedings in any court below; and

(*b*) in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and

"witness" means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance.

PART II

(2) Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal—

(*a*) to the Court of Appeal under Part I of the Criminal Appeal Act 1968; or

1968 c. 19.

(*b*) to the House of Lords under Part II of that Act.

(3) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division.

1981 c. 54.

(4) For the purposes of sections 15 and 16 of this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

(5) Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused's lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.

(6) The cases are—

(*a*) where an information charging the accused with an offence is laid before a justice of the peace for any area but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and

(*b*) where the accused is committed for trial but not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

PART III

MISCELLANEOUS

Reference to Court of Appeal of certain Crown Court sentences.

22.—(1) The Attorney General may refer to the Court of Appeal any case in which a person has been tried on indictment and convicted of an offence before the Crown Court for their opinion as to—

(*a*) whether, having regard to all the circumstances of the case which were known to the Crown Court, a sentence different to that imposed by that court ought to have been imposed on the offender; and

PART III

(*b*) if so, what that sentence should have been;

and it shall be the duty of the Court of Appeal to consider the case and give their opinion.

(2) For the purposes of their consideration of a case referred to them under this section the Court of Appeal shall hear argument—

(*a*) by, or by counsel on behalf of, the Attorney General; and

(*b*) if the offender desires to present any argument to the court, by counsel on his behalf or, with the leave of the court, by the offender himself.

(3) Where, on a reference to the Court of Appeal under this section, the offender appears by counsel for the purpose of presenting any argument to the court, he shall be entitled to the payment out of central funds of such sums as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference.

(4) Any amount recoverable under subsection (3) above shall be ascertained, as soon as practicable, by the registrar of criminal appeals.

(5) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the court; and references in this section to the Court of Appeal shall be construed as references to that division.

1981 c. 54.

(6) For the purposes of this section, an order under Part I of the Powers of Criminal Courts Act 1973 placing a person on probation or discharging him absolutely or conditionally shall, notwithstanding anything in section 13 of that Act, be deemed to be a conviction of the offence for which the order was made.

1973 c. 62.

(7) This section shall apply in relation to any case—

(*a*) in which a person has been sentenced by the Crown Court; and

(*b*) which falls within a class of case specified for the purposes of this section by order made by the Secretary of State;

as it applies in relation to a case falling within subsection (1) above.

(8) The power to make orders under subsection (7) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

PART III

(9) In this section "sentence", in relation to an offence, includes any order made by a court when dealing with an offender (including a recommendation for deportation but not an interim hospital order under Part III of the Mental Health Act 1983).

1983 c. 20.

(10) Nothing done under this section shall affect the sentence imposed by the Crown Court.

Power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings.

23.—(1) The Secretary of State may by regulations make provision, with respect to any specified preliminary stage of proceedings for an offence, as to the maximum period—

(*a*) to be allowed to the prosecution to complete that stage;

(*b*) during which the accused may, while awaiting completion of that stage, be—

(i) remanded in custody in accordance with section 128 of the Magistrates' Courts Act 1980; or

1980 c. 43.

(ii) committed in custody for trial under section 6 of that Act;

in relation to that offence.

(2) The regulations may, in particular—

(*a*) be made so as to apply only in relation to proceedings instituted in specified areas;

(*b*) make different provision with respect to proceedings instituted in different areas;

(*c*) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of any other provision of the regulations;

(*d*) provide for the Magistrates' Courts Act 1980 and the Bail Act 1976 to apply in relation to cases to which custody or overall time limits apply subject to such modifications as may be specified (being modifications which the Secretary of State considers necessary in consequence of any provision made by the regulations); and

1976 c. 63.

(*e*) make such transitional provision in relation to proceedings instituted before the commencement of any provision of the regulations as the Secretary of State considers appropriate.

(3) The appropriate court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit if it is satisfied—

(*a*) that there is good and sufficient cause for doing so; and

(*b*) that the prosecution has acted with all due expedition.

Annex B

(5) Unless the court direct to the contrary in cases where in the opinion of the court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the court, the judgment of the court shall be pronounced by the president of the court or such other member of the court hearing the case as the president of the court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the court.

(6) If in any case the Director of Public Prosecutions or the prosecutor or defendant obtains the certificate of the Attorney General that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, he may appeal from that decision to the House of Lords, but subject thereto the determination by the Court of Criminal Appeal of any appeal or other matter which it has power to determine shall be final, and no appeal shall lie from that court to any other court.

(7) The Court of Criminal Appeal shall be a superior court of record, and shall, for the purposes of and subject to the provisions of this Act, have full power to determine, in accordance with this Act, any questions necessary to be determined for the purpose of doing justice in the case before the court.

(8) Rules of court shall provide for securing sittings of the Court of Criminal Appeal, if necessary, during vacation.

(9) Any direction which may be given by the Lord Chief Justice under this section may, in the event of any vacancy in that office, or in the event of the incapacity of the Lord Chief Justice to act from any reason, be given by the senior judge of the Court of Criminal Appeal.

Registrar of the Court of Criminal Appeal.

2. There shall be a Registrar of the Court of Criminal Appeal (in this Act referred to as the Registrar) who shall be appointed by the Lord Chief Justice from among the Masters of the Supreme Court acting in the King's Bench Division, and shall be entitled to such additional salary (if any), and be provided with such additional staff (if any), in respect of the office of Registrar as the Lord Chancellor, with the concurrence of the Treasury, may determine.

The senior Master of the Supreme Court shall be the first registrar.

RIGHT OF APPEAL AND DETERMINATION OF APPEALS.

Right of appeal in criminal cases.

3. A person convicted on indictment may appeal under this Act to the Court of Criminal Appeal—

(*a*) against his conviction on any ground of appeal which involves a question of law alone; and

(*b*) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or

question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal; and

(*c*) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

Determination of appeals in ordinary cases.

4.—(1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Act, the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

Powers of court in special cases.

5.—(1) If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the court consider that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

Repealed Criminal Appeal Act 1968 s.11(3) & 45.

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Criminal Appeal consider that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) If on any appeal it appears to the Court of Criminal Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the court may quash the sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic under the Trial of Lunatics Act, 1883, in the same manner as if a special verdict had been found by the jury under that Act.

46 & 47 Vict. c. 38.

Re-vesting and restitution of property on conviction. 56 & 57 Vict. c. 71.

6. The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, of the provisions of subsection (1) of section twenty-four of the Sale of Goods Act, 1893, as to the re-vesting of the property in stolen goods on conviction, shall (unless the court before whom the conviction takes place direct to the contrary in any case in which in their opinion, the title to the property is not in dispute) be suspended—

(*a*) in any case until the expiration of ten days after the date of the conviction; and

(*b*) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or of the said provisions.

(2) The Court of Criminal Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed, and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

PROCEDURE.

Time for appealing.

7.—(1) Where a person convicted desires to appeal under this Act to the Court of Criminal Appeal, or to obtain the leave of that court to appeal, he shall give notice of appeal or notice

of his application for leave to appeal in such manner as may be directed by rules of court within ten days of the date of conviction: Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the court.

Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Criminal Appeal.

(2) In the case of a conviction involving sentence of death or corporal punishment—

(*a*) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

(*b*) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

Judge's notes and report to be furnished on appeal.

8. The judge or chairman of any court before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence, or in the case of an application for leave to appeal under this Act, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and shall also furnish to the Registrar in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

Supplemental powers of court.

9. For the purposes of this Act, the Court of Criminal Appeal may, if they think it necessary or expedient in the interest of justice,—

(*a*) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case; and

(*b*) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any judge of the court or before any officer of the court or justice of the peace or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court; and

(*c*) if they think fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant

cc H. Booth

PRIME MINISTER

I have discussed with Quintin Hailsham the action we should take following the Lords' rejection of the clause in the Prosecution of Offences Bill which gave the Attorney General a power to refer apparently over-lenient sentences to the Court of Appeal. We should be grateful if we could have a short meeting with you to consider how we should deal with the matter in the House of Commons.

You will remember that our intention to introduce this power was one of the measures which I announced at the 1983 Party Conference to strengthen public confidence in the working of the system of criminal justice. We considered and rejected the alternatives of statutory minimum sentences and of a full prosecution right of appeal; and we agreed that this proposal provided a sound way of dealing with the very real public concern which was (and still is) being expressed over sentences alleged to be excessively lenient, without the practical difficulties and objections of principle which would be involved in either of the alternatives.

The main objections which were expressed in the House of Lords were that the new Crown prosecution service would be involved in a new and improper activity of arguing for and reviewing judicial sentences, and that the power was unnecessary because the Court of Appeal Criminal Division already issues guideline judgments in the course of hearing normal appeals by the defence. Neither Quintin nor I is persuaded by these arguments. The initiative would always come from the Attorney General himself, perhaps following representations made to him by Members of Parliament or others, but not in any sense at the instigation of the prosecution service. The guidelines issued by the Court of Appeal afford no adequate substitute since the Court can only operate on

appeals which in fact have to be brought by the defence. The lenient sentences about which the public are concerned are by their nature unlikely to be the subject of appeal.

We are therefore both convinced that our original proposal was right in principle and that the issue we have to face is not one of criminal justice policy but a wider Parliamentary one. Bertie Denham's assessment is that if we reinstate the clause in the House of Commons and a large number of lawyers on our side of the House speak and vote against it, the House of Lords is likely to reject it again when the Bill returns for consideration of Commons amendments. He does not, however, consider that they would reject the clause for a third time if we again reinstated it in the Commons when the Bill returned from the Lords.

Soundings which the Whips have taken (which confirm my own impression) suggest that most of our lawyers in the Commons are opposed to the clause and would probably speak and vote against it. The Chief Whip has no doubt, however, that we can get it through the Commons with a comfortable majority.

Quintin and I would like to discuss whether, on the broadest political grounds, we should be willing to contemplate a second defeat in the House of Lords on this issue, with the widely publicised attack on the Government by the legal establishment which would inevitably be associated with it (although you may feel that persistence on our part would not necessarily be to our disadvantage in the country); or whether you would prefer to defer the issue until we can bring the measure forward as part of the Criminal Justice Bill which is planned for 1986/87. I must clearly be in a position to announce our decision during the Second Reading debate in the House of Commons (now intended to be soon after Easter), and if we are to make further approaches to some of our supporters in the Commons, we shall need to do so quite soon. Quintin and I would therefore appreciate a meeting with you and perhaps some other colleagues involved if possible early next week.

I am sending copies of this minute to Quintin Hailsham, Willie Whitelaw, John Biffen, Michael Havers, John Wakeham and Bertie Denham who might be invited to join us, and also to Sir Robert Armstrong.

L.B.

28 March 1985

Business of the House: Consolidated Fund (No. 2) Bill

The Lord President of the Council (Viscount Whitelaw): My Lords, I beg to move the first Motion standing in my name on the Order Paper.

Moved, That Standing Order 44 *(No two stages of a bill to be taken on one day)* be dispensed with to enable the Consolidated Fund (No. 2) Bill to be taken through all its stages this day.—*(Viscount Whitelaw.)*

On Question, Motion agreed to.

Business of the House: Short Debates

Viscount Whitelaw: My Lords, I beg to move the second Motion standing in my name on the Order Paper.

In doing so, it may be helpful if I point out to your Lordships that in relation to the debate in the name of the noble Lord, Lord Harris of Greenwich, this will be the first time that a two-and-a-half-hour time limit has been applied to a Motion which is intended to lead to the expression of a point of view by the House. I very much hope that this procedure will prove to be satisfactory. It will of course be possible to review the matter when we have had a chance to see how next Wednesdays's debate goes.

Moved, That the debates on the Motions in the names of the Lord Harris of Greenwich and the Lord Mayhew set down for 30th January shall be limited to 2½ hours and that Standing Order 35 and paragraphs 10 to 13 of the Rules for the Conduct of Short Debates set out in Appendix H to the *Companion to the Standing Orders* shall apply to each debate.—*(Viscount Whitelaw.)*

On Question, Motion agreed to.

Consolidation Fund (No. 2) Bill

Brought from the Commons, endorsed with the Certificate from the Speaker that the Bill is a Money Bill within the meaning of the Parliament Act 1911; read a first time.

Then, Standing Order No. 44 having been dispensed with (pursuant to resolution), Bill read a second time; Committee negatived; Bill read a third time, and passed.

Insolvency Bill [H.L.]

Lord Brabazon of Tara: My Lords, on behalf of my noble friend Lord Lucas of Chilworth, I beg to move the Motion standing in his name on the Order Paper.

Moved, That it be an instruction to the Committee of the Whole House to whom the Insolvency Bill [H.L.] has been committed that they consider the Bill in the following order:

Clauses 1 to 4,
Schedule 1,
Clauses 5 to 36,
Schedule 2,
Clauses 37 to 87,
Schedule 3,
Clauses 88 to 90,
Schedule 4,
Clauses 91 to 146,
Schedule 5,
Clauses 147 to 184,
Schedule 6,
Clauses 185 to 202,
Schedules 7 to 9,
Clause 203.—*(Lord Brabazon of Tara.)*

On Question, Motion agreed to.

Royal Assent

The Lord Chancellor (Lord Hailsham of Saint Marylebone): My Lords, I have to notify the House, in accordance with the Royal Assent Act 1967, that the Queen has signified her Royal Assent to the following Acts:

Consolidated Fund Act,

Elections (Northern Ireland) Act,

London Transport (Tower Hill) Act.

Prosecution of Offences Bill [H.L.]

3.25 p.m.

Baroness Trumpington: My Lords, I beg to move that the House do now again resolve itself into Committee on this Bill.

Moved, That the House do now again resolve itself into Committee.—*(Baroness Trumpington.)*

On Question, Motion agreed to.

House in Committee accordingly.

[The LORD ABERDARE in the Chair.]

Clause 22 [*Reference to Court of Appeal of certain Crown Court Sentences*]:

On Question, Whether Clause 22 shall stand part of the Bill?

Lord Elwyn-Jones: I rise to propose that Clause 22 be left out of the Bill. The clause, in effect, enables the Attorney-General to refer to the Court of Appeal for its opinion any sentence passed by the Crown Court for an indictable offence thought to be too lenient. In brief, the case against the proposal in the clause is that it is not only wrong in principle, but that it is also unnecessary in view of the fact that the Court of Appeal already can and does lay down guidelines to guard against over-lenient sentences. In my submission, here we have a proposal which is not only wrong in principle, but which is also wholly unnecessary—a most unattractive combination indeed.

The principle to which I have referred, over which the clause rides roughshod, is that those who prosecute an offender should have no say in his sentencing; that is for the judge. To depart from that principle, which leaves it to the judge to decide the sentence (subject of course to any errors which may be corrected or remedied in the Court of Appeal) is, I submit, wrong

and dangerously wrong. Prosecution neutrality on sentencing is and always has been an important feature of out system. While this does not happen in many other countries, I think that their experience shows that they are the worse for it. It certainly has been the practice and tradition here. Indeed, the Bar's code of practice states in terms:

"Prosecuting counsel shall not attempt by advocacy to influence the court in regard to sentence".

In my submission, the proposed clause will put in peril the impartiality of the state and of the prosecution in the matter of sentencing. It will tend to line up the prosecution in the public mind exclusively on the side of longer sentences and harsher treatment. The Attorney-General himself will be subjected to increasing pressure to intervene in that direction from the press, from party conferences and sometimes from ill-founded public clamour.

3.30 p.m.

I should like to make it quite clear that the aim of enabling the Court of Appeal to lay down, where it is necessary to do so, sentencing guidelines to guard against over-lenient sentences is of course entirely reasonable. But the court already can and does just that by laying down policy guidelines on sentencing in the course of its judgments as cases come up. Unfortunately, a very large number of cases do come up before the Criminal Division of the Court of Appeal.

In 1982, for instance, after the widely publicised case of over-lenient sentencing in which a rapist was fined £2,000, the noble and learned Lord the Lord Chief Justice lost no time in laying down, in the Roberts case, that an offence of rape requires immediate custodial sentence. Since then, the sentences passed in rape cases have indeed given rise to that guidance. The noble and learned Lord the Lord Chief Justice has given similar guidance in firearm cases, in drugs cases and in cases of armed robbery. The machinery is there and the machinery is being used.

A further objection to the clause is that it will be extremely difficult, as it stands, to hide the identity of the offender, who will in a sense be on trial again—although it is true his sentence cannot be increased. His anonymity is in no way protected, least of all guaranteed. Judicial opinion on this matter may be judged by the fact that in a report on two judicial seminars, which were held in Roehampton about a year ago, attended by about 150 judges, it recorded that there was a strong feeling against giving the prosecution the right of appeal against sentence and against the Attorney-General having power to refer sentences. Acceptance of the proposal that I now make in moving that Clause 22 do not stand part of the Bill will prevent happening what the judges fear may occur. I beg to move.

Lord Denning: May I ask the Committee to reject this clause? It is the outcome of newspaper reports. The Committee will have seen the nature of them: "Guards officer guilty of rape—six months; ordinary man next door guilty of rape—two years or five years". Newspapers are not to be condemned. It is part of their work. As Lord Atkins once said, no person does any wrong in criticising a public act done in the seat of justice. He went on to say that justice is not a cloistered virtue. Every court must be subject to the scrutiny and the respectful, if outspoken, comments of ordinary men. So the newspapers are perfectly entitled and within their rights to make these comments on sentences by the judges.

But is this to be the remedy? Is the judge to be reported to the Attorney-General, and the Attorney-General to report that to the Court of Appeal? This would not be to increase the sentence (there is nothing said that the court can increase the sentence) but to enable it to say that the judge was wrong. Here the judge is being condemned by the prosecution. Who is to tell the Attorney-General about the case? Is it the newspapers? God forbid!—they do not often get it right; they usually get something wrong, incomplete or misleading. The only person who can tell the Attorney-General about the case is the Crown prosecutor himself. He will have been in the court. He will have heard the witnesses on one side and the other, and then, after the judge has given his sentence, he will say, "Ho, Ho! That was much too lenient. I will report this to the Attorney-General and the Attorney-General will report it to the Court of Appeal".

Are the judges to be reported like this? In a case like this, the defence always put in their plea of mitigation. The judge always hears that plea. But never do we allow, nor is counsel for the Crown allowed, a plea in aggravation—because this is what it is; a plea in aggravation of sentence. I might have been faced with it years ago. I was trying a case at the Old Bailey of the driver of a motor-car. He had a most excellent character for 20 years and then one day he was forced out of his overtaking lane and as a result two delightful girls were killed. What was the sentence to be? I saw how sorrowful and distressed the driver was. I heard the plea in mitigation by his counsel but of course no plea by the prosecution. Then I sentenced him to nine months' imprisonment. Was that right? Was I to be taken and reported to the Attorney-General as being too lenient?—because many might have thought I ought to have given him three or five years' imprisonment for killing those two girls.

But appal the thought! We have to remember that it is the Crown prosecutor's duty and the duty of the Bar always to be fair; never to press the case. In a case of that kind, was I to turn to the counsel for the prosecution? In any of these cases, if a case like this came before me, I would say to counsel for the prosecution, "I have it in mind to give this man one more chance. I know his record has not been good but I have seen him; I have heard what his counsel has said; I think it is right to give him one more chance. I will bind him over". But if I were to say, "Mr. Snooks, are you going to suggest afterwards to the Attorney-General that I was wrong?" If he is going to say I was wrong, I should tick him off very considerably. But in every case he would say, "Of course not, my Lord. I leave it to your Lordship", as counsel for the prosecution always have left it to the judge. It is their duty to leave it to the judge and never to press for a heavier sentence at all in the court.

What is to be the outcome of this case if this clause goes through? The Crown prosecutor will report to the Attorney-General, who will not have heard the plea in

[LORD DENNING.]

mitigation. The Attorney-General will report to the Court of Appeal. The Court of Appeal will only hear one side: it will hear the prosecution. It will not hear the man's side—he will not worry; he has got off with a lesser sentence anyway. It will not hear the judge's side. It will not, as it ought to do, hear the parties. Then, upon that, the judge may be condemned and reproved, and they will say, "Oh, that's all wrong. We are not going to allow you any promotion or anything of that kind in the future; you give too lenient sentences".

It is quite wrong that judges of this country should be reported to the Attorney-General by the prosecution for giving too lenient sentences. It is loading a dice in the hands of the prosecution to press all the time for heavier sentences and to expect the judge to give them. It is an entirely wrong procedure and there are entirely wrong suggestions made by this clause. I hope the Committee will not accept it.

Lord Rawlinson of Ewell: The noble Lord, Lord Denning, has long been the hammer for successive Attorney-Generals and I have at one time been the anvil on which he has struck. But I support very much what he has said because I believe it puts an Attorney-General in an impossible position if this proposal in this clause remains. As the noble Lord has said, from where does the Attorney-General obtain his information? Will he respond to clamour, which is the worst possible guide for anybody in dealing with the prosecution of offenders and the responsibility for the administration of the law? There is a distinction with the right of the Attorney-General to make references on matters of law to the Court of Appeal with regard to guidance to jurors which led to acquittals. There is, I think, a considerable difference. The Attorney-General has the responsibility for the prosecution of offenders. He wants to know what the guidance is. He wants to clarify what the criminal law is. There is a great distinction between that power and the proposed power. For the reasons that have been given by both noble and learned Lords, I fully support the amendment.

Lord Campbell of Alloway: There is much mischief in this clause. The ambit of the academic exercise proposed—for an academic exercise is what it is—is open to the most serious objection. By tradition, sentencing is never a matter for the Attorney-General. Only counsel for the defence are concerned with sentencing. Judges and recorders—I declare an interest as a recorder—have never suffered the indignity of having their sentencing functions rebuked on the basis of a sort of public tutorial. Our courts in criminal matters only give judgments on sentencing intended to have effect. How is this tutorial, if you look at the wording of the Bill, to be conducted? A retrial, I quote:

"having regard to all the circumstances of the case which were known to the Crown Court".

A paper trial, a paper retrial, on argument, affords no substitute whatever for a live trial when witnesses are seen and heard and impressions gained by the sentencing judge which may well be crucial in the case in which, for one reason or another, he sees fit to exercise mercy and to give a lenient sentence.

What is the object of this exercise? To placate public concern? It is true that on occasions what appears to have been an over-lenient sentence raises problems. It is picked up by the press. Questions are asked in Parliament. The victim and the family feel outraged. This, on rare occasions, may lead to private retribution. The public feels cause for concern. But Clause 22 can do little, if anything, to deal with any of these considerations. It is much to be doubted whether such be the object of the clause.

What other object? The regulation of sentencing? Surely not. There is already adequate and efficient machinery to regulate the problem of over-lenient sentencing. There are the guidelines to which the noble and learned Lord, Lord Elwyn-Jones, referred. All judges and recorders of the Crown Court have to attend judicial sentencing seminars. It may be that the machinery that already exists could be extended. But, surely, there is no case for advisory control over general sentencing policy in cases selected by the Attorney-General in the manner proposed.

In sentencing, there is always scope for human error. But my noble and learned friend the Lord Chancellor, who appoints such judges and recorders, is able to take sometimes formal, sometimes informal, administrative steps, where appropriate, to ensure that the duties of those whom he appoints are properly discharged. I have never heard of any cause for concern as to the way in which that administrative process has worked. With the greatest respect, this clause should never have appeared in this Bill. So far as I can see, there is no justification for it whatever.

3.45 p.m.

Lord Edmund-Davies:

"A miscarriage of mercy is as bad as a miscarriage of justice"—

those words call for quotation marks for they are not my words. They are emphatically not my words. They are imputed to the generally genial Robert Lynd. Whether that is right or wrong—the attribution, I mean—I know not, but what I do know is that the proposition that it contains is detestable and should be entertained by no Member of this, your Lordships' House. The newly appointed judge soon discovers that the most difficult and detestable of his tasks is that of deciding the matter of sentencing. He may get case-hardened, it is true. Some judges never do. One old judge, I recall, reflected towards the end of his career on the Bench that he thought that he had spent most of his time when on the Bench wondering what to do with an accused man who had been convicted.

Despite dedication, ability and care, judges can occasionally make an error. They may impose too heavy a sentence. If that happens, those concerned can appeal. They can do that at the present time without risk. Formerly, in my time on the Queen's Bench, and certainly in the time of the noble and learned Lord, Lord Denning, one ran a risk. One ran the risk of having the sentence increased. I have heard it done. But public opinion would not tolerate that. Ultimately, so opposed to it was the public, that it was abandoned. On the other hand, the judge may impose too light a sentence. He may pay too great attention to the exhortation of a prophet Micah to love mercy and he errs on the side of leniency. That is unfortunate, but it is not the end of the day by any manner of means.

The fear expressed or contained in Clause 22 is that the sentence may begin to set a precedent and lead on to mischief to the public weal. I do not believe it, and I hope that your Lordships will not, either. There are several remedies for such an unfortunate situation. The first lies in the informal but very powerful capacity of those in authority not to direct the judge as to what to do in future, for no man can do that, however high placed. But it has been known for a Lord Chancellor and it has been known for a Lord Chief Justice informally to see the judge in question and to have a quiet word, a quiet but most powerful and efficacious word, with him. It is right to do this, and it is done.

Apart from that, there can be, as already stated, the formal guidelines and the sittings of the sentencing conferences. Finally, and very powerful, is the influence of the media, the expression of public opinion. At times, it can overdo itself. I have heard none other than the noble and learned Lord, the Lord Chancellor, recall the case of a most distinguished and dedicated judge who was so excoriated on the grounds of his leniency, as it was said in one sentence, that it really wrecked that man's life. The underlying basis of this clause is, therefore, in my respectful submission to your Lordships, absolutely wrong. It is contrary to established attitude in this country. The prosecution does not concern itself with the penal consequences of a conviction. It is a wholly unnecessary provision for a situation which is adequately covered at the present time.

How is Clause 22 to be implemented? The Attorney-General has counsel briefed to make complaint that the sentence is too lenient. The clause makes provision for the representation of the defendant if he desires to be represented. Why should he? There are times when he should, for it is wrong to think that the convicted man, although his sentence cannot be increased by the reference, is always going to escape scot-free. His reputation may be further polluted. Such regard as he has been able to build up in the community may be largely destroyed, for it is quite fallacious to think that by resort to anonymity, so-called, he cannot be further injured.

We have found that already, by experience. References are made by the Attorney-General, as your Lordships know, in matters of conviction. I remember quite well, sitting judicially in your Lordships' House, a reference in relation to a case tried in Northern Ireland. It was dressed up all right: it was *In re X* or *Y*, or something of that kind, and a set of facts was set out. But everybody knew—everybody present; the press and everybody—what case it was; and that would happen if the resort suggested in Clause 22 were adopted. I think, with great respect (and I hope your Lordships will share my thinking), that this clause is really quite mischievous, uncalled for, a deliberate departure from established attitudes which ought to be maintained. I hope your Lordships will reject Clause 22.

Lord Hutchinson of Lullington: My name appears on this amendment. Your Lordships, having heard the noble and learned Lord, Lord Denning, no doubt feel there is very little more to be said. I want to add only one further point. I ask myself, "Why does this clause appear in this Bill at all?", this Bill being an efficient medium for setting up a national prosecution service. Is the reason for this clause appearing in this Bill that henceforth we are to find Crown prosecutors throughout the country reporting on the judges before whom they are appearing to conduct prosecutions—reporting back to their boss, as it were, the Director of Public Prosecutions, in order that he may provide the necessary information to his superintendent, the political head of the service, the Attorney-General of the time?

To ask any prosecuting advocate to do that would be a totally distasteful procedure at this present time, and I ask the noble and learned Lord the Lord Chancellor: is it that he foresees that in this service it is wanted to have a corpus of Civil Service prosecutors who are going to make these reports up the hierarchy, as it were, to the headquarters so that the Attorney-General of the time may have the information on which to bring these cases before the Court of Appeal in order to be able to give judges a rap over their judicial knuckles? I should sincerely hope that that is not the case because, as has already been so well said—I am speaking, if I may, as an ex-practising member of the Bar of England and Wales—it has long been the tradition of the Bar (indeed, it enshrines the independence of the Bar) that the prosecution has absolutely no say in any shape or form in the sentence which is eventually passed by the tribunal.

It is said in the leader in *The Times* this morning that the reason for this clause in the Bill is that it is part of the Home Secretary's package to assuage those supporters of his at the annual Conservative Conference. I do not know whether or not that is the reason. But the other matter which was part of that package, which was the amendment to the whole basis on which parole had been given up to now, has done a great disservice to the administration of justice, I would suggest; and to allow this clause to remain part of this Bill would also, I would suggest, do an equal disservice to the administration of justice.

Baroness Macleod of Borve: I should like to support everything that has been said so far in the debate this afternoon. It seems to me that this clause is a result of a few reports in the press of a few serious cases in which it is thought that a judge has given too lenient a sentence. I hope that journalists do not think I am inferring that they misrepresent any of the cases; but within my knowledge all reports of cases before our courts are incomplete because they have to be condensed, pressure of space and time, of course, being one of the reasons.

But they are incomplete also because only those adjudicating, from the magistrates' courts to the Crown Courts to the Old Bailey, can see all the papers that are before the court. In fact, the probation office reports, the social service reports, the home reports, are read only by those who are actually adjudicating; and the judge, at whatever court, will base his judgement on all the facts, including those papers.

The learned judges are appointed by my noble and learned friend the Lord Chancellor, in his wisdom. They must and do carry the confidence of the people. Our judicial system, I feel, is second to none in the world, and is known as being wise and fair. Therefore, I feel it is wrong that the judgement of the judges

[BARONESS MACLEOD OF BORVE.]
should be queried except by the defendant on appeal, especially when the appeal court will not be able to alter the sentence, anyway. I feel that the whole exercise is a waste of time.

The basis of going to court and standing trial in this country is that hopefully the defendants have confidence in those who are judging them. I feel that in this particular case, where we might possibly be accused of putting something in this otherwise excellent Bill by acting on very few facts, doing so will make bad law. I am afraid I cannot accept this amendment.

Lord Wilson of Langside: I support wholeheartedly the rejection of this clause. I rise to do so with a degree of diffidence, because of course the criminal jurisdiction with which I am familiar is foreign to that of the English. Perhaps my interest in opposing the clause might be said to be that if, in what I imagine is the quite unlikely event of the Government rejecting out of hand everything that has been said from the Opposition Front Bench, from these Benches and, above all, from the Cross-Benches, and insisting on this clause, and in the unlikely event of your Lordships also supporting it, there is a danger—it sometimes happens—that if this becomes part of the English law and the administration of English justice, in time those responsible north of the Cheviots will emulate this thoroughly bad example.

Everything that can be said against it has been said. I shall say only this in addition. When I sat—as I did for many years—in a very busy criminal court, there were rare occasions when I had to pass sentence when I wished that another point of view had been put to me. However, there are, of course, ways of overcoming that problem.

4 p.m.

The other matter which I should like to raise and which I do not think has been referred to already, is that I find this an extraordinary provision for the reason that, so far as I remember—and it is a long time since I practised or sat in the courts—we had a principle in Scots law that the courts were never asked to pronounce upon what was fundamentally an academic question. Litigants were not allowed to come before the courts and ask for an answer to a question which would have no immediate practical results. I should have thought that that was a very sound principle and that there was something absurd about taking to a judge to make a pronouncement upon, with all the consequences of public pronouncements, a matter which will have no practical effect. I should have thought that, for all those reasons, your Lordships should reject the clause.

Lord Simon of Glaisdale: I opposed this clause on Second Reading and I certainly do not wish to weary your Lordships by repetiton. In any case, anything that I might say has been far better said by noble Lords who have preceded me. I wish to say only two things.

First, I hope that my noble and learned friend the Lord Chancellor will give weight to the extraordinary experience and authority that has today pronounced against this clause. Secondly—and I hope that I may say this in view of our old friendship and comradeship, as I should like to flatter myself—I hope that the noble and learned Lord will not regard what has happened today as a challenge to his dialectic powers. He is one of the most formidable of living debaters, probably of all time. He likes to proceed rapidly to checkmate in argument, taking a couple of bishops probably on the way! I do, with all respect, ask him to show flexibility and acknowledgement of what has been said today.

Baroness Phillips: I realise that if I could use colloquial expressions I would say that I was on a hiding to nothing. I am now going to try to tangle with noble and learned Lords who speak from experience and from a great knowledge of the law which I do not possess. However, I should be betraying the women's organisations for which I speak if I did not voice the fact that there is public concern about the leniency of many sentences.

We have heard that the press misrepresent or do not always give the full facts. No one would dispute that. But surely they can hardly misreport the nature of the sentence. When we read that somebody who has tortured and finally murdered a small child and who is described as the "living-in boy friend", gets 18 months and the mother (who should have had something to say in it) is referred to a psychiatrist, one cannot wonder that ordinary women feel concern.

We have heard today from all the noble and learned Lords and there is to me—and I am sorry to say this—a certain arrogance about the suggestion that a judge cannot be called to account. I would remind my noble and learned friends that judges will eventually be called to account by a higher Judge. But in the meantime on this mortal coil it is not unreasonable that anyone who sits in a judicial capacity should have another authority by which he can be called to account.

As a magistrate, I always understood that my verdict could be taken to an appeal court. It seems that here we are only asking for a right that is already given to the offender. The ordinary people outside very often feel that justice has not been done and they are beginning to feel that the offender gets all the benefit and the victim is not considered. That is my plea as regards this matter. I realise that I am on a sticky wicket, but I should be betraying the people for whom I speak if I did not voice my concern about this matter.

Lord Morris: When I first read this clause, I could not help but feel somewhat cynically that the only possible explanation for its inclusion in the Bill was that it was, as it were, the Aunt Sally clause—namely, a clause which is put in deliberately to be knocked down in order, however marginally, to divert attention from other matters in the Bill which may not be considered quite so important. No doubt I am wrong in taking that view.

I wish to make only one point with regard to this clause and that is that it raises a constitutional matter of the greatest importance. The clause undoubtedly puts pressure upon the judiciary, however mild and, indeed, however public, and as such in my humble and totally untutored opinion it constitutes a considerable

threat to the independence of the judiciary. Therefore, I agree entirely with the proposal that the clause should be rejected.

Lord Gisborough: I rise briefly to support the amendment. This seems to me to be a pointless clause in the Bill which has been largely instigated, as has already been said, by party conference clamour. Furthermore, it is no more than an academic exercise because, after all, the sentence cannot be altered. When there is a different trial subsequently under the Bill—if it is passed as it is—there will be very little likelihood of the accused giving evidence again and therefore it is almost inevitable that a different slant will be taken on the result. Apart from that, I point out that no two judges at any time are likely to give exactly the same sentence. Therefore, in my view all that will happen is that it will cast doubt on the legal system and on the justice of our courts, which are probably, in fact, the fairest in the land.

Lord Scarman: It is refreshing that at last a noble Lord has expressed some concern about the opposition to this clause. I support my noble and learned friend Lord Elwyn-Jones and all other noble Lords who oppose this clause standing part of the Bill. But it is very important that your Lordships' House should, so to speak, base its opposition on sound reasons and not on unsound reasons. It is no part of the duty of this House to spare the feelings of judges. Of course judges must be subject to public criticism when they dispense justice sitting in the seat of justice. Of course judges are accountable morally and spiritually as well as legally. I would ask your Lordships to set aside any arguments based upon the embarrassment that this clause may cause to judges. The true objection to this clause has been touched upon by several noble Lords. First, it is a constitutional monstrosity. Under our constitution the Crown has concentrated in it all the functions of the state: executive, legislative and judicial. But it is accepted as part and parcel of our unwritten constitution that in the conduct of the public business of the state the various functions of the Crown—executive, judicial and legislative—be kept stringently apart.

The essence of our criminal law is that the Crown, as prosecutor, shall not take part in argument addressed to the Crown as sentencer in the person of the Crown's judge. It is vital, for reasons already developed by one noble Lord, that the judicial act of sentencing should be seen to be kept out of the grasp or reach of the Crown as prosecutor and now, when this Bill becomes law, out of the grasp of the national service of prosecutors. This is a judicial function. The prosecution has a lively job to do up to the moment of conviction. After that the initiative passes from the prosecution. The prosecution can assist with the exposition of facts, the elucidation of evidence and so forth, but it makes absolutely no submission on the Crown's judicial function, exercised in the person of the judge. At that stage the Crown as prosecutor—that is an executive function—has to retreat.

With an unwritten constitution, unless we keep these matters absolutely clear in practice, there is nothing in theory to prevent us confusing the lot; and if we confuse the lot, we do indeed, throughout the whole of the kingdom, perpetrate injustice on a large scale. I suggest to your Lordships that this clause is objectionable in principle. As noble Lords have plainly indicated, it is unnecessary in practice. We should forget the distress, if any, of a judge who may find himself criticised. It may also be—and I mention this to your Lordships because we must consider the offender at some stage—the cause of unnecessary and irretrievable further distress imposed upon a man who has already been publicly punished for his crime.

That is not double jeopardy, as a lawyer understands that phrase. The man is not in danger of an additional penalty to that already imposed. But he is in danger of publicity, whatever steps are taken to protect him. The publicity, the public repute, among those who know him and, indeed, among the general public to a man who was sentenced in one way and who should have been sentenced very much more severely in another way, is a distressing public reputation with which that offender has to go through life. That may not be the most important reason, but let us not forget the offender. We should forget the judge, but we should not forget the offender or the basic constitutional separation of powers upon which not only the criminal law depends.

4.15 p.m.

The Lord Chancellor: There is one point at which I cannot submit to the blandishments of my noble and learned friend (if I may be so allowed to call him) Lord Simon of Glaisdale. My noble and learned friend asked me not to treat this as a challenge to my debating skill. I should be mad if I did not. I have had about 15 speeches fired at me—no bishops this time!—and I am supposed to lie down and wag my tail with my paws in the air. I shall not do it.

First, because it is fresh in my mind at the moment, let me address a few remarks to my noble and learned friend Lord Scarman. Of course I do not forget the offender in the sense in which my noble and learned friend has asked me not to forget the offender. As I think the noble and learned Lord, Lord Elwyn-Jones, said, of course it is true that in a number of cases—though perhaps not in all—it may be possible to identify the case which is the subject matter of the reference. Of course it is true that there may be people—though I hope that they would be a minority—who, should the reference succeed, would say, "He got off with less than he deserved". I think that some noble Lords who have spoken have somewhat forgotten this, although three noble Lords have made a passing reference to it, but that must be true in exactly the same sense of an Attorney-General's reference on conviction. The case will be identified and people will say—and, again, I hope that it will be a minority—"There is a man who got off scot-free and he ought to have been convicted" of whatever it may have been, up to and including murder. Therefore, I do not think that that was a fair point to make.

I should like to make two others points before I go back to the beginning. First, it is utterly unworthy to suggest, as did one noble Lord, that this proposal in this Bill was, either in origin or in purpose, the result of some package made by my right honourable and learned friend the Home Secretary in response to clamour from a party conference. That is unworthy

[THE LORD CHANCELLOR.]

and it is untrue. I say that of knowledge and not of opinion. It is equally unworthy and untrue to suggest that there is an oblique objective in this clause, whatever its merits or demerits, to invest a class of prosecutors—who will, of course, provide a service, if the Bill is passed in its entirety—with powers, duties or rights which do not already exist in counsel for the prosecution in the Crown Courts.

I shall now begin at the beginning. I thought that the case, whatever it is, was very well formulated by the noble and learned Lord opposite when he spoke to this Question. It is a question of principle and it is a question of practice. The noble and learned Lord put it exactly as I would have wished to put it, whichever side I had been arguing on in this particular debate. But I do not claim the noble and learned Lord's experience, the experience of my noble and learned friend Lord Rawlinson as a Law Officer, or the experience of my noble and learned friend Lord Simon of Glaisdale. Nor, of course, can I claim the experience as a trial judge of several of the noble and learned Lords on the Cross-Benches who have spoken. But I was called to the Bar as long ago as 1932 and for a barrister who principally practised in the civil courts I suppose that I have prosecuted and have defended in criminal cases as often as the next man.

I nail my colours of principle to two or three general propositions. I do not think any of them are infringed by Clause 22, and I do not think that in formulating any of them—although I may formulate them in different words—I would at all differ in principle from what any noble Lord or any noble and learned Lord has said.

In the first place I refer to prosecuting counsel. Prosecuting counsel is not an avenging angel; he is an instrument of justice. It is not his business now, it will not I hope ever be his business in the future, whatever the result of this proposal regarding the clause, to ask the court to impose a particular sentence. Particularly it is not his business to ask a court to impose a particular sentence in the direction of severity.

Indeed, it would be his task, especially if the accused were unrepresented, to bring out in his opening for the prosecution any mitigating factors that he could legitimately point to. That was always my practice, long before the code of practice referred to by the noble and learned Lord was even formulated by the Bar Council. It has always been the tradition of the Bar, and I hope it will remain the tradition of the Bar until judgment day.

The second point is that the sentence of the court is a question for the trial judge and nobody else. That is absolutely vital to our system of justice. It will remain vital to our system of justice, whatever the result of this proposal now before us. But—and here I must come back to my noble friend Lady Macleod of Borve—it is not a criticism of a judge that he is reversed. Indeed, it is my task as Lord Chancellor to hear the oaths of a judge before he can sit. One of the few things I nearly always say to them is, "Don't be afraid of being reversed", because if I find a judge who has never been reversed, I know about that judge one of two things: either he has fudged his facts, or he has been afraid of the Court of Appeal.

Those of us who sit in the highest tribunal in this land in the House of Lords know how often we are divided three to two. We cannot always be right, and it is the mark of a judge who has not identified the true principles involved that he is never reversed. If he identifies the true principle, if he identifies the real question of principle to be decided, it is just as likely as not that in a certain proportion of his cases he will find an upper court reversing what he has done. It is the mark of a good judge to be reversed occasionally though it is not the mark of a particularly good judge to be reversed always.

But whereas the sentence of the court is a matter for the trial judge, sentencing policy is a matter for the Court of Appeal (Criminal Division). It is not a matter for the Lord Chancellor; it is not a matter for the Attorney-General; it is not a matter for the Home Secretary. It is a matter for the Judiciary, the Judiciary alone, and in particular the Court of Appeal (Criminal Division). That is where Clause 22 puts it. Fairly and squarely on the Court of Appeal (Criminal Division) it is now, and it will be thereafter, whatever the result of this proposal to delete the clause.

But I would say, with respect to the noble and learned Lord who sits opposite, that it is as important to get your principles right, your sentencing policy right, as it is your principles of law. It has been a wholly beneficial change in our criminal law during my professional lifetime that if a judge misdirects a jury, not only can he be appealed by the defence through the process of an application for leave to appeal, but the Attorney-General, as the instrument of justice, and, as the noble and learned Lord quite rightly said, in order to clarify for the future what principles you act on, can have an Attorney-General's reference.

In passing, I remind my noble and learned friend Lord Scarman that we do our best to preserve anonymity in those cases, as he knows. we do our best, and we know that we shall not succeed in every case because some cases are already so notorious that the identity, although superficially concealed, will be fairly widely known. Therefore, when the noble and learned Lord, Lord Elwyn-Jones, places his case on principle, my principle is the same as his. I do not think I have said—at any rate until this moment—anything which the noble and learned Lord who has spoken in this debate on the opposite side could reasonably complain of.

Lord Elwyn-Jones: I am grateful to the noble and learned Lord for giving way. On the matter of practice is the noble and learned Lord suggesting the Criminal Division of the Court of Appeal have been neglecting their duty up until now in stating principles clearly and well when they think right as the matter arises?

The Lord Chancellor: The noble and learned Lord will see as I go along that I have not missed any of the more obvious points, and that is one of them that I shall not miss. I am not quite so silly as he takes me for.

Having said that—and I think I may have committed myself to my own *credo* in this matter—I come back to perhaps the very point which the noble and learned Lord has just put to me. This does not

have its origin in press criticism. It does not have its origin in party conferences. It does not have its origin even in women's organisations, although I much appreciated the courageous and well-spoken speech of the noble Baroness, Lady Phillips. It has its origin in the Lord Chief Justice. No less; no more.

He was speaking at the Mansion House in, I think, the summer of 1983 at the Judges' Dinner, in the presence of the assembled Judiciary of England and Wales, I think with one or two Scots guests. He was speaking about the difficulty of the judicial role. He said, incidentally, at the beginning of the passage I am about to refer to that the first thing that a judge needs is a thick skin, and I rather agree with that. Then he went on to say this and I quote his actual words:

"Then there are the occasions, happily not frequent, when there is an outcry about a particular sentence passed by a judge, usually because it is said to be too lenient. This difficulty will never be cured"—

I repeat, "This difficulty will never be cured"—

"until there is introduced, as there should be, with suitable stringent safeguards, a right in the Crown to appeal a sentence manifestly too light".

That is what he said. In fact, he went on to elaborate it.

I was present at that dinner. May I say, perhaps indiscreetly, perhaps unconstitutionally, that I played no part in the introduction of this particular clause. I was present at that dinner and I reacted to what the Lord Chief Justice said. I reacted to what he said in almost exactly the words which have been used against this clause, subject to the fact that he asked for stringent safeguards.

4.30 p.m.

I was afraid that he was suggesting a retrial in the sense of double jeopardy. As a matter of fact, that is a construction which, in the heat of the moment, could legitimately be put on the words I read out. It is almost as important not to have double jeopardy in sentence as not to have double jeopardy in conviction. A man must not be put on trial twice, once the trial has come to a legitimate conclusion. That is almost, though perhaps not quite, as important in relation to sentence as it is to conviction. I thought perhaps that was what was being suggested at the time, and I said so in my speech in reply, which came later in the evening.

The other thing which concerned me was precisely the point of which the noble and learned Lord spoke earlier; that is, the role of the prosecutor at the trial. I have already said that I regarded it from the earliest moments—and I received it from my father before me—that the function of prosecuting counsel is to be objective. If he knows points favourable to the accused which are undisputed, whether on conviction, on sentence or on a mitigating factor, he ought to bring them out to the jury, if the case is contested, and to the judge if the judge is dealing with a plea of guilty.

I was afraid that that criticism might be true. But if the clause is examined further it will be found that it is not in the form in which it has been proposed by my right honourable and learned friend and by the Government. It is not subject to either criticism. It is for the Court of Appeal (Criminal Division) to decide, in the particular circumstances under discussion, what sentence should be imposed. Sentencing policy is with them under the clause, as it is now, and nothing that counsel for the prosecution can say imposes on him a duty—I hope the reverse is true—to ask for any particular sentence, and particularly any sentence in the direction of severity. So that is a genuine fear. It is one I shared myself when I heard the proposal first made. It is one which I think has been met in the clause which has been put before the Committee.

The noble and learned Lord and I believe, my noble and learned friend Lord Edmund-Davies—certainly someone from the Cross-Benches, said that there is ample machinery already. Says the noble and learned Lord, Lord Elwyn-Jones—this is the question he asked me a moment ago—"Ah! but in the rape case, where the man was fined £2,000, the Lord Chief Justice took an early opportunity to lay down guidelines from his seat in the Court of Appeal (Criminal Division)". So he did; and he made his speech which I have just quoted after having just done so, if my recollection is correct.

In passing—and again it may be I am being indiscreet—I may say that the moment I saw that case I spoke to him. We both agreed that something had to be said, and he said it; but he said it in the context of somebody else complaining in a sexual case that his sentence had been excessive. That is an extraordinary way of having to set about things. He had to wait until somebody complained that his sentence was too severe before he could indicate by oblique reference, even, that a particular sentence was inadequate. What an extraordinary thing to make him do! The noble and learned Lord says that that is good enough. I venture to ask the House to say that that is not good enough; that the proper way is to apply an astringent, objective reference in exactly the same way in relation to sentence as has already proved successful in relation to conviction. That is my answer to the noble and learned Lord's question.

Some noble and learned Lords and some noble Lords may say, "But the Lord Chancellor may have a word with an errant judge". That is all very well. Perhaps to an assistant recorder who has been consistently too lenient over a period of time one might manage to say something, but I do not recollect having done so since 1979. It is easier for the presiding judge, because he is a High Court judge on the circuit. It is possible for the Lord Chief Justice; but justice should not only be done (Oh, dear, I am going to use a cliché!) it should be seen to be done. Is a private word from the Lord Chancellor or from the Lord Chief Justice or from the presiding judge to take the place of a judgment of the Court of Appeal (Criminal Division)? My noble and learned friend Lord Edmund-Davies spoke about detestable opinions. Is that not a detestable doctrine? I think it is. Let what is said about sentencing be said in public, so long as it is said about sentencing principles. Let it be said, if need be, in the context of a particular set of facts.

Then it is said "Oh, dear; but there are the sentencing seminars at Roehampton". Every year in which such a sentencing seminar has been held I have opened every single one and spoken at their dinners. And very valuable! they are! I would not be without them for worlds. They help to give the Judiciary—and, in particular, the new Judiciary, although the seminars are not held only for new judges but for the junior

[THE LORD CHANCELLOR.]

Judiciary: potential deputies, the acting stipendiaries, acting recorders and recorders—a three dimensional sense of what the sentencing processs ought to be. They visit prisons; they have police officers to address them; they hear distinguished psychiatrists and doctors; and occasionally they even listen to a High Court judge.

It is not good constitutional doctrine to say that this is a substitute for the principles of sentencing in the Court of Appeal (Criminal Division). If I may say so with the greatest respect both to my noble friend Lord Morris and to my noble and learned friend Lord Scarman, it is they who are guilty of constitutional monstrosity. It is necessary as a matter of practical necessity for the Court of Appeal (Criminal Division) to be in charge of sentencing principles. They cannot properly or completely be so in charge if they limit themselves to cases in which what they have to decide is limited to whether a sentence is excessive.

I now return to the speech of the noble Baroness, Lady Phillips. I think that the grandees of the legal profession who have spoken in this debate with such force, including my noble and learned friend Lord Simon of Glaisdale, who threatened me with bishops, take too little account of public opinion. The difference between being Lord Chancellor in 1970, which I had the honour to be first, and being Lord Chancellor from 1979 to 1984 under a number of Home Secretaries, has been, first of all, the question of matrimonial legislation, which I will not trouble the Bishops with on this occasion but which I hope we have amicably settled in the course of debate in this House and elsewhere.

The other point is the growing volume of complaint that the sentences of the criminal courts are too lenient. I can say, crossing my heart, that I always reply to these MP's letters or these other letters in the same terms. I say that sentencing is not for the Lord Chancellor; the Lord Chancellor is not responsible for sentencing; I cannot comment on the particular case. I say that sentencing policy is a matter for the Court of Appeal Criminal Division and not for the Executive in any shape or form. I do not get much praise for saying that but that is what I say.

Having had week by week and year by year an increasing volume of complaint, I can say, equally crossing my heart, that although most of the complaints are without foundation—and there I would agree with my noble friend Lady Macleod of Borve: it is impossible to sentence in a case on the basis of a press report. Such reports are bound to be truncated and many of them are sensationalised. But although I would accept that statement from my noble friend at its full value, I am still left with the conviction that there is an irreducible minimum of cases where public opinion is right and the grandees of the legal profession have not been right.

I will say this—and I am going to be reminiscent for a moment, and am now fixing my noble and learned friend Lord Rawlinson with a basilisk stare. I have not always been wrong about such things. I can remember very clearly when I was what they call shadow Home Secretary and Mr. Roy Jenkins was the Home Secretary. He came to me—and I hope that he will not think if he reads what I say that I am breaking a confidence—and he said that he wanted to have majority verdicts; he said ten to two. We talked about it and I said, "I will deliver. I will support you on that". I tried to square every grandee on my side of the House of Commons—and there were nine of them. They all were squared; and they all ratted on me before the end. Every one of them! They all said to me, "You are diluting the burden of proof". They all said to me, "You are undermining trial by jury".

The first verdict—and I told them that it was going to be so, although I did not tell them that it would be the first—given under that provision was a verdict of not guilty. Let us remind the noble Lord, Lord Hutchinson of Lullington, that one of the verdicts of not guilty by a majority was that of (I am not sure whether he still is a co-religionist) Mr. Peter Haine —not my favourite man—who was acquitted, and, in my opinion, quite rightly acquitted, on a charge of theft by a majority verdict. If he had not been acquitted he would have had to stand his trial again. I only say this to the House. I am fighting, it may be tenaciously, *contra mundum*; but history will say that I am right.

Lord Wigoder: When the noble and learned Lord, Lord Elwyn-Jones, and I, agreed that he might move this amendment, and that I might reply to it, one of the purposes of that was that we might demonstrate in a practical way that this was in no sense a party political issue. It is hardly necessary, I think, to pursue that aspect of the matter any further. Having heard three noble and learned Lords from the Cross-Benches opposed to Clause 22; having heard five noble Lords and noble Baronesses from the Government Benches, including one former Attorney-General, opposed to Clause 22; and having heard only a single voice raised in its support, and that from the noble Baroness on the Labour Benches, I think it is perfectly clear that party political issues have nothing to do with the merits of what we are now discussing.

I want to devote myself briefly to some of the points made by the noble and learned Lord the Lord Chancellor, a formidable advocate, as we all know, and indeed—and I mean this as a compliment— someone who was well known in his days at the Bar for being the more formidable the weaker was his case. Let us look in a practical way at the problems that are going to arise. There is a case and a sentence is passed. There is not then a reaction of public opinion; that does not happen spontaneously. There is a reaction of the media—this is inevitably so. Sometimes it may be justified, often it is due to a misreporting, often it is due to a partial reporting, often it is due—and the noble and learned Lord knows this only too well—to an entirely appropriate sentence passed in a somewhat unhappily inappropriate way.

As a result of the outcry that then follows, the Attorney-General, through the medium of the Director of Public Prosecutions, wants to know whether the matter should be referred to the Court of Appeal. His first duty inevitably will be to go to the prosecuting counsel in the case and ask, "What do you think of the sentence?" I think it is quite idle to pretend that we can continue the tradition that prosecuting counsel are not concerned with sentences if they are to be consulted after a case as to whether, in their view,

the sentence is appropriate or not. We shall see in a minute the real problems that prosecuting counsel will have to face in answering that question. For what happens then is that there will be a reference to the Court of Appeal.

I do not believe that the Court of Appeal are going to welcome that. They are very desperately overworked as it is. If I may say so, I was extremely unhappy at the (I am sure, quite inadvertent) suggestion made by the noble and learned Lord the Lord Chancellor that in some way the noble and learned Lord the Lord Chief Justice of England approves of Clause 22. I should be very surprised if the noble and learned Lord the Lord Chancellor does not know perfectly well the views of the noble and learned Lord the Lord Chief Justice of England on this clause; and if the noble and learned Lord the Lord Chancellor wants to suggest that there is the slightest sympathy in that quarter for the way that the Government have gone about this matter, then I give the noble and learned Lord the Lord Chancellor an opportunity of doing so now.

The Lord Chancellor: I have not spoken to the Lord Chief Justice. I quoted him in a public speech directly, and I know that if he were here—whether he would approve this particular formulation or not, I know not—he would go at least as far.

Lord Wigoder: I can only say that I know perfectly well the answer.

Let us come now to this. What happens in practical terms in the proceedings on a reference in the Court of Appeal? Prosecuting counsel is there. He is asked, "What do you say about the sentence? Why did the judge pass this sentence?". He does not know. He does not know what influenced the judge. He does not know that the judge might have been particularly affected, as the noble and learned Lord, Lord Denning, said, by some passage in the evidence, by some part of the defendant's own evidence, by some particularly impressive statement in mitigation by the defendant's wife. In particular—and the noble Baroness, Lady Macleod of Borve, hit this nail very firmly on the head—prosecuting counsel has not the faintest idea of what was in the probation officer's report, the social inquiry report, which has been made to the judge and which may very much influence the judge in the decision he takes.

If we are going to go on to a system as proposed in Clause 22, we are going to have a situation in which prosecuting counsel, in defence of the system, is going to demand at every sentencing process in the Crown courts that the probation officer be called and that he should be cross-examined by the prosecuting counsel as to why he has made a particular recommendation on sentence. The noble Lord, Lord Elton, will know perfectly well that the prosecution service is in no position to withstand strains of that sort. So prosecuting counsel will have no idea why the judge passed the sentence.

The defence counsel will not be there: why should he be there? Why should a defendant, who cannot be affected, except notionally or as a matter of moral reputation, by the fact that he is being told that instead of being fined £100 he should have been sent to prison for two years, trouble to turn up to take part in these proceedings? What is going to happen in the Court of Appeal if the presiding judge says, "I would like a little elaboration of this particular point: what was meant when the defendant in his evidence said this, that or the other"? There will be a total silence. Prosecuting counsel is not properly instructed; defence counsel will in all probability not be there. And it goes without saying that the judge will not be represented—of course he will not be. Nobody will be there to put the reasons why, in a particular case on a particular argument in particular circumstances, the judge passed a particular sentence.

The whole proceedings, I venture to think, would bring our system of justice into total disrepute. The fact that in occasional circumstances in that situation an *ex cathedra* statement is handed down, saying, "In this particular situation we think the proper sentence might have been this rather than that" is not going to reassure public opinion. It is going to bring our judicial system into total disrepute.

The only other matter I would add is this. It is important of course that if sentences which may be too lenient are passed, there should be the machinery for putting the matter right. There is the machinery for putting it right. There is abundant machinery at sentencing conferences; there is abundant machinery for laying down guidelines. And the noble and learned Lord the Lord Chancellor knows this perfectly well, too. If there is today a particular case of, let us say, rape—for some reason we always talk about rape in connection with this sort of amendment—and a sentence is passed as a result of which there is some comment in the press tomorrow, it is well within the powers of the Court of Appeal to have a similar rape case brought into the list the day after tomorrow, and straight away the Lord Chief Justice is able to make comments which will affect the case that was in the list today far more quickly, far more readily and far more effectively than going through all the procedure of referring to counsel and the Director of Public Prosecutions, referring to the Attorney-General and, in a few weeks' time, giving notice and then, when the matter has gone completely stale, having these artificial proceedings in the Court of Appeal.

I venture to suggest to your Lordships that, on the merits of the argument today, Clause 22 ought not to remain part of this Bill and I would invite your Lordships in all parts of the Committee to join now and reject it.

4.53 p.m.

On Question, Whether Clause 22 shall stand part of the Bill?

Their Lordships divided: Contents, 98; Not-Contents, 140.

DIVISION NO. 1

CONTENTS

Abinger, L.	Belstead, L.
Airey of Abingdon, B.	Bessborough, E.
Alexander of Tunis, E.	Boyd-Carpenter, L.
Avon, E.	Brabazon of Tara, L.
Aylestone, L.	Braye, L.
Belhaven and Stenton, L.	Caithness, E.
Bellwin, L.	Cameron of Lochbroom, L.

Cathcart, E.
Constantine of Stanmore, L.
Cox, B.
Cullen of Ashbourne, L.
Daventry, V.
Davidson, V.
De Freyne, L.
Denham, L. [*Teller.*]
Drumalbyn, L.
Eccles, V.
Ellenborough, L.
Elliot of Harwood, B.
Elton, L.
Faithfull, B.
Gainford, L.
Gainsborough, E.
Glanusk, L.
Glenarthur, L.
Gowrie, E.
Gray, L.
Gray of Contin, L.
Hailsham of Saint Marylebone, L.
Harvington, L.
Henley, L.
Hertford, M.
Home of the Hirsel, L.
Hornsby-Smith, B.
Howe, E.
Kitchener, E.
Lane-Fox, B.
Lindsey and Abingdon, E.
Liverpool, E.
Long, V.
Lothian, M.
Lucas of Chilworth, L.
Luke, L.
MacLehose of Beoch, L.
Mancroft, L.
Margadale, L.
Marley, L.
Marshall of Leeds, L.
Massereene and Ferrard, V.
Merrivale, L.
Milverton, L.
Moran, L.
Mottistone, L.
Murton of Lindisfarne, L.
Noel Buxton, L.
Nugent of Guildford, L.
Orkney, E.
Orr-Ewing, L.
Pender, L.
Pennock, L.
Penrhyn, L.
Phillips, B.
Platt of Writtle, B.
Reay, L.
Renton, L.
Renwick, L.
Rodney, L.
Romney, E.
St. Aldwyn, E.
Selkirk, E.
Sempill, Ly.
Skelmersdale, L.
Soames, L.
Southborough, L.
Stockton, E.
Sudeley, L.
Swinton, E. [*Teller.*]
Taylor of Blackburn, L.
Teviot, L.
Teynham, L.
Trefgarne, L.
Trumpington, B.
Ullswater, V.
Vaux of Harrowden, L.
Vickers, B.
Vivian, L.
Ward of Witley, V.
Westbury, L.
Whitelaw, V.
Young, B.
Young of Graffham, L.

NOT-CONTENTS

Ailesbury, M.
Airedale, L.
Alport, L.
Amherst, E.
Ampthill, L.
Ardwick, L.
Attlee, E.
Avebury, L.
Banks, L.
Beaumont of Whitley, L.
Beswick, L.
Birk, B.
Blease, L.
Boothby, L.
Bottomley, L.
Brandon of Oakbrook, L.
Brockway, L.
Broxbourne, L.
Bruce of Donington, L.
Burton of Coventry, B.
Caccia, L.
Campbell of Alloway, L.
Caradon, L.
Carmichael of Kelvingrove, L.
Chitnis, L.
Cledwyn of Penrhos, L.
Collison, L.
Cork and Orrery, E.
Cornwallis, L.
Cottesloe, L.
Craigavon, V.
Craigmyle, L.
Cudlipp, L.
David, B.
Dean of Beswick, L.
Denington, B.
Denning, L.
Derby, Bp.
Diamond, L.
Donaldson of Kingsbridge, L.
Edmund-Davies, L.
Elwyn-Jones, L.
Ezra, L.
Falkender, B.
Falkland, V.
Foot, L.
Gallacher, L.
Galpern, L.
Gisborough, L.
Gladwyn, L.
Graham of Edmonton, L.
Grimond, L.
Hampton, L.
Hanworth, V.
Harris of Greenwich, L.
Hatch of Lusby, L.
Henderson of Brompton, L.
Henniker, L.
Hughes, L.
Hunt, L.
Hutchinson of Lullington, L.
Hylton-Foster, B.
Ilchester, E.
Irving of Dartford, L.
Jacobson, L.
Jacques, L.
Jeger, B.
Jenkins of Putney, L.
John-Mackie, L.
Kagan, L.
Kearton, L.
Killearn, L.
Kilmarnock, L.
Lauderdale, E
Lawrence, L.
Leatherland, L.
Listowel, E.
Llewelyn-Davies of Hastoe, B.
Lloyd of Hampstead, L.
Lloyd of Kilgerran, L.
Lockwood, B.
Longford, E.
Lovell-Davis, L.
McIntosh of Haringey, L.
Macleod of Borve, B.
McNair, L.
Mar, C.
Mayhew, L.
Mersey, V.
Meston, L.
Molloy, L.
Molson, L.
Monckton of Brenchley, V.
Morris, L.
Moyne, L.
Nicol, B.
Onslow, E.
Oram, L.
Polwarth, L.
Ponsonby of Shulbrede, L. [*Teller.*]
Porritt, L.
Prys-Davies, L.
Rawlinson of Ewell, L.
Rea, L.
Roskill, L.
Ross of Marnock, L.
Rugby, L.
Sandford, L.
Scarman, L.
Seear, B.
Seebohm, L.
Sefton of Garston, L.
Serota, B.
Simon, V.
Simon of Glaisdale, L.
Somers, L.
Stallard, L.
Stamp, L.
Stedman, B.
Stewart of Fulham, L.
Stoddart of Swindon, L.
Strabolgi, L.
Swinfen, L.
Terrington, L.
Thorneycroft, L.
Tordoff, L. [*Teller.*]
Underhill, L.
Wallace of Coslany, L.
Walston, L.
Wells-Pestell, L.
Whaddon, L.
White, B.
Wigoder, L.
Wilberforce, L.
Wilson of Langside, L.
Wilson of Rievaulx, L.
Winchilsea and Nottingham, E.
Winterbottom, L.
Woolley, L.
Wootton of Abinger, B.

Resolved in the negative, and clause disagreed to accordingly.

Baroness Trumpington: My Lords, I beg to move that the House be now resumed.

Moved accordingly, and, on Question, Motion agreed to

House resumed.

Radioactive Waste Disposal

5.3 p.m.

The Parliamentary Under-Secretary of State, Department of the Environment (The Earl of Avon): My Lords, with premission, I shall repeat a Statement being made in the other place by my right honourable friend the Secretary of State for the Environment on waste disposal planning procedures. The Statement reads:

"With permission, Mr Speaker, I wish to make a Statement about the disposal of low and intermediate radioactive wastes. The House will recall that on 25th October 1983 I announced two things—a public consultation on the principles for assessing disposal facilities, and procedures for dealing with the possible sites which NIREX had inititally identified. These sites were at Billingham, in Cleveland, for deep disposal, and at Elstow, in Bedfordshire, for less deep disposal. The House will remember that the deep depository would be for the longer-lived, intermediate-level wastes, and depending on the geology, would be at least 300 feet deep; the other facility, for shorter-lived wastes, would probably consist of concrete-lined trenches up to 60 feet deep, covered by a thick layer of concrete, and a mound of earth.

Home Office

NEWS RELEASE

50 Queen Anne's Gate London SW1H 9AT
Telephone 01-213 3030/4050/5050
(Night line 01-213 3000)

October 9, 1984

TIME LIMITS ON CRIMINAL PROCEEDINGS

The Home Secretary announced today that the Government is to introduce proposals for statutory time limits on the period from arrest to commencement of trial in criminal proceedings. The necessary enabling powers will be included in the Bill to create a new prosecution service. Their introduction will be preceded by trials to test the scheme.

Time limits are intended to do two things. First, they will ensure that cases where the accused is in custody are guaranteed the highest priority by the new prosecution service. Secondly, when applied to cases where the accused is on bail, they will serve to dispel any view that "a case takes as long as it takes", and provide an impetus to greater efficiency and speed throughout the system.

Statutory time limits cannot however generate greater capacity in the courts to hear cases quickly. There will still be delays where the courts are simply overloaded. The Government has taken action to increase the number of courtrooms and judges available to the Crown Court - where the delays are most serious - and to bring about best use of resources. Time limits will take their place as part of a comprehensive programme to attack delay.

Under the Home Secretary's proposals, there will be power to order that the various stages of bringing criminal proceedings should be limited to a set number of days. The Bill will allow extensions to be granted only for good reason where the prosecution can show that it has not been at fault. If a case overruns the limit, a defendant in custody will have to be released, but he will still face trial within the time limit which will be set for bail cases. For a defendant on bail, the proceedings against him would have to be stopped once the time limit for bail cases has overrun.

Time limits will not allow defendants to escape justice. The field trials will ensure that the limits which are eventually set are realistic and workable. Time limits will introduce a discipline into the system,

/serving

serving the interests of justice. On the one hand witnesses' memories will be fresher; on the other defendants who may eventually be acquitted or given non-custodial sentences will not be detained unnecessarily long while the case against them is prepared.

NOTE TO EDITORS

In its report on remands in custody, published in June, the House of Commons Select Committee on Home Affairs recommended that the Government should commit itself in principle to the introduction of time limits on the period from arrest to trial, and should conduct experiments to demonstrate what kind of limits would be feasible. The Government reply in July said that the Home Secretary was already reconsidering the arguments and was aiming to announce a decision in the autumn.

Greetings

CONFIDENTIAL

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

8 October 1984

Dear Willie,

TIME LIMITS ON CRIMINAL PROCEEDINGS

Following the meeting of H Committee on Friday, the Attorney General and I have now had a further opportunity to discuss the question of whether the Prosecution of Offences Bill should be used as the vehicle for the proposed legislation on time limits. We now both agree that it should be and we will be considering together, as agreed by the Committee, how to frame the exemptions to time limits in such a way as to ensure that major criminals do not escape justice.

I will, therefore, be making it clear tomorrow that the legislation will be incorporated in the Prosecution of Offences Bill.

I am sending a copy of this letter to the Prime Minister, members of H Committee, the Attorney General and to Sir Robert Armstrong.

Yours ever,
Leon

The Rt Hon The Viscount Whitelaw, CH., MC.

CONFIDENTIAL

Sentencing Policy

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Leon Brittan QC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

2 October 1984

TIME LIMITS IN CRIMINAL PROCEEDINGS

Thank you for sending me a copy of your letter to Willie Whitelaw of 17 September.

2 There is much to be said for your proposals. If they help to reduce the very long delays that sometimes occur, without significantly affecting the average, they will complement the very worthwhile improvements in the workings of the courts being accomplished by the Lord Chancellor and, in the case of the magistrates courts', yourself.

3 It is important, of course, to consider resources. I understand that, because time spent on remand counts towards sentence, you do not expect the prison population as a whole to fall by more than a hundred or so. You therefore see the exercise as involving largely a readjustment of priorities. I trust that the field trials which you propose will confirm this is so, and that any resource implications which may be highlighted for courts and prosecutors can be accommodated without bids for additional provision. I assume, of course, that you would expect to pay for the field trials themselves out of the provision for your programme that we are agreeing separately.

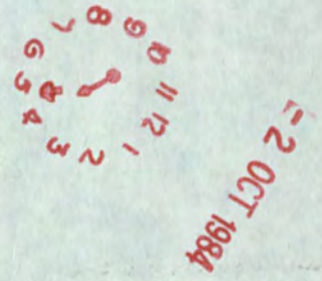
4 It would be right to proceed cautiously, since we do not want exaggerated ideas to build up about the extent to which time limits can by themselves speed cases being brought to trial. The field trials will, I hope, show the extent to which some types of difficult cases are likely to need longer time limits because of the nature of the investigations involved. It may be useful, even at this early stage, to have statutory provisions in place, so

that the field trials are taken seriously. But it seems important, for all the reasons I have mentioned, not to encourage the belief that time limits will necessarily be quickly introduced or suggest that they might take a particular form.

5 I am sending copies of this letter to the Prime Minister, members of H and the Attorney General and to Sir Robert Armstrong.

PETER REES

HOME AFFAIRS: Sentencing Policy
July 79



RESTRICTED

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

1 October 1984

Dear Home Secretary

TIME LIMITS IN CRIMINAL PROCEEDINGS

Thank you for sending me a copy of your letter of 17 September to Willie Whitelaw, together with your memorandum on time limits in criminal proceedings.

I share your view over the need to reduce excessive delay in bringing cases to trial where the accused is in custody. However, I believe that there would be genuine public concern if people who could be charged with serious offences were acquitted simply because a time limit had been exceeded.

I agree with the Lord Chancellor that we should await the views of the Attorney General and the Lord Chief Justice before any final decision is taken.

I am copying this letter, with the paper, to the Prime Minister, the Lord President, other members of "H", the Attorney General and to Sir Robert Armstrong.

Yours sincerely

Pat Jenkin

PATRICK JENKIN

Approved by the SAT and signed in his absence

The Rt Hon Leon Brittan QC MP

5

cc Mr R.G.S. Johnston
Mr Young
Mr Thon
HJStos

QUEEN ANNE'S GATE LONDON SW1H 9AT

17 September 1984

DEPARTMENT OF THE ENVIRONMENT
RECEIVED IN
17 SEP 1984
PRIVATE OFFICE

Dear Willie,

TIME LIMITS IN CRIMINAL PROCEEDINGS

As you will recall from our exchanges over the Government's reply to the Home Affairs Committee's report on remands in custody, I have been considering whether there might be a case for introducing statutory limits, as already exist in Scotland, on the period before trial in the criminal courts in England and Wales. I enclose a copy of a paper on the subject which I would have circulated to colleagues in the normal way had it been possible to arrange an early meeting of H Committee.

As the paper explains, I have recently come to the view that, although the Scottish system cannot simply be replicated south of the border, time limits could make a useful contribution to reducing excessive delay in bringing cases to trial where the accused is in custody, and would be consistent with our general policy on efficiency in the public service. I should therefore like to move firmly in that direction and to announce our commitment in principle to do so at the Party Conference, in the context of a general statement about the efficiency of the criminal justice system. I have had a discussion about this with Quintin Hailsham and intend to talk to Michael Havers about the matter when he returns from his holiday next week. Quintin retains some of the doubts expressed in his letter to you about the reply to the Select Committee, but I understand he would be ready to go along with my proposals if they command the support of other colleagues.

I should be grateful for colleagues' agreement that I should announce at the Party Conference that the Government is committed in principle to introducing statutory time limits. There would, of course, be no need to announce the full details at the Conference, and any outstanding points affecting implementation could be dealt with either in further correspondence or at a future meeting of H.

I do feel, however, particularly in the light of the concern currently being expressed about crimes committed in the context of the miners' strike, that it is important to take an initiative of this kind at the Conference.

I am copying this letter, with the paper, to the Prime Minister, ~~to~~ other members of "H", ~~to~~ the Attorney General and to Sir Robert Armstrong.

Yours,

Leon

The Rt Hon The Viscount Whitelaw, CH., MC.

TIME LIMITS IN CRIMINAL PROCEEDINGS

Memorandum by the Secretary of State for the Home Department

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1. There has been growing concern in recent years about delays in bringing criminal cases to trial. The Lord Chancellor has achieved substantial improvements in the performance of the Crown Court, at a time of increasing business; and he and I have recently issued a circular of guidance to the magistrates' courts about ways in which they might tackle delay. But a minority of cases is subject to very serious delay, more than can be explained either by the need for adequate preparation on both sides or by the pressure on court capacity. This is particularly serious where the accused is in custody.

2. Some months ago, I therefore asked my officials to review the arguments for and against statutory time limits on the period before trial, as exist in Scotland. This review coincided with a study by the Home Affairs Committee of remands in custody, whose report included a recommendation that the Government should commit itself in principle to introducing statutory time limits, and should mount a series of experiments on what kind of time limits would be feasible. In the reply to the Committee's report, we described the work in hand, and indicated that we aimed to announce a decision on time limits early in the next session.

The nature and causes of delay

3. For cases tried on indictment, the average time between first court appearance and committal for trial, where the accused was in custody, was 37 days in both 1981 and 1982. (It had been as low as 27 days in 1977). But 15% (equivalent to about 1500 cases) had not been committed after 56 days. For the period between committal and trial in the Crown Court, waiting times are longer - 59 days on average in 1981, but with 13% (1700 cases) still awaiting trial after 110 days. This means that it is not unusual for the

total time spent awaiting trial in custody to be as much as six months, and not unknown for it to be more than a year. The position is more serious in the London area, where the average time between committal and trial in custody cases was 116 days in 1983.

4. These long periods in custody awaiting trial are undesirable in principle. They are particularly damaging to confidence when, as happens in a minority of cases, the accused is acquitted. And, by boosting the remand population, they put further pressure on the prison system. They occur for a variety of reasons, not the least of which is the sheer volume of business. But I believe that the attitudes of the various participants in the process - prosecution, defence, courts staff, even witnesses - are also crucial. By contrast with Scotland, there is no single person in our system who has the responsibility for bringing cases to trial on time or the authority to do so. If there is an expectation about the time which cases will take, and attitudes which assume a certain amount of delay, then delay will occur. It is the scope they offer for toning up the system generally which attracted me to the idea of time limits.

Time limits in other countries

5. In the course of their study, my officials looked at the time limits which already operate in the United States and in Scotland. They differ greatly in nature and effectiveness. The American Federal Speedy Trial Act requires the federal courts to bring cases from arrest to trial within 100 days, 90 days if the offender is in custody. But there is a very wide range of circumstances in which the period can be extended, and many observers doubt if the Act has made much difference to the time taken to bring cases to trial.

6. The Scottish system, however, works extremely well. It has been in place for many years and all those associated with the criminal process work on the assumption that the time limits will be observed. Where the accused is in custody, the limits are 110 days in cases to be tried on indictment and 40 days in summary cases. These limits may be extended by a High Court judge, where he is satisfied that the delay is due to

- the illness of the accused or of a judge
- the absence or illness of a necessary witness
- any other sufficient cause not attributable to fault on the part of the prosecutor

If the limit is exceeded, the accused must be released from custody. Strictly speaking, the charges then fall, but it is open to the procurator fiscal to order release before the limit is reached, thus preserving the possibility of trial. (In practice this scarcely ever happens).

7. There are several important respects in which the Scottish system differs from that in England and Wales. The prosecution can insist on court sittings being held, if it is necessary to enable a case to be brought to trial before the time limit. This power is rarely exercised, but its existence conditions courts management very greatly. The prosecution also effectively determines whether cases should be tried on indictment or summarily; and the defence has more incentive to comply with the time limit, because (although taken into account) time spent on remand does not count automatically towards sentence.

Time limits in England and Wales

8. These are important differences. My plans for an independent prosecution service will establish a clearer and simpler framework for consideration of these matters. But I do not envisage the prosecutor having power to insist on court sittings or to determine method of trial; and changing the basis of sentence calculation to accord with the Scottish approach would be highly controversial. The consequence of our prosecutor having less control over the passage of cases through the system is that the range of causes of delay which could not be attributed to the prosecution (and hence form grounds for an extension of the limit) would be that much wider. A statutory time limit, unsupported by other measures, would therefore be a significantly less powerful instrument than the Scottish 110 day rule.

9. I therefore have in mind a more comprehensive approach. Much of our current effort, in the Lord Chancellor's Department and the Director of Public Prosecutions' office as well as in the Home Office, is directed towards improvements in efficiency and the setting of targets and guidelines for the services in the criminal justice system. The recent circular to magistrates' courts invites them to consider setting local guidelines. The Lord Chancellor's Department, in the context of the Financial Management Initiative, is instituting a system of objectives and targets for the Crown Court. Plans for the new prosecution service include the development of targets and measures of performance. It would fit naturally with all of these moves to have a system of administrative guidelines for the courts and the prosecution, setting out the normal maximum time to be taken over each stage of the process.

10. Such a combined approach - a statutory time limit on the Scottish model, biting essentially on the prosecution, but backed by administrative guidelines - would, I believe, have a good chance of success. It would give the courts a stake in the achievement of the time limits. Moreover if the prosecution and the courts administration between them succeeded in listing a case for hearing in time, the defence would have to make any case for adjournment before a judge or before the magistrates, rather than simply telling the listing officer that they were not ready. Cases would not simply drift into excessive delay, as they sometimes do now.

11. As regards the statutory provisinn itself

a) Its scope would be broadly as in Scotland. In particular, the consequence of exceeding the time limits where the delay was attributable to the prosecution would be the release of the accused. Without a sanction of this kind, it seems to me that we could not expect the time limit to operate as an effective discipline.

b) There would be broadly the same range of grounds on which the court could grant an extension (see paragraph 6 above), notably in cases of illness, but embracing other sufficient reasons not attributable to the prosecutor.

c) Time limits would apply to three distinct periods - the whole period between first court appearance and trial in summary cases, and the periods between first appearance and committal and committal and trial in cases tried on indictment. The study by my officials suggested tentatively that these three limits might be of the order of 40 days, 56 days and about 100 days respectively, but I would want to discuss the precise limits with interested parties and reappraise them in the light of the field trials which I propose in paragraph 13 below. There is an existing requirement in the Crown Court Rules that trials in the Crown Court should begin not later than 56 days after committal, but this period is unrealistically short and is routinely extended. It would need attention if the changes I am proposing are accepted.

12. Doubts have been expressed about the feasibility of statutory time limits while the courts are under as much pressure as they are in some parts of England and Wales. A time limit would not in itself create courts capacity. I understand these doubts. But I see the argument as essentially about priorities in using existing resources. We already afford a degree of priority to cases where the accused is in custody, and cases which have already been delayed. Time limits would sharpen that priority and make it more habitual. There might be some lengthening of waiting times in cases where the accused is on bail and in custody cases which would otherwise have been disposed of more quickly, but I believe that this would be a price worth paying. Bail cases are very much more numerous than custody cases. My officials ~~calculate~~ estimate that even in the Crown Court the average increase in waiting times to enable the achievement of realistic time limits in custody cases would probably be less than a week.

Field trials

13. Nevertheless, I accept that there is sufficient uncertainty about the effect of my proposals for it to be right to proceed cautiously. I therefore propose that we should mount trials in a few areas. This would accord with the Home Affairs Committee's recommendation for experiments. The purpose of the trials would be to test the feasibility and effectiveness of the approach outlined above, the realism of the time limits adopted, the effect on bail cases, and the implications in areas, especially London, where the courts are particularly hard-pressed.

14. Such trials would need the co-operation of all those involved. To yield their full benefit, they would also require as realistic an atmosphere as possible, and for that reason I propose to include provision for time limits in future legislation, if possible in the Prosecution of Offences Bill. The provision would cover the basic elements of the scheme, but would leave its implementation (including the specification of the actual time limits) to subordinate legislation, with scope for implementation by geographical area.

Financial and manpower implications

15. As is noted above, what I envisage is a readjustment of priorities within existing resources. On certain assumptions, there might be some relief to the prisons (a small overall reduction in the prison population and some easement of the burden of escort duties for remand prisoners) and the magistrates' courts (fewer routine remands), but it is difficult to translate these into quantifiable savings. The cost of the field trials would probably be of the order of £100,000.

Conclusions

16. The comprehensive approach which I have outlined above accords with our general thinking on efficiency and effectiveness in the public services. At one level, it constitutes quite a narrow re-ordering of priorities within the criminal justice system. But I am optimistic that it might have the general effect of toning up the system and increasing awareness of court delay (which has been in our minds in recent weeks in the specific context of the miners' strike) as a general issue. I should like to announce at our Party Conference next month that the Government is committed in principle to time limits and perhaps to outline how we see the way forward.

17. I therefore invite colleagues' agreement

a) that we should move towards a system of statutory time limits in criminal proceedings, designed to prevent excessive delay where the accused is in custody, directed primarily at the prosecution but backed by administrative guidelines for the courts;

b) that we should proceed by mounting several field trials to test the feasibility and effectiveness of the scheme;

c) that these trials should take place in as realistic an atmosphere as possible and that we should therefore include a provision in legislation containing the main elements of the scheme and enabling time limits to be brought into force selectively by order;

d) that I should announce the Government's commitment in principle to time limits when I address the Conservative Party Conference next month.

LB

Home Office

September 1984

HOME AFFAIRS: Sentencing Policy
July 79

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Leon Brittan QC MP
Secretary of State for the
Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

1st October 1984

Dear Home Secretary,

TIME LIMITS IN CRIMINAL PROCEEDINGS

Thank you for sending me a copy of your letter of 17 September to Willie Whitelaw about your intention to announce at the Party Conference a commitment in principle to the introduction of statutory time limits in criminal proceedings.

Delay in coming to trial is a severe problem in Northern Ireland too. My department has recently given it close attention, in co-operation with the Law Officers' Department and the Court Service. We have recognised that action on several fronts is necessary, to reduce delays to a minimum. Accordingly I could not take issue with your proposal to commit the Government in principle to time limits for England and Wales at the Conference. There are strong reasons in its favour.

Nevertheless, I cannot foresee our being able to adopt a system, similar to what you have in mind, in Northern Ireland while circumstances remain at all as they are today. Far too many crucial terrorist cases fall outside the limits that you propose. The enactment of Home Office legislation would leave Northern Ireland unhappily exposed, as the only jurisdiction in the United Kingdom unable to conform. We would have to consider how to meet this criticism without weakening our ability to bring terrorists to justice.

I/....

I therefore support your intention to adopt a comprehensive approach to the whole problem, and to proceed cautiously with time limits by monitoring realistic experiments. I shall be interested to see the results of these. It will certainly ease our difficulties that you expect to introduce the limits piecemeal by geographical area, and with some flexibility in the precise limits in different areas.

I am copying this letter to the Prime Minister, Members of 'H' Committee, to Sir Michael Havers and Sir Robert Armstrong.

Yours Sincerely
N Ward.

(Approved by the Secretary of State
and signed in his absence in Belfast)

ssd

HOME AFFAIRS
Sentence
July 29

RESTRICTED

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

28 September 1984

Dear William,

I have seen the Lord Chancellor's letter of 24 September setting out his views on my proposal to announce a decision in principle to introduce statutory time limits on the bringing of criminal proceedings.

I had discussed this matter with the Attorney General, and he raised no objection in principle to what I propose, though he has reservations on certain points in regard to the scheme outlined in the paper enclosed with my letter of 17 September. I am circulating today a further paper with more detailed proposals which take account, I think, of his anxieties and which I hope we shall be able to discuss in H Committee on 4 October.

I have now had a reply from the Lord Chief Justice. He expresses a lack of enthusiasm for the Scottish system and, like the Lord Chancellor, takes the point that time limits would not create additional court capacity and would not in themselves reduce delay overall. However, he thinks that when the national prosecution service comes into operation there might be some advantages in what I propose; and he says that he sees no objection to limited trials being instituted at this stage. I take this as offering us cautious encouragement to proceed in the way that I propose.

I hope, therefore, that in the light of these further consultations I can have colleagues' agreement to making an announcement at the Party Conference on the lines I have proposed.

I am sending copies of this letter to the Prime Minister, to the other members of H Committee and to Michael Havers and Sir Robert Armstrong.

Yours ever,

Leon

The Rt Hon The Viscount Whitelaw, CH., MC.

RESTRICTED

HOME AFFAIRS

Sentencing Policy

June 79

DG

CCBI

HOUSE OF LORDS,
SW1A 0PW

RESTRICTED

24 September 1984

Await Lord Chief Justice and Home Sec's reply.

D
24/9

My dear Leon:

TIME LIMITS IN CRIMINAL PROCEEDINGS

Thank you for copying to me your letter of 17 September to Willie Whitelaw. As you say in your letter I continue to have doubts about the value of statutory time-limits and I think it as well that colleagues should know what those doubts are.

I believe the principal concern of the public is that criminals should not escape justice and that they should be properly punished when convicted. In my view there is nothing more damaging to public confidence in our system of justice than the acquittal of people who otherwise would be convicted because of the breach of a technical rule unrelated to the merits of the case. There is legitimate concern, which I fully share, about delay in the courts; but this cannot be overcome by the elimination from the lists of some of what in my view might be the more serious cases. Thus I take it as essential to any system of time limits that it should include provisions for extending the limit or exempting cases from it so as to prevent unmeritorious acquittals. I believe you would accept this. But in my view this would mean that it would have to be drawn so widely that, like the 8 week rule in the Crown Court Rules, the limit would be more honoured in the breach than the observance.

In my evidence to the Home Affairs Committee of the House of Commons I showed that the factors which cause delay, at least in the Crown Court, are seldom due to delay by the prosecution. Such factors are the complexity of cases, unavailability of witnesses, or their mysterious disappearance, the need to link up with other cases, the need to have the gravest cases tried by the most experienced judges, and so forth. All these would be good reasons to extend any time-limit. As a result the time-limit would become a hollow gesture. Moreover, the aim of very many of the most culpable defendants is to initiate plausible reasons for delaying trial.

I do not believe that statutory time-limits would actually reduce delay. I also suspect that this would rapidly become apparent in the passage of any necessary legislation through Parliament, and if such legislation were passed the working

/... of the

The Right Honourable Leon Brittan QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
London SW1H 9AT

of the exceptis would produce constant pressures both from the law and order enthusiasts and the civil rights lobbies. We should indeed be preparing in pickle a rod for our own backs.

Finally, time-limits could actually be counter-productive: a limit of 100 days, for instance, which you mention in your paper, would probably conduce to slackness outside London where the average waiting time in a custody case is now only 58 days.

All this is, of course, primarily for you and the Attorney General, especially bearing in mind the administrative responsibilities he will soon have for prosecutors. Furthermore, it is the judiciary who would have to administer any system of time-limits, and I note that you have written to the Lord Chief Justice about your proposal. We must see what he says in reply before coming to conclusions.

I am copying this letter to the Prime Minister, the other members of H Committee, the Attorney General and Sir Robert Armstrong.

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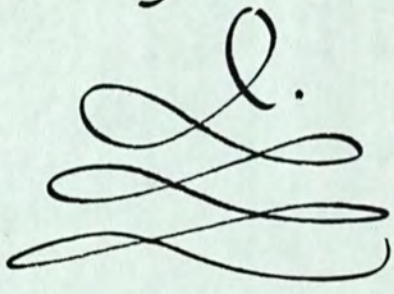

Have Affairs

Sentencing Policy

VC

c. LPO D/M
LCO CS, HMT
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10 DOWNING STREET

From the Private Secretary

19 September 1984

Time Limits in Criminal Proceedings

The Prime Minister has seen a copy of the Home Secretary's letter of 17 September to the Lord President, with which he circulated a paper on time limits in criminal proceedings.

The Prime Minister is content with the Home Secretary's proposals, subject to the views of H Committee colleagues. She also agrees that, if his proposals are approved by the Committee, they should be referred to at the Party Conference.

I am copying this letter to the Private Secretaries to members of H Committee, to Henry Steel (Law Officers' Department) and Richard Hatfield (Cabinet Office).

(David Barclay)

Hugh Taylor, Esq.,
Home Office.

Prime Minister (4)

Any doubts about this are likely to revolve around courts' ability to cope, given the pressure on them in some areas. But a worthwhile reform in principle.

Content, subject to colleagues?

QUEEN ANNE'S GATE LONDON SW1H 9AT

17 September 1984

Dear Willie,

DMB 17/9

TIME LIMITS IN CRIMINAL PROCEEDINGS

As you will recall from our exchanges over the Government's reply to the Home Affairs Committee's report on remands in custody, I have been considering whether there might be a case for introducing statutory limits, as already exist in Scotland, on the period before trial in the .... criminal courts in England and Wales. I enclose a copy of a paper on the subject which I would have circulated to colleagues in the normal way had it been possible to arrange an early meeting of H Committee.

As the paper explains, I have recently come to the view that, although the Scottish system cannot simply be replicated south of the border, time limits could make a useful contribution to reducing excessive delay in bringing cases to trial where the accused is in custody, and would be consistent with our general policy on efficiency in the public service. I should therefore like to move firmly in that direction and to announce our commitment in principle to do so at the Party Conference, in the context of a general statement about the efficiency of the criminal justice system. I have had a discussion about this with Quintin Hailsham and intend to talk to Michael Havers about the matter when he returns from his holiday next week. Quintin retains some of the doubts expressed in his letter to you about the reply to the Select Committee, but I understand he would be ready to go along with my proposals if they command the support of other colleagues.

I should be grateful for colleagues' agreement that I should announce at the Party Conference that the Government is committed in principle to introducing statutory time limits. There would, of course, be no need to announce the full details at the Conference, and any outstanding points affecting implementation could be dealt with either in further correspondence or at a future meeting of H.

I do feel, however, particularly in the light of the concern currently being expressed about crimes committed in the context of the miners' strike, that it is important to take an initiative of this kind at the Conference.

I am copying this letter, with the paper, to the Prime Minister, to other members of "H", to the Attorney General and to Sir Robert Armstrong.

Yours,

Ian

The Rt Hon The Viscount Whitelaw, CH., MC.

TIME LIMITS IN CRIMINAL PROCEEDINGS

Memorandum by the Secretary of State for the Home Department

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1. There has been growing concern in recent years about delays in bringing criminal cases to trial. The Lord Chancellor has achieved substantial improvements in the performance of the Crown Court, at a time of increasing business; and he and I have recently issued a circular of guidance to the magistrates' courts about ways in which they might tackle delay. But a minority of cases is subject to very serious delay, more than can be explained either by the need for adequate preparation on both sides or by the pressure on court capacity. This is particularly serious where the accused is in custody.

2. Some months ago, I therefore asked my officials to review the arguments for and against statutory time limits on the period before trial, as exist in Scotland. This review coincided with a study by the Home Affairs Committee of remands in custody, whose report included a recommendation that the Government should commit itself in principle to introducing statutory time limits, and should mount a series of experiments on what kind of time limits would be feasible. In the reply to the Committee's report, we described the work in hand, and indicated that we aimed to announce a decision on time limits early in the next session.

The nature and causes of delay

3. For cases tried on indictment, the average time between first court appearance and committal for trial, where the accused was in custody, was 37 days in both 1981 and 1982. (It had been as low as 27 days in 1977). But 15% (equivalent to about 1500 cases) had not been committed after 56 days. For the period between committal and trial in the Crown Court, waiting times are longer - 59 days on average in 1981, but with 13% (1700 cases) still awaiting trial after 110 days. This means that it is not unusual for the

total time spent awaiting trial in custody to be as much as six months, and not unknown for it to be more than a year. The position is more serious in the London area, where the average time between committal and trial in custody cases was 116 days in 1983.

4. These long periods in custody awaiting trial are undesirable in principle. They are particularly damaging to confidence when, as happens in a minority of cases, the accused is acquitted. And, by boosting the remand population, they put further pressure on the prison system. They occur for a variety of reasons, not the least of which is the sheer volume of business. But I believe that the attitudes of the various participants in the process - prosecution, defence, courts staff, even witnesses - are also crucial. By contrast with Scotland, there is no single person in our system who has the responsibility for bringing cases to trial on time or the authority to do so. If there is an expectation about the time which cases will take, and attitudes which assume a certain amount of delay, then delay will occur. It is the scope they offer for toning up the system generally which attracted me to the idea of time limits.

Time limits in other countries

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7. There are several important respects in which the Scottish system differs from that in England and Wales. The prosecution can insist on court sittings being held, if it is necessary to enable a case to be brought to trial before the time limit. This power is rarely exercised, but its existence conditions courts management very greatly. The prosecution also effectively determines whether cases should be tried on indictment or summarily; and the defence has more incentive to comply with the time limit, because (although taken into account) time spent on remand does not count automatically towards sentence.

Time limits in England and Wales

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9. I therefore have in mind a more comprehensive approach. Much of our current effort, in the Lord Chancellor's Department and the Director of Public Prosecutions' office as well as in the Home Office, is directed towards improvements in efficiency and the setting of targets and guidelines for the services in the criminal justice system. The recent circular to magistrates' courts invites them to consider setting local guidelines. The Lord Chancellor's Department, in the context of the Financial Management Initiative, is instituting a system of objectives and targets for the Crown Court. Plans for the new prosecution service include the development of targets and measures of performance. It would fit naturally with all of these moves to have a system of administrative guidelines for the courts and the prosecution, setting out the normal maximum time to be taken over each stage of the process.

10. Such a combined approach - a statutory time limit on the Scottish model, biting essentially on the prosecution, but backed by administrative guidelines - would, I believe, have a good chance of success. It would give the courts a stake in the achievement of the time limits. Moreover, if the prosecution and the courts administration between them succeeded in listing a case for hearing in time, the defence would have to make any case for adjournment before a judge or before the magistrates, rather than simply telling the listing officer that they were not ready. Cases would not simply drift into excessive delay, as they sometimes do now.

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Field trials

13. Nevertheless, I accept that there is sufficient uncertainty about the effect of my proposals for it to be right to proceed cautiously. I therefore propose that we should mount trials in a few areas. This would accord with the Home Affairs Committee's recommendation for experiments. The purpose of the trials would be to test the feasibility and effectiveness of the approach outlined above, the realism of the time limits adopted, the effect on bail cases, and the implications in areas, especially London, where the courts are particularly hard-pressed.

14. Such trials would need the co-operation of all those involved. To yield their full benefit, they would also require as realistic an atmosphere as possible, and for that reason I propose to include provision for time limits in future legislation, if possible in the Prosecution of Offences Bill. The provision would cover the basic elements of the scheme, but would leave its implementation (including the specification of the actual time limits) to subordinate legislation, with scope for implementation by geographical area.

Financial and manpower implications

15. As is noted above, what I envisage is a readjustment of priorities within existing resources. On certain assumptions, there might be some relief to the prisons (a small overall reduction in the prison population and some easement of the burden of escort duties for remand prisoners) and the magistrates' courts (fewer routine remands), but it is difficult to translate these into quantifiable savings. The cost of the field trials would probably be of the order of £100,000.

Conclusions

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d) that I should announce the Government's commitment in principle to time limits when I address the Conservative Party Conference next month.

LB

Home Office

September 1984

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Mark
25/7

The Rt Hon Leon Brittan MP
Home Secretary
Queen Anne's Gate
LONDON
SW1H 9AT

25 July 1984

Dear Leon,

will report if required

HOME AFFAIRS SELECT COMMITTEE REPORT ON REMANDS IN CUSTODY

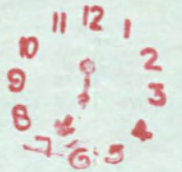
Thank you for your letter of 17 July with your proposed response to the Home Affairs Committee Report on Remands in Custody.

I have no comments on what you propose to publish on 25 July. I should however be glad to be kept in touch with the review of time limits referred to in paragraph 7. That will inevitably mean some assessment of our Scottish 110-day rule and related time limits. Whatever public conclusions you and the Lord Chancellor reach in this matter would clearly be of some consequence to the Lord Advocate and myself.

I am copying this letter to the members of "H" Committee and to Sir Robert Armstrong.

Yours ever,

George.



PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

23 July 1984

Dear Leon

TOUGHER REGIMES IN DETENTION CENTRES

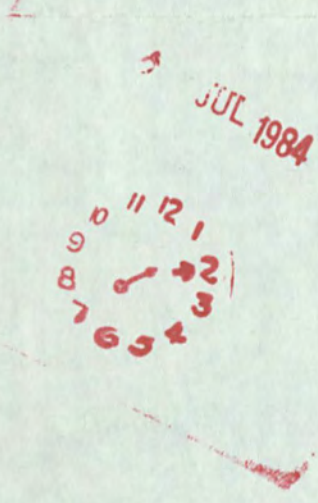
Thank you for your letter of 13 July proposing to make an announcement tomorrow about conclusion of the experiment with tougher regimes in detention centres.

I am content that you should proceed on the lines set out in your letter. You may take it that you have H Committee clearance to make your announcement tomorrow unless any substantial objections are received from colleagues by early morning.

I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Secretaries of State for Northern Ireland, Scotland and the Social Services, the Lord Privy Seal, the Chief Secretary to the Treasury, the Chief Whip and Sir Robert Armstrong.

Yours

The Rt Hon Leon Brittan QC MP


JUL 1984

QUEEN ANNE'S GATE LONDON SW1H 9AT

13 July 1984

TOUGHER REGIMES IN DETENTION CENTRES

I have been keeping you in touch with my proposals for handling the report of the evaluation of the experiment with tougher regimes in detention centres. The purpose of this letter is to notify you (as Chairman of H Committee) and those of our H Committee colleagues who have interests, of the arrangements I shall be making to accompany publication of the report.

As colleagues may recall, our 1979 Manifesto contained a commitment to experiment with a tougher regime in certain detention centres, and you set up the experiment, and its accompanying evaluation, in 1980. The evaluation report (an advance copy of which is enclosed) has recently been completed, and there is a Parliamentary commitment to publish it before the House rises for the Summer Recess. A summary of the report's main findings is enclosed at Annex A. I intend to publish the report on 24 July, and to announce publication by way of an arranged Parliamentary Question. The text of the draft arranged PQ is enclosed at Annex B. As you know, my intention is to pre-empt a debate about the significance of the report's findings by announcing an immediate programme to establish a consistent detention centre regime as a distinctive feature in the penal system and one which will command the confidence of the courts. The draft arranged PQ makes clear the contribution to the new detention centre regime which the tougher regimes experiment has made. We shall be incorporating into the whole detention centre system those regime elements which the report and experience have identified as positive and suitable.

The announcement of a programme to establish a consistent detention centre regime should be welcome to the courts. The programme will be implemented within existing resources. My aim will be to move swiftly to have the new structure in place as soon as possible - I envisage about the turn of the year.

I am sending copies of this letter and enclosures to the Prime Minister, the Lord Chancellor, the Secretaries of State for Northern Ireland, Scotland and the Social Services, the Lord Privy Seal, the Chief Secretary to the Treasury, the Chief Whip and Sir Robert Armstrong.

The Rt Hon Viscount Whitelaw, CH, MC

TOUGHER REGIMES IN DETENTION CENTRES: MAIN FINDINGS OF EVALUATION REPORT

(a) Deterrence: There was a slight fall at Send and a slight rise at New Hall in the adjusted reconviction rates: neither is statistically significant. There were no discernible general deterrence effects.

(b) Trainees' attitudes towards staff: The new regime seems to have brought about a more positive attitude in trainees towards staff at both centres. There is no straightforward explanation for this result. The report suggests it may be partly the product of the more varied daily routine.

(c) Trainees' reactions to the regime: At New Hall the new regime seems to have led to a reduction in the stress experienced by trainees, and to an increase in the proportion who described themselves as having an easy time. At Send there was no significant change. Drill and PE were less unpopular with trainees than most work activities. Many trainees appeared to enjoy drill once they had got used to it.

(d) First two weeks: The report provides support for the view that the early days of sentence have an initial impact on the trainee which wears off fairly quickly as he comes to terms with the requirements of the regime.

(e) Staff surveys: The earlier of the two staff surveys reported in the chapter, which took place at a time (late 1980) when staff had not settled down after the changeover, presents a worse picture than the second one (autumn 1982).

TOUGHER REGIMES: ARRANGED PQ FOR WRITTEN ANSWER ON TUESDAY 24 JULY

DRAFT QUESTION

To ask the Secretary of State for the Home Department, when he will publish the evaluation of the experiment with tougher regimes in detention centres; and if he will make a statement.

DRAFT REPLY

The report of this evaluation, which has been carried out by the Young Offender Psychology Unit of the Prison Department and overseen by a committee with two independent members, is being published today, and copies have been placed in the Library and the Vote Office.

I am now putting in hand a programme of work to establish a consistent regime for the whole detention centre system - including those establishments which have been operating the experimental regime - with a view to enhancing the role of detention centres as a distinctive feature of the penal system commanding the confidence of the courts. The experiment will now be concluded. Of the features particularly associated with the tougher regimes experiment the new regime for all detention centres will include increased emphasis on parades and inspections; demanding work; earlier lights out; an initial period of restricted association, privileges and outside activities; and a brisker tempo. On the other hand, formal drill sessions and extra physical education will not be continued: many trainees came to find them undemanding and their inclusion would leave less time for other features - notably work - which the new regime will emphasise.

This programme will take full account of the evaluation findings, experience of running the tougher regimes, informed comment (including the memorandum which the Prison Officers' Association sent to us in 1982), and the way in which detention centres generally have geared their regimes to the new sentencing structure which was introduced last May. The experimental regime has made an important contribution to my decision on what form of regime should now be standard practice in detention centres. The evaluation report finds that the experimental regime had no statistically significant effect on the rate at which trainees were reconvicted: while it was right to test whether any such effect would be produced this conclusion is not surprising against the general background

of research findings on the identifiable deterrent effect of particular sentences. Nor does it alter in any way the need to establish a positive and well-defined detention centre regime. The evaluation rightly goes much wider: its particular value lies in the practical information it presents about the operation of the experimental regimes, their impact on both trainees and staff, and the suitability of different regime elements.

The report's confirmation of the impact on inmates of the first few days of sentence is especially important. We shall build on this finding - and on the changes made by detention centres in May 1983 to accommodate the new two week minimum effective sentence - to make a brisk and structured initial two week programme a key feature of the new regime. This will highlight basic and unpopular work such as scrubbing floors; increased emphasis on parades and inspections; and minimal privileges and association. As in the experimental regimes, trainees will now have to move briskly from activity to activity, and their lives will be conducted at a brisk tempo and within a well defined and clearly organised framework.

For the subsequent part of sentence the operation of the grade system will be sharpened so that incentives such as eligibility for association, privileges, the less unpopular types of work and any outside activities will be clearly dependent on good conduct.

Trainees will have physical education for an average of one hour each weekday. The content of education classes will be in keeping with the regime, and trainees of compulsory school age will participate in education, including physical education, for at least 20 hours a week. The interest taken by staff in the progress and well-being of trainees was a central feature of the tougher regimes experiment and this, together with the firm but fair approach towards trainees which has long been followed by detention centre staff, and whose value the report has re-inforced, will be maintained.

The Prison Department will work with the governors of detention centres and their staff on the detail of the regime adjustments which will be required. The prison service unions will be fully consulted at both local and national level. By early next year the new regime will be in general operation in all detention centres, including those which have taken part in the experiment. It will be monitored by the Prison Department. At the same time the analysis of certain reconviction and related data outstanding from the evaluation of the tougher regimes experiment will be completed.

The new detention centre regime will be a marked improvement over the regime which was in operation before the tougher regimes experiment was introduced in 1980. In incorporating much of the experimental regime on a permanent basis it will provide a penalty to which the courts can turn with confidence when dealing with an offender for whom a short period in custody is necessary.

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone : Direct Line 01-212 0100
Switchboard 01-212 7676

David Barclay, Esq.,
Private Secretary,
10 Downing Street,
London SW1.

10th July 1984

Dear David

I refer to the Lord Advocate's minute of 21st June and to your letter of 22nd June about a High Court ruling on a procedural defect in bringing four men to trial.

The appeal by the Crown against the High Court ruling was heard today in the Appeal Court and I understand that the appeal was successful. The Court is to give reasons for its decision at a later date.

yours sincerely
Iain Jack.

IAIN JACK
PRIVATE SECRETARY

Home Affairs 7/79

Sentencing policy

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

28 June 1984

Prime Minister (2)

The Home Secretary will be publishing a consultative document tomorrow dealing with day and weekend imprisonment.

Dear David,

The Home Secretary is publishing tomorrow a Green Paper on intermittent custody - day and weekend imprisonment. I enclose a copy of the Confidential Final Revise. The Paper will be issued at 12 noon with an accompanying press notice. Its publication will be announced by Written Answer.

Publication will discharge the commitment made by the Home Secretary in his speech at Blackpool last October - and repeated several times since - to consider various proposals, notably by the Magistrates' Association and the Parliamentary All-Party Penal Affairs Group, and to issue a consultative document.

The Paper identifies key questions and invites views. It should not, therefore, be controversial. If, in the light of comments received, the Home Secretary decided, in consultation with colleagues, to go ahead with an intermittent custody scheme, he envisages that the necessary provisions would form a major part of the next Criminal Justice Bill.

I am sending copies to the Private Secretaries to all members of the Cabinet.

Yours

Nigel

N A PANTLING

David Barclay, Esq

CF

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone. Direct Line 01-212 0100
Switchboard 01-212 7676

25 June 1984

David Barclay Esq
Private Secretary
10 Downing Street
London SW1

GR/CF
To note x please.
DMB
25/6

Dear David,

Thank you for your letter of 22 June. We will of course keep you in touch with any developments.

x1 You may like to note that Christine Duncan has now returned to Scotland to work for M.O.D. and I have now taken over from her.

yours sincerely
Iain Jack.

IAIN JACK
Private Secretary

Home Affairs July 79

Sentencing Policy

22 June 1984

The Prime Minister has seen and noted the Lord Advocate's minute of 21 June about a recent High Court ruling.

The Prime Minister has noted the present position and would be grateful to be kept in touch with developments.

(David Barclay)

Mrs Christine Duncan,
Lord Advocate's Department.

Prime Minister (2)

To be aware. Although the Lord Advocate does not expect anyone to be let off entirely, those who may have to be released pending trial include people charged with attempted murder and offences under the Firearms Act.

Davis
21/6

PRIME MINISTER

Yesterday three judges in the High Court in Glasgow ruled that there had been a procedural defect in bringing four men to trial and the accused had to be released until a new trial date could be fixed.

The Crown has appealed against this decision and the appeal is expected to be heard on 10th July.

There has been some speculation in the Scottish press that following this decision a number of accused charged with serious crimes including murder and rape but not yet brought to trial may have to be let off. Even if the Crown Appeal is unsuccessful it is not anticipated that there will be any such consequence and that those trials which have had to be postponed will take place next month. A small number of accused at present in custody may have to be released before their new trial dates because of the 110 day rule, but the great majority of cases are unaffected.

Cowan of Lochbroom

TCC100

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

19 June 1984

MG pm
Dmb
20/6

EXCESSIVELY LENIENT SENTENCES

will require staff if required

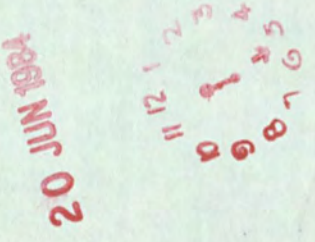
Thank you for your letters of 18 April and 29 May setting out the details of the proposed power for the prosecution to refer to the Court of Appeal sentences which appear excessively lenient.

I understand that Quintin Hailsham, Michael Havers and Peter Rees are content with the modifications to your proposals set out in your second letter. You may therefore take it that you have H Committee approval for including a scheme on these lines in the Prosecutions Bill. In his letter of 8 May Michael Havers pointed out that additional staff would be required for the Director of Public Prosecutions; and I understand that Peter Rees accepts that he will need to make an appropriate bid in due course.

I am sending copies of this letter to the Prime Minister, to members of H Committee, the Attorney General, First Parliamentary Counsel and to Sir Robert Armstrong.

The Rt Hon Leon Brittan QC MP

Home Affairs 7179
Sentencing policy



ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

5 June 1984

nhpm DMB 6/6

The Rt Hon Leon Brittan QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON SW1

18 April Post received

Dear Leon.

I write in response to your letter of 29 May 1984 to Willie Whitelaw which you kindly copied to me setting out your revised views as to the principal features of the scheme to provide for a Crown right to refer excessively lenient sentences to the Court of Appeal.

I am pleased to see that you have been able to accommodate me on all the points on which I had reservations and for this I am most grateful. It follows that I am quite content that you should go ahead and prepare a provision for the Prosecutions Bill on the lines suggested.

No doubt you will keep me informed of progress, particularly when it comes to consideration of the procedural provisions to be made with regard to the relationship between appeals against sentence and references and as to written material to be made available to the Court of Appeal.

Copies of this letter go to recipients of yours.

Yours ever. Michael

Home Affairs July 79

Capital Punishment

010

Prime Minister:

2

As the Home Secretary says in his minute, nothing new but a good reference book!

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

4 May 1984

Dear Prime Minister, 4/5

CRIMINAL JUSTICE: A WORKING PAPER

attached to file cover.

..... I enclose a copy of "Criminal Justice: A Working Paper" which will be published on 9 May.

The purpose of the document is set out in my Foreword. As you will see, it is a wide-ranging review of the initiatives which are being taken in pursuit of our strategy for tackling crime. It lays particular emphasis on the need for good management in the criminal justice system, and the importance of public confidence.

The Working Paper is intended to be of use to those who work in the criminal justice system and to improve awareness of our policies and of the extent the various services interact and rely on each other. I am arranging for it to be distributed widely to key people in these services and other interested organisations. I am also anxious to present publication of the Paper as a means of engaging the interest and enthusiasm of the public in the community effort against crime.

The Paper does not reveal any previously unpublished policy initiatives, and I have therefore not thought it necessary to consult you or other colleagues about its publication. But I thought you would be interested to know of it, in the context of the exchange which we had earlier this year about criminal justice strategy.

I am copying this letter to the Lord President, to the members of H Committee and to Sir Robert Armstrong.

Yours,

Leon

The Rt Hon Margaret Thatcher, M.P.

cc NO From: THE PRIVATE SECRETARY

2

HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

Prime Minister:

30 April 1984

The Home Secretary agrees with you that costs should be awarded as of right in "prosecution appeal" cases. JF 30/7

Dear David,

Thank you for your letter of 24 April about the proposed right for the Crown to refer to the Court of Appeal sentences which appear excessively lenient, as outlined in the Home Secretary's letter of 18 April.

The principles underlying the awarding of costs in criminal cases are a matter for which the Lord Chancellor is primarily responsible, but subject to his views (which he will no doubt incorporate in his overall response) the Home Secretary is on reflection inclined to agree that the defendant in a case referred under the proposed new power should be entitled to costs as of right, rather than at the Court's discretion. Such an arrangement would follow that in the Criminal Justice Act 1972, which defines the power to refer a point of law arising from an acquittal. Section 36(5) of that Act states that the acquitted person "shall be entitled to his costs, that is to say to the payment out of central funds of such sums as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference".

I am copying this letter to the Private Secretaries of the recipients of the previous correspondence and the Attorney General.

Yours ever

Nigel Wicks

for

H H TAYLOR

David Barclay, Esq.

Home Affairs July 1979

Sentencing policy.

FCLE SH

CO
Lord Donham's Office
WO CWO
SO D/Trans.
NIO CSO
DES D/Emp.
LCO CDLO
LPO DHSS
LPSO
DoE
1st Parl. Counsel.

10 DOWNING STREET

From the Private Secretary

24 April, 1984

Dear Hugh,

The Prime Minister has seen a copy of the Home Secretary's letter of 18 April to the Lord President about the proposed right for the Crown to refer to the Court of Appeal sentences which appear excessively lenient.

The Prime Minister is generally content with what is proposed, subject to one point. She wonders, in relation to sub-paragraph (f) of the second paragraph of the Home Secretary's letter, whether it would not be right for the offender to be entitled to costs in any event, rather than at the Court's discretion. She would be grateful for the Home Secretary's views on this.

I am sending a copy of this letter to the recipients of your Secretary of State's letter.

Yours ever,

David

DAVID BARCLAY

Hugh Taylor, Esq.,
Home Office

SH

Prime Minister (1)

Content, subject to colleagues, with these detailed proposals on the Crown's right of Appeal against lenient sentences?

Legislation is proposed in next Session's Prosecutions Bill.

DHB 19/4

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

18 April 1984

Dear Willie,

We are, as you know, committed to introducing in the Prosecutions Bill next session a Crown right to refer apparently excessively lenient sentences to the Court of Appeal. This would be quite closely based on the existing power (in section 36 of the Criminal Justice Act 1972) for the Attorney to refer to the Court of Appeal points of law arising from acquittals.

I enclose a paper which my officials have prepared after consultation with officials of the main interested Departments. The principal features of the scheme as I envisage it are:

(a) the Attorney's right of reference to the Court of Appeal would extend to all sentences passed on conviction on indictment or on committal to the Crown Court for sentence after conviction in a magistrates' court;

(b) he would be able to refer such a case to the Court of Appeal for the Court's opinion on whether a more severe sentence ought to have been imposed and what would have been the appropriate sentence in the circumstances of the case;

(c) the person whose case had been referred could not be directly affected adversely by the Court's opinion, i.e. he would not have to serve a more severe sentence;

(d) by contrast with section 36, the person whose case had been referred would have no guarantee of anonymity; I think this impracticable since such cases are likely to have received publicity already, and indeed in some cases the notoriety may have been a factor leading to the reference. He would be able to be represented at the hearing by Counsel and, with the Court's leave, to present argument in person;

(e) the Court would be able to take account of all relevant information, including information which was not available to the Crown Court;

(f) if the offender chose to be represented, he would be entitled to legal aid and to costs, at the Court's discretion;

Ought he to get costs in any event?

(g) there would be (limited) scope for further reference by the Court to the House of Lords on a point of law.

The resource implications would fall mainly on the office of the Director of Public Prosecutions, partly in conducting the relatively small number of cases which the Attorney might be expected to refer each year, but also in establishing machinery for considering which cases to refer. The overall annual cost is put at around £150,000.

The introduction of a procedure of this kind was an important element of the package of measures which we agreed last autumn to improve public confidence. I believe it will have an important contribution to make, both in allowing the Attorney to pursue cases where the sentence has given rise to public unease and seems unduly lenient and in affording the Court of Appeal an opportunity to offer sentencing guidance in cases of this kind.

The Rt Hon The Viscount Whitelaw, CH., MC.

/cont ....

I should be grateful to know by Friday 4 May whether colleagues are, as I hope, content for me to instruct Parliamentary Counsel on this basis.

I am copying this letter to the other members of H Committee, to Sir Robert Armstrong and to First Parliamentary Counsel.

Yours,

Ian

E.R.

ATTORNEY GENERAL'S RIGHT TO REFER CASES TO THE COURT OF APPEAL FOR AN OPINION AS TO SENTENCE

1. Ministers have agreed that the Prosecutions Bill should include a provision empowering the Attorney General to refer cases to the Court of Appeal where he considers that the Crown Court's sentence was unduly lenient. Such a right would not operate in such a way as to affect the particular offender adversely, even if the Court held that the sentence had indeed been unduly lenient. But it would enable public concern about apparently inadequate sentences to be recognised and met, and would provide the Court of Appeal with an opportunity to offer general guidelines on sentencing, as it now does in other kinds of cases.

2. The main questions which arise in framing such a power are:

(a) the range of cases to which it should apply;
(b) the basis on which such cases would be referred to the Court of Appeal, and the nature of the opinion which it would be invited to offer;
(c) the position of the offender, and the safeguards which he should be afforded;
(d) the procedure to be followed;
(e) the possibility of further reference to the House of Lords; and
(f) the resource implications.

Range of cases

3. Ministers have agreed that the right of reference should not extend to sentences imposed in the magistrates' court, if only because of the resource implications. If cases originally dealt with summarily are to be excluded, it would probably also be sensible to exclude sentences passed by the Crown Court on appeal against sentence by the magistrates' court. A more difficult question is whether to include sentences passed by the Crown Court on committal for sentence from the magistrates' court. Excluding all such sentences would considerably narrow the range of cases to which the new power applied, and would prevent the Attorney from referring some relatively serious cases, including some involving offences of violence. Including all such sentences would mean that the Attorney would be able to refer cases in which the offender himself had not had right of appeal to the Court of Appeal against sentence, since that right

/extends

extends only to sentences of imprisonment of six months or more. This might add to pressure (which has so far been resisted) for an expansion of the defendant's right of appeal.

4. The Lord Chancellor's officials have suggested that this dilemma might be resolved by making the Attorney's right of reference co-extensive with the defendant's right of appeal. The difficulty with this course is that it would exclude the more lenient sentences, which are precisely those which are the target of the new power.

5. On balance, it seems right to opt for the widest coverage, on the basis that Ministers would be open to criticism if some serious offences were not covered, and that any criticism to the effect that the right of reference was more extensive than the defendant's right of appeal could be met by the argument that the processes were different, and that the Attorney's right of reference was bound, by its nature, to focus on shorter sentences. The proposal is therefore that the right should extend to all sentences and orders made by the Crown Court on conviction on indictment or on committal for sentence from the magistrates' court. (The inclusion of orders as well as sentences will allow the reference of, for example, hospital orders and probation orders, on which important sentencing issues can arise).

Basis of referral

6. The Attorney General already has a power of reference (in section 36 of the Criminal Justice Act 1972) in relation to points of law arising on acquittal. Ministers have agreed that the new power, which is not precisely analogous, should nevertheless be modelled broadly in section 36 which provides that:

> "Where a person tried on indictment has been acquitted.... the Attorney General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the court, and the court shall ..... consider the point and give their opinion on it".

In cases where the Attorney considers that the sentence was unduly lenient, the opinion which he desires of the Court might be expressed in terms of "whether a more severe sentence ought to have been imposed in the circumstances of the case". The Lord Chancellor's Department and the Registrar of Criminal Appeals have pointed out that the concept of "relative severity" could give rise to problems, since it may not be clear whether, for example,

/a

a short suspended sentence is more or less severe than a £10,000 fine. They suggest that it would be better to focus on the "appropriateness" of the sentence, and define the procedure as flexibly as possible, by keeping the Attorney's discretion to refer at large and requiring the Court simply to consider the point referred by the Attorney and furnish him with an opinion on it, on the model of section 17(1)(b) of the Criminal Appeal Act 1968.

7. The point about the difficulty of judging the "relative severity" of two sentences has force, especially in relation to non-custodial orders. But it would be absurd to omit from the proposed provision any reference to the severity or otherwise of the sentence actually passed by the Crown Court when the undue leniency of this sentence is the premiss on which the exercise of the power of reference is based. In practice the Court will not be called on to compare two sentences in point of severity. The first question for it to consider will be whether the particular sentence imposed was sufficiently severe. Only if this question is answered in the affirmative does the further question arise of what other sentence would have been appropriate.

8. The proposal is therefore that the Attorney General would be able to refer a case to the Court of Appeal if he desired the Court's opinion on whether a more severe sentence ought to have been imposed and what would have been an appropriate sentence in the circumstances of the case.

The position of the offender

9. As has been remarked above, Ministers have agreed that the particular offender whose case is referred by the Attorney should not have to serve a more severe sentence, if it is the Court of Appeal's opinion that such a sentence should have been imposed. His case is, however, likely to have been the subject of Parliamentary or press comment, and his reputation could be affected by the outcome of the reference. It therefore seems essential that he should have the right to representation by counsel at the Court of Appeal hearing, or (with the leave of the Court) to represent himself. This would follow the model of section 36 of the Criminal Justice Act 1972. What could not be assured, however, would be anonymity for the defendant, which is a feature of the section 36 procedure. The case may well have already attracted press or public attention; and Ministers will want to be able to say in Parliament whether a particular case has been referred.

/Nor

Nor is the case for anonymity as strong as in section 36 cases, since such cases by their nature involve a defendant who has been acquitted. The Lord Chancellor's Department have suggested that the Court might be given power in the Rules to order that the defendant's name should not be disclosed, to deal with particular cases where this would be desirable or practicable.

10. Acknowledging the particular offender's interest in the reference raises the question of whether it should be possible for information which was not before the Crown Court to be considered by the Court of Appeal in forming its opinion. The Lord Chancellor's Department is strongly of the view that, if anonymity is not to be preserved, all relevant material, whether or not available to the Crown Court, should in principle be available to the Court of Appeal. Otherwise, they see a risk that the Court of Appeal might be placed in an intolerable position, where, for example, a defendant had good grounds for appealing against a sentence of imprisonment on the basis of new information which established that he should have been made the subject of a hospital order, but the Attorney had equally good grounds for concluding that the sentence which had actually been passed was, on the facts available to the Crown Court, unduly lenient. The Law Officers' Department, on the other hand, would regard the admission of "new" information and material as inconsistent with a scheme which was intended simply to review the correctness of the Crown Court's decision.

11. The question turns on whether the procedure is seen as a review of the sentence in the (full) circumstances of the case, or as a review of the trial Court's decision. The embarrassing combination of events which the Lord Chancellor's Department fears might be avoided by careful selection of the cases which the Attorney chose to refer, but there remains the difficulty that, if all relevant material were not be admissible, the offender might feel that his reputation was at risk of damage on the basis of only a partial account. Even if Ministers decided that the reference constitutes a review of the trial court's decision pure and simple, it might be difficult to explain the distinction satisfactorily. On the other hand, a process which allowed information to be taken into account which had not been available to the Crown Court would run the risk of amounting to a rehearing of the case (or at least those parts of it which were liable to bear on the sentencing decision) and it might then be more difficult to hold the position that the offender should not be adversely affected by the Court of Appeal's decision. On balance, for the reasons given in the

/earlier

earlier part of this paragraph, the Home Office's preference would be to allow information which had not been before the Crown Court to be taken into account.

12. The proposal is therefore:

(a) that if the sentenced person desires to present any arguement to the court, he may do so, by counsel on his behalf, or, with the leave of the Court, in person:

(b) that the offender should not be guaranteed anonymity, but that it should be open to the Court of Appeal in appropriate cases, which would be rare, to order that his identity should not be disclosed during the proceedings;

(c) that it should be open to the Court of Appeal to take into account information and material which had not been before the Crown Court.

Other procedural questions

13. There are several questions of procedure, which have not been covered in the preceding paragraphs.

(a) The Attorney's role would be confined to making the reference. The conduct of the case for the Crown would be in the hands of the Director of Public Prosecutions, and the Court of Appeal would hear argument by counsel on his behalf.

(b) Where the sentenced person was represented by counsel it would seem right for him to be entitled to legal aid (awardable, at any stage, by a single judge) and to costs, at the Court's discretion. This would follow the model of section 36 of the 1972 Act.

(c) Where the sentenced person had lodged an appeal against conviction and/or sentence, it would be left to the Court of Appeal to make the necessary arrangements.

/Further

Further reference to the House of Lords

14. The Law Officers' Department would confine any further reference to the House of Lords to points of law such as the scope of the powers conferred upon the Courts by particular enactments. The Lord Chancellor's Department consider that there should not be the possibility of further reference to the House of Lords, which has never dealt with questions of sentencing.

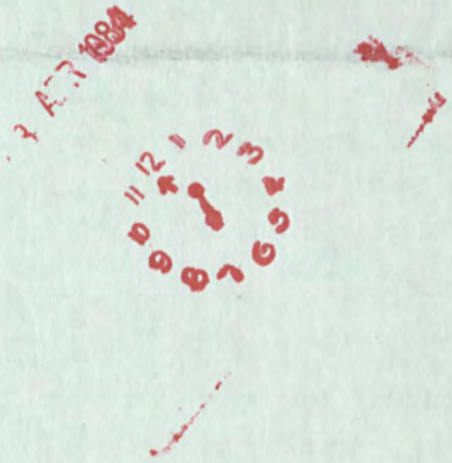
15. In fact questions of law relevant to sentencing - e.g. how a court is to determine, after a plea of guilty to buggery, whether the higher penalty for a non-consensual offence can be imposed - have been before the House of Lords. It therefore seems justifiable that, where the questions on which the Court of Appeal has given an opinion involve a point of law of general public importance which ought to be considered by the House of Lords, the Court should have power (as under section 36(3) of the Criminal Justice Act 1972) to refer the point to the House of Lords.

Resource implications

16. It is understood that the Attorney expects to use the power sparingly. There will, however, be a need for some form of sifting of cases, within the new prosecution service (and probably in the office of the Director of Public Prosecutions), and consideration of representations by the public that the power should be exercised in particular cases. It is difficult to be precise, but a best estimate is that the scheme as described will cost about £150,000 a year, mainly in staff time.

Home Office

April 1984



HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

31 October 1983

DMB 1/11

Dear Quintin,

Thank you for your letter of 21 October about my proposal for a Departmental Committee to review the prison adjudication system.

I was most grateful for your suggestion that we should alter the order of the sub-paragraphs in the terms of reference and as you may have seen when I announced these in reply to a written Parliamentary Question on the 24th I adopted your proposal.

As I think my officials explained to yours I saw difficulty in accepting your other proposal that we should amend what is now sub-paragraph (ii) to read 'whether and, if so, to what extent it may be appropriate to use the ordinary criminal law courts and procedure to deal with serious misconduct by prisoners'. The difficulty about this is that even now the criminal courts do get involved in these matters: for example when one prisoner commits a serious assault on a member of staff or even on another prisoner, or when, to take an extreme example, one prisoner commits murder while in custody. But having said that I very much agree with the thrust of your comments about the need to avoid putting any more substantial pressure on the criminal courts. Of course in numerical terms we are not talking about very large numbers since last year there were only about 3,500 cases in all which were dealt with by Boards of Visitors, but I do know that any addition at the margin can be onerous.

I am grateful to you for your point that one of the possible resource implications could be for the legal aid fund.

I am copying this letter to the recipients of yours.

Yours ever,

The Rt Hon The Lord Hailsham of St Marylebone, CH, FRS, DCL

Home Aff.
July '79
Sentencing
Policy.

Hansard 24 October 1983

Prisons (Discipline)

Mr. Brinton asked the Secretary of State for the Home Department whether he has any proposals with regard to the system of discipline in prisons.

Mr. Brittan: I propose to establish a departmental committee to look at the system of adjudications in prison. The committee's terms of reference will be:

To consider the disciplinary offences applying to prisoners, and the arrangements for their investigation, adjudication and punishment, having regard in particular to:

(i) the need within custodial institutions for a disciplinary system which is swift, fair and conclusive;

(ii) the extent to which it is appropriate to use the ordinary criminal law, courts and procedure to deal with serious misconduct by prisoners;

(iii) the connection with the investigation of related allegations by prisoners about their treatment;

(iv) the pressure on prison and other criminal justice resources:

and to make recommendations.

The membership of the committee will be announced in due course.

10 DOWNING STREET

From the Private Secretary 24 October, 1983

Prison Adjudication System

The Prime Minister has seen a copy of your Secretary of State's letter of 20 October to the Lord President about the prison adjudication system.

The Prime Minister is content for your Secretary of State to announce a review of the system on Monday, 24 October. She understands that your Secretary of State proposes to make a written statement in the House on the same day.

DAVID BARCLAY

M. Gillespie, Esq.,
Home Office

1 of NO

HOUSE OF LORDS,
SW1A 0PW

21 October 1983.

Dmcb
24/10

My dear Leon:

THE PRISON ADJUDICATION SYSTEM

unbox

Thank you for sending me a copy of your letter of 20th October to Willie Whitelaw about your proposal to announce the establishment of a Committee to review the prison adjudication system.

I can well understand the pressure which you are under to take action on this matter and would not wish to stand in the way. I must, however, view with considerable concern any possibility that the criminal courts which are already stretched to breaking point should have further burdens placed upon them: the Crown Court is already having to struggle with a 10% increase in its caseload this year on top of the significant increases recorded in recent years. I rather doubt in any case whether jury trial with the associated adversarial procedure is necessarily desirable for prison cases. For these reasons, I would myself prefer to see the proposed terms of reference modified slightly to reduce the chances of their being interpreted as involving a prior commitment to transfer at least some cases to the court system. I would suggest that point (i) in the present draft might be amended to read "whether, and, if so, to what extent it may be appropriate...." and that in any event it would be better for this point to be relegated to follow what is at present point (ii): this would seem to me to be the more natural sequence.

The proposed terms of reference rightly give prominence to the possible resource implications. Quite apart from additional pressure on the courts, any changes in the present arrangements could have significant implications for expenditure on legal aid and other matters within my Votes.

I am copying this letter to the recipients of yours.

Yrs:

L.

The Right Honourable
Leon Brittan, QC, MP,
Secretary of State ~~for~~
the Home Department,
Queen Anne's Gate,
London, SW1H 9AT.

LORD HAILSHAM OF ST. MARYLEBONE CH, F.R.S, D.C.L.

Home Affairs Sentencing Policy, July 74

PRIME MINISTER

PRISON ADJUDICATION

The Home Secretary proposes to annouce a review of the present system for dealing with disciplinary offences in prisons. He would like to do this next Monday, 24 October at the Annual Conference of Boards of Visitors.

The present system of adjudication, under which decisions rest with prison Governors and in the more serious cases with Boards of Visitors, has been subjected to some cogent criticism and no longer commands the full confidence of all Board members.

The Home Secretary proposes an external committee of enquiry with the terms of reference at Flag A.

Although his letter does not say so, I have checked that he intends to make a written statement to the House on 24 October, if his proposals are agreed.

Content?

Yes MT

DMB

20 October, 1983

see
draft for you
Sofs to make a statement of
the p a syst. I attached
WS in the House

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

20 October 1983

Dear Willie,

THE PRISON ADJUDICATION SYSTEM

I propose to announce the establishment of a Departmental Committee to undertake a study of the prison adjudication system, with the terms of reference attached. Unless you, or any of our colleagues, sees difficulty in this I would like to take the opportunity of the Annual Conference of Boards of Visitors, which is due to take place next Monday, 24 October, to make the necessary announcement.

It may be helpful if I explain the background. Under the Prison Rules there has for many years existed a self-contained disciplinary code to assist in maintaining order in Prison Department establishments. Some of the offences under the code comprise behaviour which would also amount to an offence under the criminal law; others would not. The disciplinary offences are dealt with by a two-tier system, involving Governors and Boards of Visitors. Governors conduct a preliminary inquiry in all cases and carry out adjudications themselves on the great majority (some 64,000 in 1982). They have discretion to refer serious or repeated offences to the Boards of Visitors; and the most serious cases must be so referred.

The system has provided a speedy and effective means of dealing with disciplinary offences and since the Divisional Court began to exercise its supervisory jurisdiction over Board cases the proceedings have been expressly required to meet the test of natural justice. The system, at least as respects Boards, has been questioned for a good many years (for example by the Committee under Lord Jellicoe established jointly by NACRO, Justice and the Howard League which reported in 1975). More recently it has come under direct challenge. There are a number of strands to this:

(i) a number of commentators, including some members of Boards, find it wrong in principle that Boards of Visitors should combine the adjudication function with the pastoral or watchdog role. The Association of Boards of Visitors, to which a minority of Board members belong, appears to take this view;

(ii) there is litigation now before the courts attempting to establish that a prisoner before a Board should have the benefit of legal representation, at least in the more serious cases. Whatever the final outcome of that there is clearly a wide-spread feeling that, whatever might have seemed appropriate in the past, adjudications which result in a man staying much longer in prison (through loss of remission) should have greater procedural and other safeguards than the present system affords;

(iii) judgment is awaited in a case before the European Court of Human Rights in Strasbourg. In this case the Commission reported its conclusion that Article 6 of the Convention should apply in the case of especially grave offences under the Prison Rules where the amount of remission which can be removed is limited only by the amount available. It is also suggested that Boards lacked the necessary institutional independence of the Home Secretary to qualify as appropriate tribunals under the Article. Even if the final judgment is to the effect that Article 6 should apply only to the most serious cases, that observation is likely to prove damaging in the long term to the Board's role in respect of all cases;

The Rt Hon Viscount Whitelaw, CH., MC.

/cont ....

(iv) there has been a good deal of criticism in the press, and indeed to some extent in the learned journals, about the system, particularly following the bringing of charges of mutiny following the riots at Albany prison earlier this year;

(v) partly because of this, some members of Boards are themselves losing their confidence and believe that the system needs to be changed. (At least one Chairman has indicated that he would not feel happy conducting adjudications on any especially grave offences; and the plaintiff in the litigation referred to at paragraph (ii) above has been able to parade evidence from a member of the Board expressing dissatisfaction with the system.)

It is essential to the maintenance of order in prison that there should be a relatively swift and effective disciplinary procedure. That view is shared by management and staff. It must also be fair both as an end in itself and also because only then can it command the necessary confidence of staff, inmates and the general community and survive challenge in the courts. My judgment is that against the background I have described a full review of the whole system is now inescapable and is needed as a matter of some urgency.

I also believe that this review should be undertaken by an external Committee, since only then will its recommendations - whether they amount to some minor modification of the present system or something quite different - command the necessary credibility both within and without the prison system. The cost of the review itself can be accommodated within existing resources. As to the future system, the terms of reference expressly require the Committee to consider the implications for prison and other criminal justice resources.

As I have said, unless there is some objection I propose to make the necessary announcement on Monday, 24 October.

A copy of this letter goes to the Prime Minister, members of H Committee and to Sir Robert Armstrong.

A

Draft terms of reference

To consider the disciplinary offences applying to prisoners, and the arrangements for their investigation, adjudication and punishment, having regard in particular to:

(i) the extent to which it is appropriate to use the ordinary criminal law, courts and procedure to deal with serious misconduct by prisoners;

(ii) the need within custodial institutions for a disciplinary system which is swift, fair and conclusive;

(iii) the connection with the investigation of related allegations by prisoners about their treatment;

(iv) the pressure on prison and other criminal justice resources :

and to make recommendations.

FILE cc: L Pres
L.C.
NIO
SO
A.G.

R M

10 DOWNING STREET

From the Private Secretary

5 October, 1983

The Prime Minister was grateful for your Secretary of State's minute of 4 October about life sentences and violent crime. She agrees, subject to any further points from colleagues, that he should announce a minimum period of 20 years for terrorist murders. She also agrees that parole should be restricted for drug traffickers, as well as violent offenders.

I am sending a copy of this letter to the Private Secretaries to the recipients of your Secretary of State's minute.

(David Barclay)

A.R. Rawsthorne, Esq.,
Home Office

(1)

Prime Minister

Are you content with
Yes a) a 20 year minimum
No b) restricted parole for
Yes drug traffickers?
No subject to any further points from colleagues

DS
4/10

PRIME MINISTER

Since we discussed my proposals on life sentences and violent crime, I have consulted our Ministerial colleagues most directly affected and also the Lord Chief Justice and the Chairman of the Parole Board (David Windlesham). My proposals have been found generally acceptable, subject to two amendments which have been suggested, and which if you are content, I propose to make.

Jim Prior is very anxious about the effect in Northern Ireland if I were to announce a thirty-year minimum for terrorist murders. Whereas in England all judicial recommendations in terrorist cases have been for thirty years or more, in Northern Ireland, where the number of cases is so very much greater, judicial recommendations have generally been for very much shorter periods. Jim would, however, be content for me to announce a minimum period of twenty years for terrorist murder. But I would make it quite clear that many such murderers would serve a much longer period. I think this change would be justifiable, and it would bring terrorist murders in line with the other categories I shall be specifying.

David Windlesham, the Chairman of the Parole Board, takes the view that if parole is to be restricted for violent offenders the same restriction should apply to drug traffickers. He considers they are responsible for more deaths than conventional offences of violence. I agree, and propose to amend my announcement accordingly.

I am sending a copy of this minute to the Lord President, the Lord Chancellor, the Secretaries of State for Northern Ireland and Scotland, and the Attorney General.

L.B.

4 October 1983

CC MASTER SET

10 DOWNING STREET

From the Principal Private Secretary

3 October 1983

At the Prime Minister's meeting with the Home Secretary, the Foreign and Commonwealth Secretary and Sir Robert Armstrong this morning she discussed with the Home Secretary his proposal for a power to refer to the Court of Appeal cases in which excessively lenient sentences were imposed. The Prime Minister said that she was concerned that, if the Court of Appeal found that a sentence was too lenient but it was not possible to take further action in the particular case of the convicted person, the arrangement would lead to public dissatisfaction.

The Home Secretary said that the present arrangement under which the Court of Appeal could find against the judge in a lower court on grounds of law without overturning the verdict in a particular case, had proved useful and had not given rise to dissatisfaction on the lines which the Prime Minister envisaged. To extend such a procedure to sentencing would be likely to bring a useful discipline to bear on judges against giving excessively lenient sentences.

The Foreign and Commonwealth Secretary commented that he thought that the Home Secretary's proposal would have a valuable effect, and the Prime Minister said that she accepted the point that it would act as an effective disincentive to judges to impose lenient sentences. She was therefore prepared to go along with the Home Secretary's proposal.

E. E. R. BUTLER

Tony Rawsthorne, Esq.,
Home Office.

File

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10 DOWNING STREET

From the Private Secretary

26 September 1983

Thank you for your letter of 23 September about the Home Secretary's proposal for a power of appeal against excessively lenient sentences. I have shown this to the Prime Minister. She would still like a meeting with the Home Secretary. She is concerned that the Home Secretary's proposal will not satisfy those who are concerned about lenient sentencing since it will not allow sentences in particular cases to be increased, and yet at the same time it will still arouse the criticism of those who believe that such a change would disturb the function of prosecution. She is worried that the opposition which this proposal may arouse could put at risk the Government's plans for an independent system of prosecution.

W. F. S. RICKETT

Tony Rawsthorne, Esq.,
Home Office.

dg

Prime Minister
If you agree I will pass the gist of these comments to the Home Secretary's Office before the meeting on 3 October.

cc FM

23 September 1983
Policy Unit

PRIME MINISTER

APPEAL AGAINST LENIENT SENTENCES

WR 23/9

Yes please MF

The Home Office letter of today's date argues in greater detail the case for giving the prosecution the right of appeal against lenient sentences.

The Lord Chancellor and the Attorney-General agree with Leon, so long as he does not introduce a "full" right of appeal, which would increase the sentence to be served by the actual defendant.

I think this half-way house tends rather to compound the difficulty. The prosecution would only tend to appeal in horrific cases which had aroused public outrage. But that outrage would certainly not die down if the Court of Appeal certified that the sentence had in fact been too lenient but they did not have the power to alter it.

This is rather different from the power under the 1972 Act (which in any case has rarely been used). There, the prosecution has the right "to refer a general point of law to the Court of Appeal without affecting the acquittal of the actual defendant". Here, we are dealing with a term of years to be actually served in jail, not a general point of law.

This phoney right of appeal will not satisfy our own supporters. But it will certainly annoy many of the civil liberties people who mauled the Police and Criminal Evidence Bill. More important, it is likely to be opposed by many criminal lawyers who believe that such a change would disturb the function of prosecution.

Once again, I doubt whether the law officers are the best judges of public reactions. And I remain uneasy about adding this proposal to a list of proposed measures which is already quite formidable. I am also worried that if, as Leon intends, this prosecution right of appeal is to be included in the Bill for an independent prosecutor, it may help to discredit an otherwise admirable reform.

You are due to discuss the proposal on 3 October.

FERDINAND MOUNT FM

From: THE PRIVATE SECRETARY

CC NO

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

23 September 1983

Dear Willie,

Thank you for your letter of 19 September indicating that the Prime Minister would like to discuss further with the Home Secretary his proposal for a power to refer to the Court of Appeal cases in which excessively lenient sentences are imposed. As it is not possible to arrange a meeting before Monday week the Home Secretary has asked me to write setting out his thoughts on how this proposal fits into the wider package he discussed with the Prime Minister on 13 September, and on the specific point she raised then about the application of similar arrangements to magistrates' courts.

The Home Secretary regards it as important that he should be seen to be taking legislative action to meet public concern over unduly lenient sentences, few in number but usually very well publicised. He believes that the best way of doing this is to take a power which bears directly on the particular cases where there has been a failure to apply properly the tariff laid down by the Court of Appeal. This has the merit of imposing on the judges a duty to put their own house in order. It is also in line with the trend towards greater clarity and coherence in sentencing policy which the Court of Appeal is keen to encourage. Without this element the package of measures the Home Secretary is proposing might be criticised as being excessively reliant on the exercise of the executive functions of Government. He is anxious that at least part of the package should involve the judiciary in a substantial way. The Home Secretary believes that the fact that the Lord Chief Justice has publicly advocated a prosecution right of appeal against sentence makes it particularly important to have something to offer in this area.

As the Prime Minister pointed out in her discussion with the Home Secretary, there are strong objections to conferring on the prosecution a right to ask the Court of Appeal to resentence the individual offender. What the Home Secretary is proposing, however, avoids those objections and follows precisely the approach established in section 36 of the Criminal Justice Act 1972, which confers on the Attorney General a power (already exercised several times) in the case of an acquittal to refer a general point of law to the Court of Appeal without affecting the acquittal of the actual defendant. Similarly an inherent feature of the present proposal is that the sentence served by the particular individual would not be altered. Nonetheless, in ruling that the sentence had been too low the Court of Appeal would be exercising an important general influence in favour of greater severity in the whole class of cases that would be in question, and would also be giving an authoritative and public view of the particular case. This cannot happen at present as the only appeals against sentence reaching the Court of Appeal are those where it is claimed that the sentence is unduly severe.

/ The

Willie Rickett, Esq

The Lord Chancellor and the Attorney General are in agreement with what the Home Secretary proposes. In particular, the Attorney General does not favour a full right of appeal against sentence for the prosecution, but considers that it would be entirely acceptable to follow the 1972 Act precedent as closely as possible.

As regards magistrates' courts, the Home Secretary accepts that their sentencing decisions are as liable to err on the side of leniency as those of the Crown Court; but magistrates are dealing with relatively less serious offences, whereas it is the Crown Court that deals with the really grave cases - eg of rape or robbery - over which there is most concern. An extension of the Home Secretary's proposal to cover magistrates' courts would give rise to formidable problems of selection. Magistrates deal with about two million offenders a year, as against 80,000 dealt with by the Crown Court. The Court of Appeal could not cope with any greater burden of references than might arise from the Crown Court, at least not to start with. To provide for magistrates' sentences to be referred to the Crown Court instead of the Court of Appeal would risk the very inconsistency that the proposal is intended to avoid.

The Home Secretary and the Attorney General have therefore concluded that they should proceed with the proposed power of reference in relation to Crown Court sentences only, and should see how that works before contemplating any extension or adaptation of it to the magistrates' courts.

It would be very helpful to know if the Prime Minister is content with the Home Secretary's proposal on the basis of this explanation as he is anxious to finalise the details of the package; and whether she regards it as important that the package should be, and be seen to be, a balanced whole. If the Prime Minister feels that a meeting is still necessary, he would of course be very happy to have a further discussion.

Yours ever,

Tony Rawsthorne

A R RAWSTHORNE

Home Affairs: sentencing Pol.

7179

CONFIDENTIAL

FILE

RCJ

10 DOWNING STREET

B/c: MR Mount

From the Private Secretary

19 September, 1983

On 13 September, Tim Flesher wrote to you recording the discussion between the Home Secretary and the Prime Minister about the proposals for sentencing policy set out in Mr. Brittan's minute of 9 September. In his second paragraph, Tim Flesher recorded that the Home Secretary would be having discussions with the Attorney General about the idea of giving the Crown the right of appeal against lenient sentences. This is just to record that the Prime Minister would like to have a further discussion with the Home Secretary after his meeting with the Attorney General and before any of the proposals set out in his minute of 9 September are made public.

W. F. S. RICKETT

H. Taylor, Esq.,
Home Office

CONFIDENTIAL

E.R.

CONFIDENTIAL

16 September 1983
Policy Unit

2

PRIME MINISTER

Prime Minister

APPEAL AGAINST LENIENT SENTENCES

MLS 16/9

The proposals which Leon put to you last week would, I am sure, help to ease public disquiet about the treatment of violent criminals. But there will be stiff opposition against the "tariff" idea from the judges, and the opposition would be stiffer still if we also pursue, at the same time, the idea of giving the Crown a right of appeal against lenient sentences.

The lawyers - in this case the criminal bar - are likely to team up with the civil liberties lobby again, as they did on the Police and Criminal Evidence Bill.

I think the idea is likely to provoke rather than appease public indignation. It would weaken the feeling that justice had been done, by introducing the possibility of two levels of justice: the sentence which the judge actually handed out (which the defendant would in fact still serve, whatever the judgment of the Court of Appeal); and the tougher sentence which the Court of Appeal found to be "correct". There would then be public outrage that the criminal in question would not be serving the correct sentence.

This would surely weaken the authority of the courts. It would also, as Leon said, be a major alteration in our system of justice.

We suggest that you might discuss it further with Leon after he has talked to the Attorney-General, but before he "goes public".

Agreed MT.

FERDINAND MOUNT

FM

CONFIDENTIAL

Home Affairs : Sentencing Policy

7/79

SUBJECT

CONFIDENTIAL

C. Policy Unit
file 84

10 DOWNING STREET

From the Private Secretary

13 September, 1983

Dear Hugh,

As you know, the Home Secretary saw the Prime Minister today to talk about the proposals for sentencing policy set out in his minute of 9 September. The Prime Minister asked about the difference between the proposed 30 year minimum for terrorist offences as compared with the 20 year minimum for murders of police and prison officers. The Home Secretary said that the former figure was in line with the recommendations made by judges in terrorist cases; the latter had been announced during the capital punishment debate in the House of Commons and had been widely welcomed by police and prison officer organisations. In any event, however, the case of every life sentence prisoner would be assessed against the criterion of public safety before release was authorised; there would also be a number of prisoners the gravity of whose offences was so great that they could not be released.

The Prime Minister noted the Home Secretary's conclusion that minimum sentences should not be introduced. Although she was herself not opposed in principle to statutory minima, she recognised the strength of opposition amongst the judiciary. The Home Secretary reported that the Lord Chief Justice took the view that some form of right of appeal against lenient sentences was the best safeguard. He proposed, therefore, that the Attorney General should be empowered to refer to the Court of Appeal any case in which the sentence imposed by the Crown Court appeared to him inadequate. This would be a major step and the Home Secretary proposed to discuss it with the Attorney General as soon as possible. The Prime Minister asked whether there would be any similar arrangements applying to sentences in magistrates courts. The Home Secretary said that he would give some thought to this.

The Home Secretary said that there was a particular difficulty about his proposal to increase maximum sentences for a number of firearm offences to life imprisonment. It seemed likely that the first legislative opportunity to introduce this provision would be the 1985/86 session.

/The

CONFIDENTIAL

The Prime Minister further noted the Home Secretary's proposal for restricting parole for violent offenders. While she agreed with this proposal, she hoped that there would be provision for re-introducing those who had served very long sentences to the community. The Home Secretary said that he would be arranging for release under supervision for a few months immediately before the end of the sentence under tightly controlled conditions. Such an arrangement served the interests of public safety far more than would unsupervised release at the end of the sentence.

The Home Secretary said that it had to be recognised that his proposals would have considerable implications for the prisons. The prison population would increase, as would the proportion of offenders with records of violence. It was important, therefore, for the purposes of control, that every possible step was taken to relieve the pressure on the prison system. The most important proposal in that context was the reduction in the minimum qualifying period for parole - a measure which had wide support, even amongst those who were pressing for a tougher stand against violent offenders. There would, moreover, need to be a continuing high priority given to the programme of prison building and refurbishment. The Prime Minister said that she very much supported this programme and, in particular, the efforts which were being made to introduce proper sanitation arrangements into the older prisons.

Yours ever,

Tim Flesher

TIMOTHY FLESHER

Hugh Taylor, Esq.,
Home Office

E.R.

2

PRIME MINISTER

Attached is a minute from the Home Secretary making his proposals for sentencing policy in the wake of the hanging debate. He is to come and see you on Tuesday to talk about them. His main proposals are as follows:-

Life Sentences

The Home Secretary proposes a tariff of minimum periods which those convicted of certain kinds of offence of murder would serve. The tariff is as follows: terrorist murders at least 30 years; police and prison officer murders at least 20 years; sexual or sadistic murders of children at least 20 years; murder in the course of robbery or theft with firearms at least 20 years. He would at the same time announce that a number of other murders e.g. murder/rape, murder of security guards etc., would also carry a very long period of custody.

Minimum Sentences

The Home Secretary is against minimum sentences, at least partly because they are opposed very strongly by the Judiciary and the Lord Chancellor.

Maximum Sentences

Life sentences are already available for most violent crimes. The Home Secretary proposes to increase the maximum sentence from 14 years to life for possession of a firearm while committing or with intent to commit serious offences.

Appeal Against Lenient Sentence

The Home Secretary does not propose a general appeal system but that the Attorney General should be empowered to refer to the Court of Appeal any case in which the sentence imposed in the Crown Court seems to him inadequate.

/Parole

E.R.

Parole

The Home Secretary proposes that no-one sentenced to more than 5 years for an offensive violence should be released on parole except for a very few months at the end of the sentence.

These measures, especially the first and the last, will considerably increase prison sentences served by violent offenders. The latter, i.e. the virtual abolition of parole for violent offenders is a major step and should be recognised as such. The Home Secretary hopes that this will convince those on the Government's side who have been pressing for other measures like statutory minima. The package is a clever one in that the major proposals do not require legislation and can be implemented by the Home Secretary immediately.

The other side of the coin is the effect on the prison population, not especially on the population as a whole but on the number of prisoners in the system with nothing to lose. In this context you should note the Home Secretary's bid for continuing support for increased resources for the prison service in paragraph 33.

TF.

9 September, 1983

PERSONAL

PRIME MINISTER

I have no doubt that, in the light of the capital punishment debate and subsequent events, we now need to take firm action with regard to our future policy on life sentences and, more generally, crimes of violence.

2. We should not fail to point out on appropriate occasions that such action represents only one component of our strategy to fight crime. Concentration on improving techniques of crime prevention - such as the Metropolitan Police's recent initiative with 'neighbourhood watch' schemes - is equally important. But I am determined also to reinforce public confidence in our criminal justice system and to make the changes needed to achieve that.

3. I have, therefore, conducted a full review of present practice and of the policy options. I am proposing changes which, while avoiding the need for major new legislation, are intended to reassure the public, clarify and improve the present system, and reduce (though not remove) criticism of our policy.

LIFE SENTENCES

4. The release of life sentence prisoners is already entirely at my discretion. I consult the judiciary and receive a recommendation from the Parole Board. But I am not bound to accept their views. I attach a note explaining the existing system in more detail.

5. We should try to educate the public more fully about the length of sentences life sentence prisoners normally serve. 312 life sentence prisoners have already been held longer than ten years. Of these, 15 have already served over 20 years, the longest 31 years. As the years pass since the abolition of capital punishment, the proportion of cases where very long periods are served will increase. Even the often quoted crude average period served by those so far released - slightly over 10½ years - in fact compares with a very long determinate sentence. If parole eligibility and remission are taken into account, this will be the equivalent of a sentence of 20 or 30 years. And, of course, the average figure does not take account of those most heinous offenders who are still in custody. When a life sentence prisoner is released, he is released on licence and remains subject to recall for the rest of his life.

6. We need to improve public understanding of all this. But that is not sufficient. The public have the right to be reassured that those who commit the most heinous murders will serve very long prison sentences.

7. Statutory minimum sentences for different categories of murder have some attractions. I believe, however, that pressure for them should be resisted. It would be impossible to define such categories

E.R.

in legislation without running the risk of endangering the whole system through borderline anomalies. This is the lesson of the 1957 Homicide Act, which adopted just such an approach.

8. Instead, I would prefer to avoid new legislation, make use of my existing powers, and build on the approach which I have already adopted in the case of those who murder police officers.

9. I therefore propose in a full public statement to specify the 'tariff' applying to those who commit murder in circumstances where the public interest and public outrage require that they should be treated with great severity. By the word 'tariff' I mean the minimum period of time that would actually be served. The period to be served might, however, actually be greater either because of the special gravity of the offence or because of the risk to the public of release. But I would authorise earlier release only in wholly exceptional circumstances, such as a prisoner's terminal illness.

10. Terrorist murders present the gravest threat to society. Where trial judges have made minimum recommendations in such cases they have never been for less than 30 years. Accordingly, I propose that even where no minimum recommendation has been made such murderers should serve at least 30 years.

11. I have already announced that police murderers must expect to serve at least 20 years. I propose that those who murder prison officers should do so, too.

12. There are two further categories where prison terms of at least 20 years are appropriate: those who commit sexual or sadistic murders of children, and those who murder in the course of robbery or theft with firearms.

13. I believe that other murders cover too wide a range of circumstances to categorise in this way, although some will be just as serious. I accordingly intend to make it clear that in the case of such murders the expectation must be of a very long period of custody indeed. I would not seek to provide any further definitions, but would indicate that among the sort of cases I had in mind were murders in the course of a violent or sadistic rape and murders of people such as nightwatchmen, security guards, post office staff and public transport personnel, whose jobs involve such exposure that they are rendered particularly vulnerable.

14. I would make it clear that there will also be cases outside any of these categories which require very long prison terms.

15. Irrespective of the tariff I announce, assessment of possible risk to the public must be made in each individual case and the outcome of that assessment will remain the overriding factor in any review of a life sentence prisoner's possible release. This means in some cases that 'life' will indeed mean life.

16. In order to ensure that the risk factor is taken fully into account in each case, I propose to improve the way in which indications of likely risk are identified, reported and acted upon. Reporting

officers in prisons and supervising probation officers will be reminded that life sentence prisoners have no entitlement to release, however long they have served, and that vigilant assessment of risk is their over-riding duty.

17. I intend to back up my statement on tariffs with procedural changes, which though appearing technical, have real importance. I need not bother you with details. But I propose henceforth to ensure that, subject to what I have said about the tariff in the specially serious categories, the tariff in individual cases will be settled at an early stage in consultation with the Lord Chief Justice and trial judge and that the Joint Home Office/Parole Board Committee should be abolished.

18. I should stress that these proposals will together represent substantial changes of current practice. As the attached tables show, the minimum terms I am imposing will mean a significant increase in the terms served by prisoners in these categories compared with those who have so far been released. Moreover, such changes can be effected swiftly and without legislation.

SENTENCING FOR OTHER VIOLENT CRIMES

19. There is also great public concern about the sentencing of those who commit other violent crimes. I have, therefore, again conducted a review of the present system and propose important changes. As in the case of life sentences, I have sought to proceed without new legislation - though I have two legislative proposals to make.

Minimum Sentences

20. As in the case of life sentences, there is strong support in some quarters for legislating for minimum sentences for certain violent offences. There are, however, equally strong and well known arguments of principle against this. It is opposed by the judges. The Lord Chancellor shares their view. The Lord Chief Justice considers that the introduction of minimum sentences would prevent the judiciary taking proper account of the wide variety of circumstances that arise in particular cases. He contends that the tariff set by the Court of Appeal is a proper one, although not widely enough known. 15 years is the tariff for bank robbery if firearms are used, and five to 10 years for violent robbery in the course of a burglary. After full consideration, I do not favour going down the route of minimum sentences.

Maximum Sentences

21. No such objections apply to legislation altering the maximum penalties available for violent crimes. But in general, they are already very high indeed: for example, life imprisonment for rape, robbery and wounding with intent.

E.R.

22. There is, however, particular public concern about crimes involving the use of firearms. There was a four-fold increase in robberies involving firearms between 1971 and 1981. I propose to increase the maximum penalty for certain offences under the Firearms Act 1968 - possessing a firearm while committing certain serious offences, and carrying a firearm with intent to commit an indictable offence - from the present 14 years to life imprisonment. This would, of course, require legislation on an appropriate occasion.

Appeal Against Lenient Sentence

23. Nothing does more to undermine public confidence in the criminal justice system than a small but well publicised minority of clearly inadequate sentences for serious crimes of violence, where the Court of Appeal's tariff is not observed. We could remedy this problem by enabling the Crown to appeal against what appears an unduly lenient sentence. The Lord Chief Justice would welcome this.

24. There are, however, difficult questions about how such cases should be selected for appeal. It would be widely seen as wrong if a defendant were at risk of having his sentence increased principally on the basis of clamour in the press.

25. I therefore propose not that there should be a right of appeal in the strict sense, but that the Attorney General should be empowered to refer to the Court of Appeal any case in which the sentence imposed in the Crown Court appeared to him inadequate. In exercising this power he would be guided by the standards set by the Court of Appeal itself. The purpose of the reference would be to establish a point of principle and clarify the tariff. It would not alter the sentence already passed.

26. I have not yet discussed this idea with the Attorney General. It would require legislation. It could be included in the Bill establishing an independent prosecution service which I plan to bring forward in 1984-85.

Restricting Parole for Violent Offenders

27. My final proposal is also directly aimed at restoring public confidence in sentencing. Quite apart from the anxiety felt about cases where sentences are perceived as inadequate, there is also increasingly wide perception and criticism of the gap between the sentence passed and the sentence served. This results from remission and parole.

28. I would not want to alter the remission system, which provides an important incentive to good behaviour in prison. But parole is another matter.

29. In 1975 Roy Jenkins was instrumental in relaxing the Parole Board's selection criteria. Since then the Board's attitude to long sentence prisoners has grown steadily more generous. This needs to be reversed.

E.R.

30. I would propose that no-one sentenced to more than five years' imprisonment for an offence of violence should be released on parole except where release under supervision for a few months immediately before the end of the sentence was judged to be likely to reduce the long term risk to the general public, or where there were wholly exceptional circumstances.

31. This proposal has the advantage that no new legislation is required.

CONCLUSION

32. I believe that this package of measures on life sentences and crimes of violence would command widespread public support and would be acceptable to the judiciary. I see no reason why it should cause difficulty for the Lord Chancellor. Of our other Ministerial colleagues, those with the most immediate interest are the Secretary of State for Northern Ireland, who has a particular concern for terrorist murders, the Secretary of State for Scotland and the Attorney General, for whom I am suggesting a new function. Outside the Government, we can expect opposition from the civil liberties lobby on the one hand and criticism from some of our own backbenchers who are wedded to statutory minima on the other.

33. I must emphasise that these proposals will have important implications for the prisons. They will increase the number of violent and difficult prisoners and will dim their prospects of release. I am still considering what can be said and done to handle this problem. It will be most important to be able to announce a reduction in the minimum qualifying period for parole (to relieve pressure on the prisons at the short sentence end) at the same time as we unveil our proposals to deal with more serious offenders. I also believe that the action I propose is only defensible if we are able to increase the momentum of the prison building programme which Willie got off the ground and provide the associated staff resources.

SUMMARY OF PROPOSALS

34. I accordingly propose the following measures, described fully above:

1. Life Sentences

   (a) a full public statement of the tariffs which I shall apply to certain categories of the most heinous murders;

   (b) improved assessment of risk in individual life sentence cases;

   (c) subject to (a), a closer involvement of the judiciary in establishing the tariff after sentence.

E.R.

2. Sentencing for Other Violent Crimes

(a) increase in the maximum sentences for certain offences under the Firearms Act 1968;

(b) introduction of a power of reference by the Crown to the Court of Appeal in the case of excessively lenient sentences;

(c) restriction of parole for violent offenders.

L.B

9 September 1983

E.R.

THE LIFE SENTENCE AND THE RELEASE OF LIFE SENTENCE PRISONERS

Life imprisonment is, by law, the only sentence that can be imposed on persons aged 21 and over for murder. It is also the maximum penalty for some other serious offences - for example, manslaughter, attempted murder, armed robbery, rape, buggery, arson, kidnapping, wounding with intent and causing an explosion. For young offenders, there are special indeterminate sentences which have the same effect as a life sentence and the procedures for their release (and recall) are the same as for adults sentenced to life imprisonment.

2. The Home Secretary has the ultimate responsibility for the release of life sentence prisoners. Under the provisions of section 61 of the Criminal Justice Act 1967, he may order release only if he is recommended to do so by the Parole Board and after consulting the Lord Chief Justice and, if he is available, the trial judge. The essence of the Parole Board's role is to advise on risk and that of the judiciary to advise on retribution and deterrence. However, the Home Secretary is not bound to accept the Parole Board's recommendation (and does not do so in 8-10% of cases); nor is he bound by the views of the judiciary, though he has rarely gone against their advice.

Minimum Recommendations

3. Under section 1(2) of the Murder (Abolition of Death Penalty) Act 1965, a court in sentencing an adult convicted of murder may recommend a minimum period for which he should be detained. Such a recommendation is not binding on the Home Secretary but it carries considerable weight. The expectation is that a prisoner in respect of whom such a recommendation has been made will be detained for at least that period unless there are very good reasons for doing otherwise. So far, only three prisoners have been released earlier than the minimum period recommended by the court. In all these cases, the specific assent of the judiciary was obtained before release was authorised. But the power to make a recommendation is only exercised in approximately 8% of all cases.

E.R.

Release Procedures

4. There are no fixed times at which the release of a life sentence prisoner must be formally considered by the Parole Board machinery. Statutorily, it is for the Home Secretary to decide when this should be done. In practice, the time of the first formal review is fixed in consultation with the Parole Board through a joint committee of representatives of the Parole Board (including a High Court Judge and a psychiatrist) and of the Home Office. The joint committee may consider an individual case several times before it recommends a formal review date (in about 50% of the cases referred to it the committee asks to see the case again).

5. At each review, the case is first considered by the local review committee at the prison in which the prisoner is detained. The committee considers the facts of the offence, the prisoner's background and previous record, and reports made by the prison staff throughout the period of detention so far and makes a recommendation on the prisoner's apparent suitability for release. The papers are then sent to the Home Office where the case is considered in consultation with the Department's professional advisers and an assessment is made of all the considerations, in particular the possible risk to the public if the prisoner were to be released. The case is then referred to the Parole Board and considered by a panel of members (which always includes a High Court Judge and a psychiatrist). If there seems any likelihood that the Parole Board might recommend release the Lord Chief Justice and the trial judge (if available) are consulted beforehand and the Board is informed of their views (in accordance with an undertaking given to Parliament during the passage of the 1967 Act).

6. If the Parole Board recommends that the prisoner should be released, and the Home Secretary accepts the recommendations, a provisional release date for this is fixed some time ahead - usually a year, though it may sometimes be longer or shorter. Release is normally subject to the prisoner's good behaviour, to the satisfactory completion of a period on the pre-release employment scheme (sometimes preceded by a period in an open prison)

E.R.

and to suitable resettlement arrangements being made. In considering whether or not to accept a recommendation for release, the over-riding consideration (provided the requirements of retribution and deterrence have been met) is the degree of risk which would be involved in the prisoner's release. The Home Secretary would not authorise release unless he was as satisfied as it is reasonably possible to be that the risk was acceptable.

Recall to Prison

7. Every life sentence prisoner is released on a licence, which remains in force for the remainder of his life. Initially, he is under the supervision of a probation officer who submits regular reports to the Home Office. After about three to four years, if the licensee has settled down in the community and his behaviour has given no cause for concern, the conditions may be cancelled; otherwise, they are retained for as long as it is thought necessary. But the licence itself remains in force and can be revoked at any time by the Home Secretary on the recommendation of the Parole Board or, if it has to be done immediately because the licensee is considered to be dangerous, subject to later confirmation by the Board. If the Board does not confirm the recall, the licensee must be released immediately. A licensee recalled to prison may make representations to the Parole Board. If the Board accepts them and recommends immediate release the Home Secretary must comply. If not, the question of release is again considered as if it were the initial release of a life sentence prisoner. A life licence may also be revoked by a higher court if the holder is convicted of an offence punishable by imprisonment, whether or not the court imposes a further sentence for that offence. If this is done, the Parole Board will consider the case and when it should be next reviewed. In the case of non-court recalls, this is the only area where the Home Secretary does not have ultimate discretion on the custody of a life sentence prisoner.

L.R.

AVERAGE DETENTION OF LIFE SENTENCE PRISONERS IN THE SPECIFIED CATEGORIES RELEASED SINCE NOVEMBER 1965

Category	No of Licensees	Shortest Detention	Longest Detention	Average Detention
Terrorism	1			3.4[a]
Murder of police and prison officers	2	4.0[b]	17.0[c]	10.5
Child homicide in course of sexual assault	22	9.0	24.0	14.2
Murder by shooting in furtherance of robbery or theft	9	11.3	17.6	13.8

(a) released dying of cancer (died 2 days afterwards)

(b) 14 year old boy who stabbed a police officer

(c) 19 year old borstal boy who murdered a prison officer

LIFE SENTENCE PRISONERS IN THE SPECIFIED CATEGORIES STILL DETAINED FOR MORE THAN 10 YEARS

Category	10 less than 11 years	11 12	12 13	13 14	14 15	15 16	16 17	17 18	18 19	19 20	20 24	OVER 25	TOTAL
Terrorism	1	-	-	-	-	-	-	-	-	-	-	-	1
Murder of police officers	-	2	2	1	-	-	2	1	-	-	-	-	8
Child homicide in course of sexual assault	2	-	3	4	2	1	2	5	-	-	1	4	24
Murder by shooting in furtherance of robbery or theft	1	1	2	-	1	1	1	2	-	-	-	-	9
Totals	4	3	7	5	3	2	5	8	-	-	1	4	42

From: The Rt. Hon. SIR IAN PERCIVAL, Q.C., M.P.

4

HOUSE OF COMMONS
LONDON, SW1
Secretary's Tel. No.: 01 219 4065

PERSONAL

MF

16th July 1983

Dear Margaret,

Thank you for that delightful party last week.

As we agreed you referred to my speech in the capital punishment debate & expressed interest in reading it so I am sending a copy with this.

You also hoped that we might all get together in one place or other and of course we would like very much to do that so. I am in touch with Dennis

in the hope of finding a date.

In case it is not until after your holiday may I wish you now a very happy one. Love from us both.

Yours ever

Phy

The Home Secretary is wrong, as are those who support amendment (e), to suggest that, by reintroducing the death penalty for acts of terrorism, we would reduce terrorism or the number of innocent lives that are lost. Exactly the reverse would be the case. Those hon. Members who might be attracted to amendment (e), not least because it has been given official approval by the Home Secretary, must weigh carefully whether such an act is likely to lead to more rather than less violence and more rather than fewer deaths. I suggest that more innocent lives would be lost. For those reasons and many others I ask hon. Members not to be beguiled by the Home Secretary's erroneous arguments.

There are powerful arguments against following the Home Secretary's suggestion. There are also strong arguments against the reintroduction of capital punishment for any of the other categories. The debate is a side show. What we are discussing is irrelevant to the real problems. The real issues are unemployment and the serious rise in serious crime. We should be addressing ourselves to those issues. We delude ourselves if we believe that by passing any of the amendments or the motion we shall solve any of the real problems or make any significant contribution to the reduction, which we all want, in serious crime. In any event, the return of capital punishment is another Victorian practice that is favoured by the Prime Minister that the country can well do without.

5.34 pm

Sir Ian Percival (Southport): For once, I can agree with the hon. Member for Knowsley, North (Mr. Kilroy-Silk), when he said that these issues should not be decided on emotional grounds. I also agree with him and with my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) that we are discussing only one part of the much wider subject of crime and punishment and that it is one which sometimes obscures the other issues. However, that does not in any way detract from the fact that on its own this is a subject of immense importance to the House and the country.

I also agree with my right hon. Friend the Member for Old Bexley and Sidcup that decisions on this issue are entirely a matter for individual judgment. But from there I part company with him and the hon. Member for Knowsley, North. My judgment is that the ultimate penalty should be part of the armoury of weapons with which the state should be equipped to protect its citizens from the risk of being murdered. In that judgment there is none of the morbid preoccupation of which the right hon. Member for Sparkbrook (Mr. Hattersley) spoke, and which seemed to characterise so much of what he said — and so much of what the right hon. Member for Glasgow, Hillhead (Mr. Jenkins) said. Nor is there the least element of a thirst for blood or revenge in my decision. I have formed the view which I shall now try to express by having listened in the House over the years to hours and hours of what I have always thought to be some of the best debates we have, in which hon. Members speak independently from their heads and their hearts.

I have reached my conclusions on two practical grounds. First, I believe that the ultimate penalty is a deterrent. I entirely accept that there is no way in which to prove that absolutely but, heavens above, there is nothing new about that. Many things are proved in court to the complete satisfaction of either the judge or the jury on much less than absolute cast-iron evidence. One does not normally get it. We have to approach the point in a practical way. No punishment deters everyone. Prison does not deter everyone. It ought to deter many people whom it does not deter, but I have not the least doubt that it does deter many people. Of course, the ultimate penalty does not deter, for instance, those who take the risk of killing quite deliberately. There are quite a lot of them. Nor does it deter the person who kills in a moment of passion. But I do believe that there must have been a substantial number of people who were deterred from killing, the thought having gone through their minds, by fear of the penalty.

The police gave us cogent evidence on this. In the early days during the debates about abolition, they said that the sophisticated up-market gangs who went for the big stuff would dismiss any of the gang who put a pistol in his pocket, because they knew the risks and how quickly a gun can be used even though its use was not intended, and how easily the entire gang could become liable to the death penalty. The police told us that if we removed that sanction such gangs would carry guns. They have been proved right. What we were told, what has happened and the logic of the argument impresses me. There is no way in which to measure deterrence but I am convinced, having listened to the arguments for many years that the death penalty was and would be a substantial deterrent. In my view, those who are at risk of being killed, and those whose duty it is to protect them, are entitled to demand of the state that it includes that deterrent in its armoury.

When I explain my second reason, I dare say that some people will accuse me of talking about retribution and revenge, but I am not. There are some killings that are so evil and deliberate that the only appropriate punishment —if we still think in terms of punishment, and I do— and the only form of expiation of sins—if we still think in those old-fashioned terms, and I do—is the exacting of the life of the person who took life.

Of course, I recognise the difficulties and the arguments put forward equally sincerly by others. I have considered those arguments over the years as carefully as I can. The possibility of mistakes is the most serious and places a heavy burden on those who have to administer the law when there is the ultimate penalty to ensure that there is no mistake. I recognise too the difficulty of identifying in which cases the penalty should be used, but here I differ in my conclusion from my right hon. and learned Friend the Home Secretary. I shall vote for all of the categories not because I want to see the death penalty in all of them but because I think we have first to decide the question in principle, and then get down to the identification of cases to which it is to be applicable. Once the principle has been decided, that second stage is of enormous importance.

I also recognise that questions must arise about the form of execution and its humanity or inhumanity. However, I think that the opponents of capital punishment too often overlook something. We are talking about taking life, but which is worse — leaving the State to take life in a humane way or to take somebody's life over 30 years, locked up in a cell with no liberty and disintegrating?

I see a sneer from a Member opposite but I ask hon. Members just to think about this. In these debates we have heard how, after 10 years in prison, a human being begins to cease to be a human being, disintegrates and becomes a cabbage. Those who say that execution is inhumane must

[Sir Ian Percival]

not draw the line there, but in espousing the alternative, locking somebody up for their natural life, must accept the inhumanity of that too.

Mrs. Jill Knight (Birmingham, Edgaston): While my right hon. and learned Friend is on this point, will he give us the benefit of his advice on, and knowledge of, a suggestion recently made that murderers who are particularly evil frequently take the lives of their fellow citizens while in prison and also those of warders and prison officers?

Sir Ian Percival: If my hon. Friend will forgive me, I will not develop that but it is something that has become more common since the repeal of capital punishment. Somebody in prison for the whole of his life has nothing to lose. However, I shall leave that point for others to develop, as I wish to be brief.

Execution in the case of terrorism is perhaps the most difficult part of the problem. Why is it different? First, it is because the acts in question are so often about as evil as one could possibly imagine. What could be more evil than blowing up a group of bandsmen in the park, or in fact worse still, of course, going to the door of a house and shooting the father in front of his children and wife as so often happens? The nature of the acts of terrorism are usually among the most evil that one can imagine, but that is not the end of the special seriousness of these acts. The motive for which they are carried out is to terrify people out of what they want to do or into doing what they do not want to do. It is the most direct intervention with the liberty of the subject by the most violent and evil conduct. If we are to have this penalty for anybody, why should we ever think of not having it for those who commit such evil crimes for such atrocious motives?

Rev. William McCrea (Mid-Ulster): I have come from looking at three charred bodies and the body of another of my constituents. Those four were brutally murdered today by the IRA. Does the right hon. and learned Gentleman agree that there are many hon. Members in this debate who seem to be more concerned about the guilty than about the innocent, and that the House owes it to the nation and to the widows and orphans of the innocent that the murderer is put down and the innocent allowed to live?

Sir Ian Percival: The hon. Gentleman has confirmed by a specific instance what I was saying about the evil nature of so many of these acts. However, I am sure that he will forgive me if I complete my speech in my own way.

Two reasons are given to show why one should not apply the death penalty to those who commit acts of terrorism. One is that we shall make martyrs, but this is the most upside-down argument I have ever heard. If some people are so evil that they will make martyrs of the people who have committed such evil, so be it. I do not believe that any significant number of right-thinking people will glorify such people.

The other and most serious reason given against executing terrorists, and the right hon. Member for Hillhead seemed to be getting close to it, is that we dare not do it because it would create more violence and there would be reprisals. I beg of the House one thing. If the House should reject capital punishment for terrorists, let it be made clear beyond any doubt whatever that it was not fear of reprisals that stopped us from doing it, for if it were to be thought that we were not doing it because we feared the consequences terrorism would indeed have scored an effective and important victory.

5.47 pm

Mr. Jack Ashley (Stoke-on-Trent, South): I was sorry to hear the intervention of the hon. Member for Mid-Ulster, (Rev. William McCrea), which seemed to suggest that those who support capital punishment believe that the opponents have no sympathy for the victim and are concerned only with the murderer. Nothing could be further from the truth. Those who are opposed to capital punishment—I am one of them—feel as deeply and as passionately as anybody else about the victims. There just happens to be a difference of view about what can be done about it.

We should be tough with violent crime. I am the only hon. Member who has introduced a Bill—this was some time ago—advocating that society should have the right of appeal against lenient sentences so that heavier sentences could be imposed on criminals. The Bill was defeated, but my proposal was that society should be able to appeal for heavier sentences, just as the criminal can appeal for lighter ones.

The right hon. and learned Member for Southport (Sir I. Percival) based his argument on two practical considerations, and I wish similarly to base my case for not restoring capital punishment on two practical considerations. I ask those hon. Members who are in doubt about voting tonight to bear in mind the experience of my constituent, Mr. John Preece who was convicted of the murder of a woman in Scotland. He was released eight years afterwards when it was discovered that the evidence on which he was convicted was bogus.

John Preece was convicted, not on some vague identification or some uncertain circumstantial evidence, but on the calm, cool, scientific evidence of a Home Office forensic scientist. Could anything be more impeccable than that? That was what the jury thought and convicted him of murder. Later, Dr. Clift, the forensic scientist, was discredited, both as a scientist and as a witness, by the Scottish Court of Appeal. His evidence was totally discredited.

If John Preece could be convicted on such evidence, which appeared to be foolproof, is it not much more certain that other people could be wrongly convicted? If there had been capital punishment when John Preece was convicted, he would almost certainly be a rotting corpse in a prison graveyard now, rather than walking the streets of Stoke-on-Trent.

That is just one example. There have been many more wrongful convictions. The House of Commons should not take it upon itself to impose such a risk, and such a shocking injustice, on innocent people, but that is what we shall do if we vote for the reintroduction of capital punishment.

Furthermore, I do not believe that capital punishment is a deterrent either to those who murder in hot blood or to those who murder in cold blood. By definition, those who murder in hot blood are not responsible for their actions and very few civilised societies accept that they should go to the gallows. Those who murder in cold blood regard death as an occupational hazard. In some cases they

Poor quality text due to the nature of the material.

Image quality is best available.

MJ

14 July 1983

Thank you for your telex of 11 July about capital punishment. The Prime Minister has noted your views.

AJC

Mr. Pieter Dankert.

MJ

14 July 1983

Thank you for your telex of 11 July about capital punishment. The Prime Minister has noted your views.

AJC

Mr. Pieter Dankert.

BUSINESS OF THE HOUSE

Ordered,

That, at this day's sitting, if proceedings on the motion relating to the death penalty have not been previously disposed of, Mr. Speaker shall at Ten o'clock put the Question on any amendment which may have been moved and shall then put forthwith the Questions on any other amendments selected by him which may be moved and on the main Question or the main Question as amended.—*[Mr. Ian Lang.]*

Death Penalty

3.31pm

Mr. Speaker: It will be no surprise to the House that more than 60 right hon. and hon. Members have made clear their wish to speak in this important debate, and there may be even more. I wish to call as many hon. Members as possible. In the interests of fairness, I propose to balance the rights of Privy Councillors with the claims of other hon. Members.

I therefore make two pleas. I ask that contributions should be brief—perhaps even very brief—so that as many Members as possible may be called, and I ask hon. Members not to come to the Chair to assess their chances. That could well prove to be counter-productive today.

It may also be helpful if I outline how today's debate will proceed. After the hon. and learned Member for Fylde (Sir E. Gardner) has moved the motion, there will be a general debate on the motion and the amendments. My selection of amendments has been published. I shall not call on any hon. Member formally to move an amendment before the conclusion of the debate, when, in accordance with the Business of the House motion, there will be an opportunity to vote consecutively on amendments (e) to (i) and, if appropriate, on amendment (j). After that, I shall put the Question on the motion as amended, or not amended, as the case may be.

Mr. Nicholas Winterton (Macclesfield): On a point of order, Mr. Speaker. I seek your guidance, in fairness to Back Benchers. Since the last Parliament, there has been a changeover of some 25 per cent. of Members. I seek your assurance that the new voices in this House, as well as the old, will be given the opportunity to put their views.

Mr. Speaker: Order. I am very surprised that an hon. Member with as much experience as the hon. Member for Macclesfield (Mr. Winterton) should make that suggestion to me. I shall seek absolutely to balance the opinions held in all parts of the Chamber.

Mr. Ioan Evans (Cynon Valley): Further to that point of order, Mr. Speaker. Although some of us put down amendments that have not been selected, we understand your point about your selection of amendments. We welcome your point about no preference being shown to Privy Councillors. However, it is well known that many in the Cabinet are opposed to the reintroduction of hanging. Some of them have an important responsibility for this matter in part of the United Kingdom. Will you take that into account, Mr. Speaker, and call those members of the Government, because the Home Secretary does not speak for the whole Cabinet?

Mr. Speaker: The hon. Gentleman knows perfectly well that only one government spokesman from the Front Bench will be called.

3.36 pm

Sir Edward Gardner (Fylde): I beg to move,

That this House favours the restoration of the death penalty for murder.

Tonight, at the end of this debate, we in this House, on an individual, personal and free vote, have to reach a decision that can only be described as agonising. It is a decision that must touch the conscience of us all, whether we are for or against the reintroduction of the death penalty.

[Sir Edward Gardner]

I should like to thank the Government for giving the House time to debate this important matter. This is a momentous debate. It is an important subject and the debate is outstandingly important because it may very well be the last chance that this House will have to decide the important question whether or not capital punishment for murder should be reintroduced. Furthermore, the debate is important because of the intense public interest and concern that it raises. It is important because it appears to have dramatically divided opinion in this country. That division of opinion disturbs one, because it is not difficult to see serious and reasonable arguments on both sides. Finally, it is important to those of us who believe—as I hope all hon. Members believe — that it is the inescapable duty of the State to protect its citizens in the most effective way that is available to the State from unlawful violence and death by murder.

The Royal Commission on capital punishment which reported in 1953 described murder as the gravest of all crimes. It describes capital punishment as the gravest of punishments for the gravest of all crimes. I am sure that very few hon. Members would doubt that the retributive element which would be involved in the reintroduction of capital punishment is important. It seems to me that what is even more important is the question whether or not capital punishment could, by its deterrent effect, reduce the number of murders that would be committed in this country if it became part of our law once again.

It is said that there is no evidence of this deterrent effect. I understand that, during the past week or so, when this debate has been raging outside the House, it has been said that there are no statistics to which one can point. However, in 1953 the Royal Commission came to the conclusion that the deterrent effect of capital punishment was stronger than that of any other punishment available for murder. It is only right, at the same time, that I should say that there is no convincing statistical evidence. Of course there is not. How could there be?

Let us imagine the two different situations. If there is no death penalty to frighten the criminal, he may go out with a gun and kill. On the other hand, if there was a death penalty, the same person would calculate the chances of being arrested, charged, convicted and ultimately brought to the point of sentence knowing that it could be the death penalty, and would conclude that he would not take the risk and would not, therefore, use a gun or go out and kill. How could that possibly enter into the statistics? That is the point that we must face.

I rely not on statistics — *[Interruption]* — but on something that we can all understand — the fear of death. That fear has a powerful influence over all normal human beings. It is a fear that can make ordinary, normal human beings behave differently. As Doctor Johnson almost said, nothing concentrates the mind so much as the imminent fear of execution. I submit that nothing is more likely to make a criminal pause before going out with a gun than the knowledge that if he kills with it, he may suffer the death penalty.

The Royal Commission on capital punishment made several forecasts, one of which was that if capital punishment was abolished, there would be an increase in the number of homicides and violent crimes. As we all know to our cost, the Royal Commission was absolutely right in its forecast. However, it went on to say that that increase would last only a short time, and in that it has proved to be wholly wrong.

I hope that the House will accept that I am not relying on statistics, but I must point out the figures that have been so well rehearsed. The number of homicides has nearly doubled since the abolition of capital punishment. The number of crimes involving the use of firearms has spiralled horrendously. Indeed, between 1971 and 1981 the number of offences involving the use of firearms rose from 1,700-odd offences to just over 8,000. That must be a matter of concern to everyone.

I do not doubt for one moment, because it is as obvious as the fact that the fear of death can influence someone's behaviour, that it is equally true, as the Royal Commission was at pains to point out, that the fear of death and its deterrent effect varies with the type of murder. I have an unwavering belief, which has not been moved by anything that I have heard or considered over the years, that the death penalty is a deterrent and is one of the considerations that an ordinary criminal would inevitably take into account. It would undoubtedly affect his behaviour if it were part of our law and were applied to the crime of murder.

Of all the categories of crime upon which the death penalty would operate, I submit that those involving the use of firearms would respond most sensitively to the death penalty. Before the abolition of the death penalty, it was comparatively rare to hear of criminals going out armed. Since the abolition of the death penalty it has become—as I have sought to put to the House—a commonplace crime. The inevitable result has been that, instead of having, as we had before the death penalty's abolition, an unarmed police force — the pride of this country and something that we could boast about—we can no longer have, or afford to have, a completely unarmed police force. The spiral of vicious crime goes ever up, with armed criminals going out on robberies and burglaries, and the time is coming, and will inevitably arrive, when we shall have to have a fully armed police force.

Mr. Robert Kilroy-Silk (Knowsley, North): You would love that, wouldn't you?

Sir Edward Gardner: I do not want to see that. No one wants to see that. It is the last thing that one wants to see. There is no reason why we should not today take a step that would enable us to fulfil an ambition of mine —to lessen the need to arm the police and ultimately to return to the stage of not having to have an armed police force at all.

The reality is that at present, when an ordinary criminal decides to go out with other colleagues on, for example, a robbery or burglary, he does not hesitate to take the tools of his trade with him. One of those tools is the gun. The gun is not empty, but loaded, with live ammunition, because such criminals are prepared to take the risk, if it comes to it, of using it and killing with it. The risk is calculated before the crime is planned and the rewards today from a successful robbery are so great that criminals think that they can afford to take the chance. After all, what will happen to them? They will be sent to prison for life, if found guilty. On average, that is 10½ years.

What about the police? They are in the front line. I am sure that it has not escaped the notice of the House that

Lord Devlin, one of our most eminent jurists, and a former Law Lord, wrote an article in today's edition of *The Times* and had this to say about the police:

"If the police, who are in the front line, hold strongly that the death penalty is a weapon they need, I think that it is difficult for society to deny it."

I would go further than that and say that in those circumstances it is equally difficult for the House to deny it.

If there is no doubt; or if it is probable that the prospect of the death penalty would deter a criminal from using a gun, and if the effect of the death penalty on the criminal's mind is capable of putting an end to the reign of the gun, and of making it possible for us to relieve the police of the need to carry arms, I submit that the House must consider that with the utmost gravity and care.

Mr. Jim Craigen (Glasgow, Maryhill): How does the hon. and learned Member counter the argument that the criminal might equally arm himself to the teeth to avoid capture?

Sir Edward Gardner: That did not happen before, when we had the death penalty. The experience was that the criminal did not go out in that way. Furthermore, if we had the death penalty, the risk of being arrested and convicted of using a gun to avoid arrest and killing somebody with it, would undoubtedly be, as I have said, one of the calculations which in my view and in that of many hon. Members would discourage the criminal from carrying a gun for that or any other purpose.

Mr. Craigen *rose*——

Sir Edward Gardner: I must get on.

I conclude by submitting to the House this serious point. The death penalty is not just a unique punishment, as undoubtedly it is. If it were brought back by the House on a vote tonight, it would provide a unique protection for society which the state in its duty to defend its citizens must be prepared to accept and, in proper circumstances, to use.

3.51 pm

The Secretary of State for the Home Department (Mr. Leon Brittan): It is little more than a year since the House last debated capital punishment, but it is entirely right for us to do so once more. As my hon. and learned Friend the Member for Fylde (Sir E. Gardner) pointed out, public interest in the issue is intense, we have a new Parliament and concern remains very strong. Not one of us, I am sure, failed to be questioned about our views n this issue during the election campaign. [HON. MEMBERS: "I did."] It is now time for each of us, with as clear sight and open mind as possible, to have a new look and to reach decisions once again.

The tradition has grown up that on such occasions the Home Secretary should do three things. He should analyse the evidence and the arguments for and against the general proposition that capital punishment for murder should be restored. He should review the advantages and disadvantages of treating a number of specific kinds of murder as capital offences. Finally, he should give his own personal views on these matters. I shall today seek to adhere to that tradition.

My first task is to try to lay to rest some prejudices which are all too prevalent in the country and which reflect the strong feelings with which this subject is, understandably enough, often approached. On the one hand, hon. Members who oppose restoration are often portrayed as being "weak on crime" and unconcerned by the rising tide of violence which in modern society puts the most vulnerable sections of the community in fear. On the other hand, hon. Members who favour restoration are often classified, and even vilified, as people who wish to take life and who fail to regard it as the sacred thing that men of every age and faith have accepted it to be. Neither picture is accurate. Both debase debate.

Hon. Members in favour of restoring capital punishment will enter the Lobby tonight because they believe that its application will protect and preserve lives. Hon. Members who vote against it will not in any way be showing their lack of commitment to the fight against crime. They will be disagreeing about means, but not about ends. Moreover, no one should believe or allow it to be believed that restoring the death penalty, whether that in itself is justified or not, could have a decisive impact on the broader battle against crime. However the House votes tonight, it must and will be the Government's task to pursue that battle by every means in their power.

Most of us considering the issue of capital punishment reach a conclusion on the balance of the arguments and evidence, but there are those who are utterly opposed in principle to capital punishment. They believe that the judicial taking of life is absolutely wrong, whatever the deterrent effect and whatever the circumstances. That is a view which I of course respect, although it is one which it is perhaps easier to hold for those not carrying the responsibilities of being a Member of this House. One may doubt whether a Member of Parliament who is truly persuaded that only capital punishment would provide adequate protection for the community has the right to deny his fellow citizens that protection because of his personal conscientious objection.

Most of us, however, do not have an absolutist objection to taking life and instead ask the question: would capital punishment provide society with a protection not afforded by other forms of punishment? That should surely be the paramount consideration, although I appreciate that there are those who are much influenced by the impact which capital punishment would have on the general tone of life in this country, particularly as it is reflected in the media. Others draw comparisons with penal policy in comparable countries in western Europe. I understand those considerations, but in the last analysis there will be many who would feel that if capital punishment genuinely is an effective deterrent it would be our painful duty to restore it, however unattractive some of the consequences would undoubtedly be.

It is at this point that one has to turn to the statistics. We cannot avoid looking at them, but we should be making a great mistake if we expected them to give us an unequivocal answer.

Those who argue for restoring the death penalty rightly point to the sharp rise in homicides since 1960. Between the end of the war and 1960 the number of homicides had shown a generally downward trend. In 1960, the offences initially recorded as homicide in England and Wales totalled 282. In 1965, the year capital punishment was abolished, the total was 325, in 1970 it was 396, in 1980 it was 621, and in 1982 it was 619. There are those who argue that the upward trend starting in 1960 is of no significance as that trend started before abolition. Against that, it can be said that the number of executions actually

[Mr. Leon Brittan]

carried out in the last few years of capital punishment was very small and the deterrent effect might, therefore, if it existed, have been somewhat reduced.

There are, nevertheless, forceful arguments against accepting the rise in homicides since abolition as retrospective proof of capital punishment's deterrent effect. It is pointed out that the rise in crime, particularly violent crime and not just homicide, has been a general phenomenon since the early 1960s. If we compare the 10 years 1963 to 1972 with the subsequent 10 years, we find, for example, that the number of homicides rose by 45 per cent. But the number of other serious offences of violence against the person rose by 49 per cent. The conclusion is drawn by those who point to those figures alone that there is no evidence from the figures of the uniquely deterrent effect of capital punishment.

The position is, I fear, a good deal more complicated as there are two cross-currents which both restorationists and abolitionists must consider if they are to be serious.

First, those who call for restoration must recognise that murder is only the most prominent tip of a massive iceberg of tension, violence and unrest in modern society, the causes of which are only imperfectly grasped. It has always been recognised that most murders are, at least to a limited degree, crimes of passion. In 70 to 75 per cent of cases the victim was acquainted with the suspect. In 1981, almost half the homicide victims were members of the suspects' families, or lived or slept with them, and about half of all homicides arose from quarrels, revenge or sheer loss of temper.

However, those who believe that the comparative increase in the category of "other violent crimes" proves that capital punishment does not deter should pause before drawing that conclusion. One would expect the deterrent effect of the death penalty to apply not only in cases of homicide, but in other crimes during which there was a risk that homicide would be committed. That applies especially to robbery. As my hon. and learned Friend the Member for Fylde said, it may well have affected the willingness of those involved in robberies to carry guns, and to use them if necessary, to escape arrest. The earliest figures available for robberies involving firearms date from 1969. Between then and 1981 such robberies increased from 464 to 1,893.

Before leaving this matter, I should also mention the evidence from abroad, but I am afraid that that is even more inconclusive than our evidence. Research in the United States has been adduced to support both sides of the argument, but critics of that research have exposed genuine and deep flaws in it. Elsewhere in Europe, no fixed pattern emerges, and complication is added by the fact that, even where capital punishment is retained—for example, in Ireland—it has often long fallen into disuse. Therefore, the statistics and evidence from overseas and from Britain cannot determine whether capital punishment is an effective deterrent. To my mind, the figures show one thing—the serious threat which violent crime in general, and especially wanton disrespect for life, pose to society.

None the less, many people will be inclined to take a view on the matter from their knowledge of human nature rather than from the figures. Some will feel that, even if most murders are unpremeditated and undeterrable, there must be a significant proportion where the decision to kill has been made on a more considered basis, and that for such murders at least the awesome threat of death to which my hon. and learned Friend referred must be a unique deterrent. However, such a viewpoint cannot be proved to be correct.

One's instinct may tell one that it is likely that capital punishment is a deterrent for at least some potential murderers, but many will take the view that instinct is an insufficient basis for a general reintroduction of capital punishment. Moreover, many people will be much influenced by the knowledge that, on occasion , there have been convictions that were subsequently proved to be wrong. The risk of error in inflicting a penalty that is, by its nature, irreversible, can never be removed, and if one is considering restoring a punishment that has not existed for nearly 20 years, and where there can be no conclusive proof of the deterrent effect, that must be a relevant consideration.

Each Member of the House will balance in his own way the factors that I have tried to outline in as fair-minded a way as I can, but I shall vote against the general proposition that capital punishment should be reintroduced for all murders.

Some of the factors to which I referred are also relevant to the specific categories of offence mentioned in the amendments to the motion. There are also considerations specific to those categories. Three of the categories of murder for which capital punishment is proposed in the amendments are based essentially on the distinctions drawn in the Homicide Act 1957. It is worth recalling how the Act became law and why it was subsequently repealed, because this relates to the merits of the categorisation now proposed. By 1949, there was widespread unease, especially in Parliament, at the use of capital punishment for all types of murder. Reprieves were granted in about 40 per cent. of all cases in which a person was sentenced to death. In 1949, the Royal Commission to which my hon. and learned Friend referred was established. It reported that it could not find suitable distinctions to justify the introduction of degrees of murder. None the less, the Homicide Act 1957 attempted to do just that.

It is often said that the categories of capital murders established in the Act created anomalies, which ultimately led to its repeal. That is true, but there were two sorts of anomalies—those which are inherent in any such a categorisation, and those which the skilful drafting of legislation might hope to overcome. Both are important, but the first anomaly is more important. Although attempts can be made to single out from other crime murders that are especially prevalent, or that are believed to be more deterrable by the death penalty, the problem remains that any such differentiation, when put into practice, is likely to lead fairly quickly to growing feelings of injustice. There will soon be cases outside, whatever criteria are chosen, that are felt to be more grave than those within them. Public outrage was, and is, no less great in cases of murder in which knives are used, often in the most brutal way, than in cases where firearms are used; in cases of child murder by strangulation rather than murder by shooting; and in cases of appalling ferocity rather than cool calculation. Would distinctions drawn primarily on the basis of the assumed prospect of deterrence be more acceptable to the public now than they were in the past?

The second anomaly was in definitions and borderlines. Definitional difficulty, and the borderline cases to which

they give rise, need not be regarded as providing overwhelming objections, but they are real and important and the House should not ignore or minimise them.

Of the amendments on the Order Paper, by far the most vulnerable on that score is the one which proposes the death penalty for murder in the course or furtherance of theft. Experience of murder trials before abolition confirms that, as does the experience of hundreds of cases that have come before the courts since abolition. Application of the death penalty could depend on the slenderest evidence as to when, how and whether a theft, possibly even a minor theft, had taken place. For that reason, it could be argued that the deterrent effect of this provision would be great. The increase in the number of robberies and burglaries is deeply disturbing, but it is certain that no category of capital offence would cause more public debate and questioning as the details of individual cases came to the fore. Therefore, I cannot support the amendment in the name of my hon. Friend the Member for Reigate (Mr. Gardiner).

Some may argue that the difficulty could be resolved by making the death penalty non-mandatory, leaving it to judges or juries to decide its applicability. The objection to that is that it would introduce subjectivity into the judicial system in the areas where, for reasons of deterrence and equity, that is least desirable. Many would have grave doubts about the wisdom of conferring such a discretion on either judge or jury.

Several amendments relate to the death penalty for the murder of policemen and prison officers. As Home Secretary, I have a special responsibility to ensure that the police force and prison officers are supported and protected. The debt that we all owe them for their courage and commitment in upholding the rule of law should never be forgotten.

First, with regard to the amendment in the name of my right hon. Friend the Member for Blackpool, South (Mr. Blaker), the task of the prison service has certainly become more difficult and dangerous over the years, with officers being put increasingly at risk of violent assault from a prison population that has become more dangerous because of its size and of the type of prisoner within it. During the past 40 years, two prison officers in England and Wales have been murdered while on duty—one in 1948 and the other in 1965. On such, thankfully slender, evidence it is difficult to make a judgment about the effect of, or need for, the death penalty in the case of prison officers.

In practice, the police are more affected by this debate than is the prison service. The case for the amendment in the name of my hon. Friend the Member for Bury St. Edmunds (Mr. Griffiths) is based on two propositions. The first is that the police are at greater risk from attacks by violent criminals than any other group and therefore deserve the special protection that the death penalty might give them. The second is that their position as the upholders of the law entitles them to that special protection. There can be no doubt that the police are at risk, and there has been an increase in the number of police officers on duty who have been the victims of homicides. In the years since abolition, 28 police officers have been killed in England and Wales in the course of their duties. In the comparable number of years previously, 12 were killed, which is by any standards a shocking increase.

Against that we must set the fact that the risks extend beyond the police, as they would be the first to recognise. Security guards, bank clerk and postmasters are examples of people who face risks similar to those faced by the police. I think that, in practice, it is difficult to say that the circumstances in which capital punishment has a deterrent effect are likely to occur more frequently in the case of murder of police officers than other groups.

That brings me to the second argument: the special position of the police. It is an argument which I respect, but I note that it is not one which the Police Federation in its letter has chosen to make, and I think that it is right. In individual cases of murder, where the victim was trying to prevent the commission of a crime, I think that the public's sympathy is wide and comprehensive. It does not extend just to the police. It extends to the security guard, the bank clerk or the bystander who "has a go". There is a considerable risk that singling out a particular category of victim would in practice, as opposed to theory, over a period prove difficult to sustain. I do not believe that it would be widely understood when the murderer of a police officer was hanged and the murderer of a citizen who was helping the police, possibly at the same time, was not. I shall therefore not vote for those amendments.

However, I should add that, since 1965, 16 adults have been convicted of the murder of police officers. Most of them have been subject to a recommendation by the trial judge that they should serve a minimum sentence, and that recommendation has ranged from 15 to 30 years. None of those 16 prisoners has been released. That should be a clear indication of our attitude towards murderers of police officers. I shall ensure that cases where no minimum recommendation has been made are treated in substantially the same way as those where such a recommendation was made. The expectation must be that all such murderers serve at least 20 years, and that some may never be released.

The next category of murder to be considered, covered by the amendment standing in the name of my hon. Friend the Member for Ilford, North (Mr. Bendall), is of murder by shooting or causing an explosion. The number of serious firearms offences has increased sharply. Doubtless that is why this category of murder has been singled out. However, it does not follow that the balance of the deterrent argument is necessarily different for that category. Moreover, from the point of view of the gravity of the offence, it is difficult to see why a murderer who has shot his victim should be regarded with greater abhorrence than, say, a poisoner.

Finally, the amendment in the name of my hon. Friend the Member for Banff and Buchan (Mr. McQuarrie), proposes the death penalty for murder resulting from acts of terrorism. My right hon. Friend the Secretary of State for Northern Ireland powerfully put the case against restoration—[HON. MEMBERS: "Hear, hear."]—in a statement outside the House, which I am sure that all Members will have read. He naturally concentrated on the effects of capital punishment for terrorist murders in Northern Ireland, and pointed out that the vast majority of convictions for terrorist murders had been in Northern Ireland.

My right hon. Friend recognised, as I do, that it would be very difficult indeed to have one law in Great Britain and a different one in Northern Ireland. He points out the present readiness of terrorists to put their own lives at risk, and the value to the IRA of the creation of martyrs. He reports the view of senior police officers that if capital punishment were introduced convictions would be more

[Mr. Leon Brittan]

difficult to secure. He also points out the risk of violent disorder and acts of vengeance in the wake of executions. Finally, he draws attention to the problems posed by the fact that terrorist trials in Northern Ireland are conducted without juries. The House will undoubtedly give full weight to all that someone with the experience and authority of my right hon. Friend says in these matters.

I agree with my right hon. Friend that in current circumstances there is no prospect of an early return to trial by jury in Northern Ireland. Nor would it be politically acceptable to have murder trials of Irish terrorists take place on this side of the Irish sea. The object must be to give the fairest hearing to the accused. If capital punishment were introduced, one way in which it has been suggested that that object could be fulfilled would be through trial by a judge with assessors, or by three judges.

However, I hope that I may be allowed to look at the problem from a somewhat different perspective, taking into account terrorism more generally, whatever its origins. The truth is that in Great Britain the threat is not only from Irish terrorists. No one, of course, could forget, for example, the horrific attacks perpetrated in Hyde park and Regents park just a year ago this month, when 11 soldiers were killed and 59 people were injured. Those crimes were brutal, callous, cowardly and indiscriminate —[HON. MEMBERS: "Hear, hear."]—but since 1977 in Great Britain the number of terrorist bombing and shooting incidents attributable to non-Irish groups has almost equalled the number of Irish-related attacks in the same period. Non-Irish terrorists have killed 11 people in that time — but, it is said, capital punishment would do nothing to deter terrorists.

I have already indicated, I hope quite plainly, my general reservations about the balance of the deterrence argument, but I would not go so far as to accept, as has sometimes been suggested, that terrorists are uniquely immune from deterrence. It is certainly true that one will never deter the true fanatic, and some will positively seek martyrdom. However, not all terrorists are fanatics or prepared to kill themselves by going on hunger strike. We should never, even unconsciously, accept the terrorist's vision of himself as an inflexible, high-minded freedom fighter, unconcerned with the consequences. That is not true of those who are bribed, bullied, or lured to commit murder. It may well not be true of those who are knowing and assisting parties to the deed, but do not detonate the bomb themselves. It is not true in communities where the thug and criminal slip into terrorism through the pursuit of gain. In such cases the deterrent argument is neither weaker nor stronger in relation to terrorist murders, than in the case of other murders.

We are told, however, of the risk of reprisals. To this must be added the risk of hostage-taking and other forms of serious disorder. I do not seek to deny or minimise any of those risks, but there is always such a risk in taking any effective action to curb terrorist violence. The terrorist is at war with us. He will take whatever action he can to defeat us. The question is whether we are to be stopped from doing what we think is right by those threats and that blackmail.

Those who favour capital punishment for terrorist murders do not, for the most part, found their case on its deterrent effect. They do so because of a very fundamental belief about the nature of terrorism and the appropriate response to it. Since time out of mind, it has been recognised that violence against the state poses a threat utterly different in character from crime against individuals. The law of treason, for example, though archaic and practically unused in peacetime, still uniquely preserves the death penalty. Acts of terrorism are crimes against civil society as a whole. While all crimes break and challenge particular laws, and may shatter the lives of individual citizens, terrorism deliberately seeks the overthrow of law itself. Its aim is to subvert the legitimate insitutions of democratic government. It attempts to shake the will of the majority to uphold the integrity of the state.

That is why there will be many people who favour the restoration of capital punishment for terrorist murder on grounds quite unrelated to the deterrent argument. Those who take that view are not thirsting for revenge, but they regard it as the duty of the state to signal its total and absolute repugnance for those who commit crimes that undermine its very foundations. There can be no clearer or more decisive a demonstration of that repugnance than to reserve the ultimate penalty, capital punishment, for those who commit such crimes. It is for those reasons that I shall vote tonight for the restoration of capital punishment for terrorist murders. [HON. MEMBERS: "Shame."]

Mr. Martin Flannery (Sheffield, Hillsborough): Will the right hon. and learned Gentleman give way?

Mr. Brittan: Finally, let me say a word about what may follow this debate. The House will, I hope, agree with the way in which the amendments allow hon. Members the fullest opportunity to express their views and vote on them. *[Interruption.]* As my right hon. Friend the Prime Minister has already made clear, if the House votes for the restoration of capital punishment for any category of offence—*[Interruption.]*

Mr. Speaker: Order. The Home Secretary should be heard. He has as much right to speak for himself as anyone else.

Mr. Brittan: If the House votes for the restoration of capital punishment for any category of offence, the Government will provide drafting assistance for a private Member's Bill designed to give effect to the expression of opinion of the House and will provide time for the Bill to be debated.

The legal and practical problems that would have to be resolved are numerous and formidable and there would be many further controversial decisions to be taken. If the House so wishes, those problems can be resolved and those decisions can be made. The first step is to take the central decisions of principle which the House is debating today.

Mr. Andrew Faulds (Warley, East): A disgraceful speech.

4.20 pm

Mr. Roy Hattersley (Birmingham, Sparkbrook): I begin by making my position absolutely and, I hope, unequivocally clear. I am wholly and irrevocably opposed to the reintroduction of capital punishment. I am opposed in principle, because I believe that to legislate for the judicial execution of a man or woman held in the state's safe custody would be a reversion to barbarism. We would, in this country, become the only Western

democracy where the state possessed and exercised the right to kill as judicial punishment. Nothing can justify savagery of that sort.

A reversion to such a practice would debase and, in the literal sense of the word, demoralise us all. My profound hope is that with our vote tonight we shall reject capital punishment decisively and lay the whole subject to rest —[HON. MEMBERS: "Never."]—because I must tell the House that I feel no pride in living in a society where newspapers publish the memoirs of superannuated hangmen, print drawings reconstructing the execution cell and give details about the noose, the rope and the drop.

It is because I want to put the whole morbid preoccupation behind us that I welcome the Government's decision to hold an early debate on the subject. I hope that after tonight's decision we shall be able to discuss crime and punishment in a great deal more rational fashion than it has been discussed during the past month or five weeks. I say "more rational" because of the violence that is done to logic by many of the claims that are made about the deterrent effect of capital punishment in murder and in a multitude of other crimes.

Later, I want to examine the claim that hanging would, were it reintroduced, reduce the murder rate and affect the number of crimes of violence committed in every category. Before I do that I want to deal with some other aspects of the debate, merely pausing to welcome warmly the Home Secretary's assertion that if capital punishment were reintroduced it would not make a comprehensive change to the incidence and pattern of crime in Britain. Too much of the debate during the past six weeks has asserted quite the opposite and in a moment we must deal with the evidence for the two conflicting judgments.

Before I do that I want to repeat, because I want the House to understand my position clearly, that even were there evidence to demonstrate that capital punishment was a deterrent—such evidence does not exist—I should still believe hanging to be wrong. [HON. MEMBERS: "Hear, hear."] I know that some people will argue, have argued, and no doubt will argue again this afternoon, that hanging as retribution is right in itself and that in our society one can justify, shall I say as a matter of principle, the taking of a life of a man or woman who has himself or herself taken a life.

Indeed, the Prime Minister, in a television interview during the general election campaign—which I suppose was in part the genesis of the debate — seemed to be saying that some murders were so hideous that execution was an intrinsically appropriate response — [HON. MEMBERS: "Hear, hear."] — seemed to be saying that some murderers deserved to die. [HON. MEMBERS: "Quite right."] There is no moral or philosophical justification for that view. It is a cry for revenge, and nothing except revenge. I do not believe that the House of Commons should, and I pray that the House of Commons will not, write such a primitive instinct into the laws of Great Britain.

The call for the execution of those who commit the foulest murders — a phrase that is often used — raises another issue which the House must face. If we are to have capital punishment at all, I suppose that it is better that it should be prescribed for only a very limited category of murder and murderers. But if we do that, we have to accept the problems of definition, problems so great that men and women will be hanged as a result of the interpretation of their behaviour, as a result of judgments about their motives—interpretations and judgments that will outrage the country.

I intend to spend a good deal of the time at my disposal dealing with terrorism, but, in relation to the problem of definition, the Home Secretary must understand that if there is to be capital punishment for terrorist murders, the chaos, confusion and anguish that will be caused in obtaining appropriate definition will put the entire law into disrepute. Let me give the Home Secretary a simple example from Northern Ireland. If we were to return to capital punishment for terrorist crimes in Northern Ireland, after that law came into effect post offices in Northern Ireland would be robbed and, I regret to say, postmasters would be killed as part of such robberies. It would be the duty of somebody—we shall come to that as the debate continues—to decide whether that robbery was carried out to give funds to the IRA or whether it was intended to take the money south to the Curragh and put it on a horse. Does the Home Secretary believe that a man's life should be determined by such a definition? Those gross anomalies aside, the supporters of capital punishment always argue their case in terms of cold-blooded premeditation, calculated wickedness and ruthless terrorism — all phrases used during a broadcast in which I took part yesterday.

If the death penalty is to be directed to such categories, and to such categories alone, it will be reintroduced for appreciably less than one quarter of all the murders carried out in the United Kingdom. It will not be reintroduced for murder by the mentally sick. It will not be reintroduced for murder by the suddenly deranged. It will not be reintroduced for murder by the unbearably provoked— often the family murders to which the Home Secretary was right to draw our attention. If capital punishment is to be brought in as a deterrent, we are talking about the prospect of it deterring about one murder in five at the most, giving the argument every credit that is possible. It will not deter four fifths of murderers. Even those most passionately committed to capital punishment do not want capital punishment to cover those categories, and four fifths of murders are motivated by a passion which does not allow the consequences to be considered.

Even if the deterrent claim can be justified, its effect on the murder rate in Britain will be neglible. Indeed, I go on to say — I have said it in the House on many occasions and I must say it again today — that there is much evidence to support the view that the hanging lobby has done a great disservice to law and order in Britain by campaigning for capital punishment as if it were a real, quick and certain remedy for all forms of violent crime. By talking about hanging as if it would deter everything from terrorism to armed robbery——

Sir Edward Gardner: Why does the right hon. Gentleman keep referring to hanging? What we are debating today is capital punishment—[HON. MEMBERS: "Oh, no!"]—and he knows that as well as anyone else.

Hon. Members: Irrelevant.

Mr. Hattersley: The hon. and learned Gentleman will have heard some of my hon. Friends say that his intervention is an irrelevance. They are only partly right. I assure him that in a moment I want to consider the suggestion, which I thought he would not make, but others less experienced might, that somehow the entire process

[Mr. Hattersley]

could be made more morally acceptable by shooting, gassing or injecting. In my view that would not change the moral implications by an iota.

Before I do that, I want to complete the point that I was making. By talking as if capital punishment were the sure and sovereign cure for all our problems of crime, the hanging lobby has diverted us from the steps which we should have taken. They are less spectacular, less newsworthy, less likely to attract newspaper attention and provoke headlines, and could have made a more peaceful society in Great Britain.

Sir Robert Mark, writing in *The Times* and *The Sunday Times,* made the same point. He said that we should concentrate on the certainty of detection and conviction and that hanging was, by and large, an irrelevance. Time after time the hanging lobby repeats the old remedies and the venerable prejudice that capital punishment deters. I tell the hanging lobby what every informed person knows —that there is absolutely no evidence to support the view that capital punishment is in itself a deterrent.

If we compare abolitionist and retentionist countries and countries before and after abolition, we find that there is no evidence to prove that execution reduces the murder rate or reduces crimes of violence. The Home Secretary said as much today, and his predecessor put the figures into proper perspective, when, rather more robustly four years ago, he said:

"the only sensible conclusion to reach is that their evidence is inconclusive."—[*Official Report,* 19 July 1979; Vol. 970,c. 2047.]

If the deterrent case is to be accepted, if we are to vote for capital punishment as a deterrent, we at least ought to be sure that it deters. If we are to hang men and women by the necks until they are dead, we ought to do it on more than a hunch, a superstition, a vague impression or the anecdotes that follow Rotary Club lunches. Unless there is some positive proof that hanging deters, the case for hanging cannot be made even by its most sophisticated proponents.

They cannot provide that case. I must provide for them the other statistic, of which we are certain. Had hanging not been abolished in 1964, at least five innocent men would be dead today. That seems to me, and to almost all the people who have commented on the facts, the only statistic about which we can be sure in this entire debate.

Two minutes ago the hon. and learned Member for Fylde (Sir E. Gardner) asked why I talked about hanging. I know that there are some people—I am sorry to hear that he is one, if that is the category in which we find him —who want an alternative form of execution. I hope that anyone who talks airily today of the alternatives will answer some of the questions about how they might be used.

A year ago the then Home Secretary urged all supporters of gassing, injections or firing squads to read the Gowers report on the alternative forms of execution. That report shows that all the alternatives to hanging are equally macabre and corrosive to a civilised society. The capital punishment lobby must not hide behind the pretence that there is some decent alternative to the rope and the long drop. I ask them to read——

Mr. Allan Roberts (Bootle): Is my right hon. Friend aware that the gallows in Wandsworth prison are still in working order, that they are kept there to hang people who have committed crimes of treason, violent piracy or arson in the royal dockyards? Is not the very presence of those gallows, which are kept in working order, an insult to a civilised society? Will he and others in the House support the abolition of capital punishment for those crimes as well by voting for the manuscript amendment which I and the hon. Member for——

Mr. Speaker: Order. The hon. Gentleman must not make a speech.

Mr. Hattersley: I agree that in a truly civilised society we would be against capital punishment in any form, including for the most recherché and esoteric of crimes. However, today we are debating, not the theoretical possession of that punishment for use on occasions that will never arise, but the practical reintroduction of capital punishment in the real world for real crimes. It is important to concentrate on that. We must not shelter behind the idea that there is an alternative to hanging which makes judicial execution more acceptable.

The fact is that it is not the method of execution that degrades society, but the fact of execution itself. We must concentrate on that. Anyone who believes that there are better ways to do the thing decently might—I make an unusual request for me—read today's copy of *The Sun.* That newspaper describes the whole sordid, degrading, dehumanising process of judicial execution. It makes it clear that it is not the method that counts, but the decision to take a life which demoralises us all: it is the act of judicial execution itself.

I quote *The Sun* because I do not believe that it is possible to overstate the importance of that newspaper's leader today. We all know that the Bar, the Bench and the bishops are against capital punishment. They are all formally against captial punishment. They can be scoffed at as members of the liberal, enlightened establishment, but even *The Sun's* most bitter critics have never accused it of coming into that category. Yet today that newspaper describes hanging as

"turning a civilised society into a brutal and brutalised nation."

I am happy to pay my tribute to *The Sun* for putting the position so firmly and succinctly.

That judgment must be true if we merely—"merely" is an inadequate word—restore capital punishment for terrorist killings. The hon. and learned Member for Fylde, with his characteristic honesty, speaking on the radio last Sunday, said that this was the proposition on today's order paper which it was most difficult for the supporters of capital punishment to justify. That is right, because the proposition is based on blind prejudice rather than cold logic. It is all the more disturbing, therefore, that the Home Secretary will vote for that amendment tonight.

It was not clear from what the Home Secretary said whether he proposes that execution for terrorist murders should be the punishment in Northern Ireland and the United Kingdom as a whole, or whether capital punishment should be introduced for Great Britain alone.

Mr. Brittan: Both.

Mr. Hattersley: The Home Secretary says "Both". That enables me to make a point that is central to the debate. He can tell us that when we talk about terrorist murders there are other forms of terrorism and that he wants to take action against them. He knows, if he is as honest as he wishes to be, and normally struggles to be, that when we debate terrorist murders in the House and

outside, by and large we think of Northern Ireland and the effects on Northern Ireland. Therefore, I ask the Home Secretary two question: is he really coming to the House to propose, and vote for, executing men who have not been convicted by the jury system? Is that what he proposes should happen in Northern Ireland? Perhaps, as the afternoon goes on, the Home Secretary will tell us whether in 1983, in a civilised, democratic society, he is proposing that men who have not been convicted by their peers should be executed. Merely to describe the proposition is to show that it is wholly unacceptable.

I wish to make three further points, all of them concerning Northern Ireland. Having asked the Home Secretary one rhetorical question and received not so much an inadequate answer, as no answer at all, I must ask him a second question. Does the Home Secretary realise that by introducing such a proposal he will concede one of the IRA's most passionate demands — that its crimes be treated differently from other people's crimes? It is a long-established principle in this country that the man who shoots a soldier should not be treated in any different way from the man who knifes a bookie's runner and steals his cash. We have always argued that two horrible crimes cannot be given different legal or judicial treatment because the man who commits one of the crimes claims that he is doing it for some special reason or from some special motive.

The IRA wants that distinction to be made. If the Home Secretary has his way, we will for the first time in our law distinguish between terrorists and common criminals. That is madness in terms of the Northern Ireland prospect. Hanging such men will mean that by their deaths they will make a far greater contribution to the cause of Republican violence than they would have made by their lives. In the eyes of thousands of Irishmen who now despise terrorism and detest the killings, suddenly the British Government will become the instrument of violence and the oppressor.

When I last said that to the House, one Conservative Member said that the martyrs would be not the hanged IRA terrorists, but their dead victims. The problem is that it will not be seen that way in the IRA recruiting areas. Nor will it be seen as a deterrent among the IRA. The Northern Ireland terrorist has virtually no concern for human life, the lives of his opponents, the lives of innocent bystanders, or even the lives of his own supporters. Terrorists have persuaded men to die on hunger strike — indeed, they have terrorised them with threats against their families if they abandon the hunger strike. In future they will organise, glory in and, worst of all, benefit from, the execution of their members. It is absolute madness to provide them with such a weapon.

The Home Secretary warned us about various visions of terrorism and asked us not to accept the terrorist on his own definition of his character and conduct—and nor do I. But I ask the Home Secretary not to take comfort in the sentimental notion that all bullies are always cowards. The people with whom we are dealing in Northern Ireland are certainly vile, but weak and undertermined they are not. We must not pretend that they are something out of a *Boy's Own Paper* story. They must be dealt with in the most effective way, and judicial execution would be to play into their hands.

I conclude as I began, by making it absolutely clear ——

Mr. Norman St. John-Stevas (Chelmsford) *rose*——

Mr. Hattersley: No. I am sorry, but I must conclude so that the right hon. Gentleman ad others can make their speeches.

I conclude as I began. Were all the practical or pragmatic arguments against capital punishment not to apply, I should still resist its reintroduction. Supporters of capital punishment insist on comparing the crime rates before and after abolition, as though abolition itself had created a more violent society. The truth is something different. Violence has grown within our society during the past 25 years for many reasons. To legalise violence in the way proposed would make Britain not a more peaceful nation, but one in which violence had been accepted and institutionalised.

I very much regret the misuse of statistics that we have heard during the past six weeks, and will undoubtedly hear again today, but there is one other point that I regret even more—indeed, almost resent—and that is the suggestion that abolitionists think only of the perpetrators of crime and not of the crime victims. The victims, the potential victims and the relatives of the victims are, like the rest of us, men and women who will benefit most by living in a decent society where violence is loathed and rejected. That loathing must be directed against all violence—by the state as well as by individuals. By killing murderers we become too like the murderers themselves. The whole community is lowered to their standards. For that reason I shall vote against the motion and all the proposed amendments. For that reason I say with great pride that I believe that all right hon. and hon. Members in the Labour party will do the same.

4.45 pm

Mr. Edward Heath (Old Bexley and Sidcup): I wish initially to address myself to the general question of capital punishment. I think that my position is well-known to all hon. Members. For more than 20 years I have been opposed to capital punishment for all crimes of homicide, and I have always voted against it. I intend to do so tonight. My position is not only as strong as it ever was, it has been confirmed in recent years.

For nearly 20 years capital punishment has been abolished in this country. My hon. and learned Friend the Member for Fylde (Sir E. Gardner), who moved the resolution with great restraint and wisdom, wishes to change the status quo. He and those who support him must prove that it is necessary, in fact vital, to change the status quo. The onus of proof rests with him and his friends. When the House judges the issue and votes tonight, it should ask itself whether the proposer of the resolution and his supporters have proved beyond any shadow of doubt that it is vital to change the status quo.

In my judgment—and I say this with great respect for my hon. and learned Friend whom I have known for many years—he has not proved his case. He said quite frankly that he did not intend to rely on statistics. The Home Secretary rightly said the same. If they did, they would have to explain why the increase in homicides began long before the abolition of the death penalty and why the increase in ordinary crimes of violence has been many times greater than the increase in homicides. It is that factor which has produced attention in the public mind. The growth of lesser crimes of violence has been so

[Mr. Edward Heath]

great that the public has deduced that the only answer is to deal with homicide by capital punishment. That is a confusion in the public mind. A great deal rests upon us to remove that confusion.

My hon. and learned Friend did not introduce the question of retribution and revenge, although it was mentioned by the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley). I was saddened to hear murmurs in some parts of the House that appeared to support retribution and revenge. Quite frankly, from any moral viewpoint, I find revenge completely unacceptable. I do not believe that it is for the House to decide whether there should be revenge—*[Interruption.]* If some of my hon. Friends want revenge, I hope that they will say so and also state their position on other issues that they consider require revenge. It is not for the House or for Parliament to decide retribution either. That lies elsewhere at other times. That is why I cannot accept either of the arguments of revenge or retribution.

My hon. and learned Friend said that our purpose must be to secure the safety of the people of this realm to the greatest possible extent. That is the task of Government both externally and internally, and I agree with him entirely. The question at issue is whether the restoration of capital punishment will improve the security of the people of this realm? That issue remains unproven.

My hon. and learned Friend said that that is a matter of judgment. It is. Others would say that it is a matter of instinct—indeed that has already been said—but in my view the judgment, if it is in favour of restoration, is wrong. This is far too great a matter to rest on instinct. We need more substantial reasons than just instinct for changing the status quo.

I come next to the point which in recent years I have found more and more worrying and more and more impressive. I refer to condemnation by mistake. I find it impossible to accept a penalty that is irreveresible when it is so apparent that a number of mistakes have been made. One of my hon. Friends said on the radio that if no one else is prepared to hang people he is quite prepared to do the job himself—[HON. MEMBERS: "Which one?"] I ask him a rather different question. Because of his views, is he prepared to be hanged by mistake? I am not asking my hon. Friend to reply on the spur of the moment. I shall let him give due consideration to the problem before he finally makes up his mind.

I wish now to deal with the specific amendments on the Order Paper about the restoration of capital punishment in particular cases. In this respect, I emphasise what was said by the right hon. Member for Sparkbrook and in great detail by my right hon. and learned Friend the Home Secretary about the Homicide Act 1957. I agree with everything that my right hon. and learned Friend said about that. The Homicide Act 1957 was largely shaped by Viscount Kilmuir as Lord Chancellor. I was involved as the Chief Whip of the Government of the day in trying to bring together those who felt strongly about capital punishment and the abolitionists. The Government wanted to lift the problem out of the constant battle in the House of Commons and try to get public support for a final position. That Act lasted for only eight years. It failed, as the Home Secretary said. It failed because the general public was not prepared to support an Act—nor was the judiciary for that matter—which said that one kind of murderer was worthy of the death penalty and that another kind was not; that if a public figure was shot crossing Trafalgar Square that was a matter for the death penalty, but that if a man poisoned his wife that was a matter between the two of them and did not deserve the death penalty.

There is a basic lesson here about trying to pick out particular aspects of homicide for the death penalty. I believe that the public would quickly say "Yes, if there is to be a death penalty, is not such and such a case also worthy of it?" That is the fundamental argument of principle against trying to select particular aspects of homicide as justifying the death penalty.

If there is to be a selection, I regard the case for the selection of terrorism as the weakest. If murder of the police or prison warders were to be selected, I think that the public would say that those people have a rather better chance of looking after themselves than they, the innocent public. Terrorists present great problems. I think that the Home Secretary is underestimating the determination of terrorists in Northern Ireland and elsewhere, quite regardless of death, to carry through their purposes. Even if one is dealing with Arab terrorists, one finds that very few of them are paid marksmen. If they are paid marksmen, they will weigh up the risks against the penalties. If money is what they want they will take the risk. Therefore, I cannot see that the argument for capital punishment for terrorists is a powerful one. I come now to the definition of terrorism, the importance of which I hope my right hon. and learned Friend will not underestimate, as he glossed over it this afternoon. If there is to be the final capital penalty for terrorism, there is the problem of judges and juries deciding whether a person is a political terrorist. There has been criticism in the Province of attempts to deal with the IRA on the basis that its members should, when arrested, be treated as political prisoners, and it has been said that that is an immense mistake. Exactly this definition, as has so rightly been pointed out, would have to be made permanently for capital punishment if the amendment were agreed. I do not believe that one can gloss over the issue of defining terrorism or of how a jury and the judge would handle it.

Even more important — as the Home Secretary emphasised—is that there is no hope of returning to jury verdicts in Northern Ireland. One will not persuade a jury to convict if there is the death penalty. My right hon. and learned Friend then referred to a judge and perhaps two assessors. But is the Northern Ireland judiciary in favour of dealing with IRA terrorism by a judge and two assessors? I cannot believe for one moment that the judiciary would accept that. I lived through all the problems of 1970 to 1974 and have been back to Northern Ireland many times since. I know the views of the people there and, leaving aside the impact on the IRA, I cannot believe that our judiciary or the Northern Ireland judiciary would be prepared to deal with these cases with an assessor sitting on each side.

Therefore, as my right hon. Friend the Secretary of State for Northern Ireland has already said, it is out of the question for practical reasons to apply capital punishment there. But, we cannot punish terrorist murderers on the mainland by imposing the death penalty if we do not do so in Northern Ireland. The number of cases here is comparatively few—a few Arab and other terrorists—but from the public's point of view, let alone all the other considerations, it is impossible to deal with an Arab

terrorist who shoots the Israeli ambassador in one way but to deal with the same crime differently in Northern Ireland, which most people consider to be the home of terrorism. Amendment *(e)* therefore is entirely impractical.

I am astonished—I must not say that—I was taken unawares by the fact that my right hon. and learned Friend the Home Secretary argued as he did. His argument did not seem to deal with any of the basic problems of making terrorism a separate capital crime. Other European countries have had great problems with terrorism—for example, the Federal Republic of Germany and the Italian Republic. They have dealt with those problems not by bringing back capital punishment, but in other ways, largely by effective police action and by reducing the status of the terrorists so that they could not gain public support. The same is true of the Netherlands. I do not support the argument that we of all European countries should have to reintroduce capital punishment to deal with terrorism.

I conclude with these points. First, we must consider what changes there have been over the past 20 years. One change has been the immense growth of the media—television, radio and the press — and the almost complete removal of privacy. The media's impact in rousing public feeling on the occasion of an execution would by many times what it was in the days before the abolition of capital punishment. One cannot encourage a deeper feeling for the spirituality of man when he is being influenced all the time by the media dealing with executions in that way. That in itself is a powerful argument against capital punishment.

When one considers what has happened in the few states of the United States that have restored capital punishment, one realises the growth in the influence of the media over the past 20 years. It is seen in the horrifying stories that appear before, during and after an execution, especially when men plead for death, which shows that death is not for them a deterrent. I believe that the impact on people is terrible.

Secondly, I am sure, having listened to these debates for 30 years, that the constant emphasis on capital punishment is preventing us from giving real attention and real resources to the problems of crime in a modern democracy. The Government have done a great deal. At one stage criminals had much greater resources than the police. They had better radio facilities, modern communications, such as the use of motorways and other technical devices as well as more up-to-date firearms. The police have now caught up a great deal. We must recognise that if we really are to tackle the penal problems of the country we must turn our attention to that, instead of automatically saying that the answer is hanging and flogging.

I hope, therefore, that this debate can settle it for this Parliament and for many years to come. If my hon. and learned Friend the Member for Fylde (Sir E. Garner) is right about that—he said that it might be the last time Parliament would vote on the issue — then I warmly support the fact of him having put the motion forward—though I want to see it defeated—I hope for the last time.

I can claim to speak with a certain amount of experience. When one first comes into the House, one faces many pressures in relation to the way in which one should vote. This has therefore become an early test for many of the victors in the recent general election. My career in the House, covering 33 years, has not been entirely without controversy. I think back to debates on Suez, the abolition of resale price maintenance, the European negotiations, the war in the Middle East, the whole reform of the trade union movement and, for more than 20 years, the abolition of capital punishment.

I can say with honesty to every person who has had the privilege of entering the House that, having said clearly where I stood, and having explained to my constituents why I took up the position that I did, they have accepted that as being the right of their Member of Parliament. I hope that that will always be the case. It is the basis of the British constitution; we are not mandated, we cannot be mandated, by a selection committee, by a constituency committee or by the public as whole.

This is the occasion, above all, when we must use our own judgment. I hope that tonight every hon. Member, and particularly new hon. Members, will feel free to use their judgment. I do not believe that the case for the reintroduction of the death penalty has been proved and I therefore urge the House to reject the motion and all the amendments.

5.03 pm

Mr. Roy Jenkins (Glasgow, Hillhead): The speech of the Home Secretary—a speech similar to two on this subject which I delivered from the same position during the 1970s—left me bewildered. He began by setting out the good, clear, reasonable test of saying, "Let us judge the issues by the test of public safety. Let us, in a way, put old prejudices behind us and look at it afresh from that critierion"—and on the whole I would be prepared to go along with him on that—but he then proceeded, coolly and rationally—and to me persuasively—to destroy the case for capital punishment on all the amendments but one —and then he came to terrorism.

As soon as the right hon. and learned Gentleman did that, he galloped through — as a sort of tribute to differing views in the Cabinet—a catalogue of the case put forward by the Secretary of State for Northern Ireland, and proceeded to face none of the issues invloved in that case. He elided off into some general asseverations in which he completely deserted the test of public safety and the rational approach which he had previously applied. He went on to say that terrorist crimes had to be viewed with such repugnance, because they were crimes against the state, that we should not apply those rational tests but should use the final supreme penalty without regard to whether it would work or increase public safety.

There are enormous dangers in that approach. It implies that other crimes, however bestial they may be, are not regarded with the same repugnance. That is a dangerous view to take. It also means that we are moving away from looking at the matter clearly and cooly, as the right hon. and learned Gentleman started by doing. He made a good speech to begin with, but it was fatally flawed and so it became a sorry performance at the end of the day.

The right hon. and learned Gentleman cannot get away with not answering the questions to clarify his position which were put to him by the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) and which I shall repeat, because if he does not answer them, I must tell him, as somebody who has twice occupied his office

[Mr. Roy Jenkins]

and spoken from the Dispatch Box in very similar circumstances, that he will be neglecting his duty to the House as Home Secretary.

I shall deal, because it is the essence of the matter, almost exclusively with the terrorism aspect, and I come immediately to the two points which the right hon. and learned Gentleman must answer. First, the vital issue is whether the supreme penalty—if that is what one is to call it — is to be used in Great Britain only or in Northern Ireland as well.

I remember that in a debate in 1974 the right hon. Gentleman who is now the Secretary of State for Education and Science put forward the extraordinary proposition that it should be used in Great Britain but not in Northern Ireland. I say "extraordinary" because the nature of the threat in relation to the population is, on the record, 600 times as great in Northern Ireland as it is in Great Britain.

It is, therefore, an extraordinary proposition to say that it is a uniquely valuable deterrent but that we should use it where the threat is relatively small and not use it where the threat is 600 times greater. There could be no possibility, no basis in logic or morals, of doing that.

If, in the United Kingdom as a whole, including Northern Ireland, it were to apply, how would we obtain convictions? As we know, trials for terrorism in Northern Ireland are by the so-called Diplock courts, judges without juries, because it is almost impossible to get jury convictions for terrorism in the Province. Is the right hon. and learned Gentleman really saying that one could hang a man or woman——

Rev. Ian Paisley (Antrim, North) *rose*——

Mr. Jenkins: Is the Home Secretary saying that, for the first time for centuries, one could hang a man or woman in a part of the United Kingdom without a jury trial?

Those are the two points on which we must have the clear view of the Home Secretary. Let me make the questions absolutely clear, so that there is no question of his dodging them. Is he proposing that the death penalty should be used in both Northern Ireland and Great Britain? Will he therefore abolish the Diplock courts and, if so, how would he hope to get convictions?

Mr. Brittan: I am sorry that the right hon. Gentleman did not find it possible to get the answers that he seeks from my speech. Had he listened carefully he would have heard them. However, I am happy to deal with the matter in this way, though it is slightly curious that he should find it necessary to make allegations of an unfounded kind about whether or not one is prepared to answer his points.

I made it clear that I did not think it was possible to distinguish between Great Britain and Northern Ireland for these purposes. I also made it clear that I fully recognised the difficulties in relation to convictions by jury in Northern Ireland and that I did not expect that to be restored. I spoke of one possibility that had been mentioned—not by me, but by those who favoured this course — namely, that trials in Northern Ireland for offences of a capital kind should be conducted, not by a single judge but by a judge with assessors or by a panel of judges.

Mr. Jenkins: It was not unreasonable of me to ask the right hon. and learned Gentleman to clarify that, because I do not think it was clear from his speech to any hon. Member. [HON. MEMBERS: "Hear, hear."] The right hon. and learned Gentleman is now saying, having clarified one point totally and satisfactorily, that there would be no distinction on either side of St. George's Channel. The right hon. and learned Gentleman is also saying, and this is less clear——

Mr. Brittan *rose*——

Mr. Jenkins: The right hon. and learned Gentleman should not be so impatient. He is floating a possible idea and not submitting a clear proposition. He has no idea whether the procedure of a judge and assessors would work, and he has no idea whether the judiciary would accept it. However, he is proposing that in the peculiarly delicate circumstances of Northern Ireland there should be hanging—as I have said, this would be for the first time for centuries—without trial by jury. That is one of the most extraordinary propositions that a Home Secretary or any other Cabinet Minister has ever put before the House.

Mr. Nicholas Budgen (Wolverhampton, South-West): Will the right hon. Gentleman allow my right hon. and learned Friend the Home Secretary to say whether the judiciary in Northern Ireland has said that it would sit with assessors in accordance with the idea that he has floated?

Mr. Jenkins: That is a relevant question, but it would probably be better if the hon. Gentleman were to put it to the Home Secretary in his own speech. I do not think that the system which the right hon. and learned Gentleman has proposed would work. If we are to have capital punishment for terrorist crimes, and if we are to extend that to Northern Ireland, we shall have to return to trial by jury in Northern Ireland. That will result almost certainly in terrorists being hanged occasionally, with the most dangerous repercussive effects. The majority of terrorists would be acquitted and be free to carry on their nefarious trade.

I have no doubt that the dangerous repercussive effects of judicial killing for terrorist crimes in Northern Ireland, or in this country, would be there, and strongly there. That is why Viscount Whitelaw, as he now is, abolished it in 1972. His reasons are set out in the statement that he put before the House in that year. Those reasons have convinved everyone, with the exception of one individual, who has had any responsibility in Northern Ireland over the past decade or so that many innocent lives might be endangered by employing judicial killing.

I had to deal wth hunger srikes, including the hunger strike of the Price sisters, and I was enormously aware of the dangers, which cannot be remotely underestimated. The Price sisters were two girls who threatened to kill themselves. If the issue had been whether they were to be killed on the gallows, think how much more explosive the position would have been. Is there a balance between a dangerous repercussive effect and a deterrent effect? None of us is moving in a realm of absolute certainty, but that seems a particularly difficult case to argue in terms of terrorists, especially Irish terrorists.

A hunger strike that will lead to death is an immensely powerful and obvious example that is present in all our minds, and so I shall not weary the House with it. However, no one can pretend that being an Irish terrorist is to have a safe occupation. Irish terrorists kill themselves by the hundreds, and always have done. In the psychosis

of Northern Ireland terrorism, death is very much the basis of the trade. No doubt the primary desire of terrorists is to deal it out to others, but on the whole they are willing for it to be part of their grisly trade. The position of the funeral in the mythology of Irish terrorism is an eloquent tribute to that.

There are some who will say that those considerations apply only to the hard core of fanatics. They acknowledge that by hanging we might create a few perversely triumphant martyrs, but argue that the essential supporting baggage team would be deterred. I do not agree with that argument. For example, we cannot hang landladies who provide safe houses. We cannot hang mothers who shelter their sons. We cannot hang women who shelter their husbands. We cannot hang boys of 13, 14 or 15, and they would be increasingly involved in terrorism. No one is suggesting that we would do so and we must not pretend that we could. There is no question of the House or the country doing that. That being said, do not let us pretend that we can deter the baggage train. Do not let us pretend that we can do something that we cannot. Let us not deceive ourselves that we can create a great weapon of deterrence, only to face the humiliation of seeing it break in our hands.

Irish terrorists may be the primary problem, but the problem does not end there. One of the last acts of judicial execution in western Europe was carried out in Spain, where five terrorists were executed in October 1975. What was the deterrent effect? Nine policemen were shot in the following two weeks. I am convinced that hanging or any other form of judicial killing for terrorism would increase public danger rather than increase public safety. I do not go as far as that in respect of the amendments, but the case in favour of them is unproven.

I, too, have had responsibility for the police. We all have a great regard for their exposed position. I am convinced that if the police were to be singled out for protection and girl bank clerks who resisted armed robbery were not, public-police co-operation would be damaged. That co-operation is crucial to the success of the police in the front line in the fight against crime.

If we look back over the history of the capital punishment controversy, I think the House will agree that the Bentley case, a police shooting case, was one of three cases to drive nails into the case for capital punishment and led to its abolition in the mid-1960s. In my two periods as Home Secretary I was concerned with at least 10 cases of capital conviction. There was not capital punishment in all of them, because the sentence did not exist throughout my time as Home Secretary. However, hanging took place in some of the 10 cases where the convictions were either clearly wrong or where there was a lingering flicker of doubt. There were only 186 capital convictions in the 20 years after the war when capital punishment existed, but the ratio of doubt to certainty was too high. The finality of the punishment is too great for the certainty of human judgment.

I hope that the House will vote clearly and consistently on all the propositions before it. There are some who might say that it would not matter if one or two votes went in contrary directions, but if proposed legislation were framed in that way it would never pass through Parliament. I certainly do not think that it would if the Home Secretary had responsibility for drafting it. That may be a tempting proposition for those who, like myself, do not wish the majority of the Government's legislative programme to pass through the House, but it would not be good in general. It would be bad for the Government's position, bad for Parliament, bad for the integrity of the law and bad for the protection of the public. Let us settle the issue in all its aspects, and let us do so now. We are a new Parliament and we have all been in recent contact with our constituencies. Presumably we have all made our views clear on these issues—certainly I have. Let us give a clear answer to the motion and all the amendments.

Mr. St. John-Stevas: On a point of order, Mr. Speaker. This is a debate on a private Member's motion, so presumably there will be no Government reply. The right hon. Member for Glasgow, Hillhead (Mr. Jenkins) raised two most important questions on which the House must know the view of the Home Secretary before it can make a judgment. The first question has been answered, but answer to the second one about Northern Ireland and what judicial process, without a system of trial by jury, the Home Secretary recommends should be used before the death penalty is imposed, we do not know. Will there be an opportunity for the Home Secretary to speak again in the debate to make that vital position plain?

Mr. Speaker: If the Home Secretary were to show that he wished to speak again and he had the leave of the House, that would be in order.

5.21 pm

Mrs. Edwina Currie (Derbyshire, South): There are many in the House who are both more experienced and more eloquent than me, so I intend to be brief.

I shall vote in favour of the return of capital punishment. In doing so, I should like to challenge two of the criticisms that were made, one by the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley), who seemed to imply that all the morality in the debate was on the other side. It is not. The other criticism that is frequently made is that those of us who support capital punishment are somehow seeking vulgar popularity and playing to the gallery. Some of those people may glory in this horrible and gruesome business, but I am not one of them.

For me, to vote in favour is to vote with great sadness. Had I been in the House in the 1960s I would have voted for abolition. At that time, it seemed to be a humane act, a great and wise act. I wish that it had worked. Suppose that since then crimes of violence had declined in number weapons had become almost unknown in crime and the number of murders had become minuscule. By standing the figures on their head in that way, we can see what terrible things have been happening in society.

Reference has been made to the number of murders, but whether someone dies is a matter of circumstance — whether he is near a hospital or the surgeon is skilled enough. My right hon. Friend the Home Secretary rightly drew attention to the overall level of violence. I have the report of the chief constable of the county of Derbyshire for 1982, which covers my constituency. Derbyshire is a pleasant and attractive area. By no means could it be said to have the problems of our great cities, including Glasgow. Last year there were four murders, three of which were cleared up. There were two manslaughters, both of which were cleared up. Recently there were two nasty murders in Derbyshire. The level of violent crime in Derbyshire has been rising steadily. Since 1978 — in

[Mrs. Edwina Currie]

other words in the five years for which we have figures —the level of violent crime has gone up by 18·5 per cent. In 1982 it had risen 5·5 per cent. since 1981. That is the tragedy of our society today.

Something is wrong. We seem to have become a lawless and dangerous society in which brutality no longer shocks but becomes commonplace, and in which the carrying of weapons of all kinds in the furtherance of crime has become an every day matter. From many people there is the cry that something must be done. Our sense of natural justice is offended. My sense of natural justice is offended by the feeling that there is no appropriate response. Why should decent citizens go in fear of their lives? If the abolition of capital punishment has anything to do with it or is in any way to blame, and if any criminal sees its disappearance as condoning his activity, its return may help to reverse that trend.

I accept that the return of capital punishment alone is not enough. It is what the philosophers call necessary but not sufficient. Other action is urgently needed. I would support reform of the shotgun laws, the Bail Act 1976 and other measures, but capital punishment is seen by many as an essential element in the return of a firm approach to deal with crime and the criminal at the worst and most evil edge of our society.

Therefore, the death penalty would be a deterrent to all violence, just as its absence has been seen as condoning it. A successful vote for its return would state more clearly than anything else that we could do, our abhorrence of violence and its results.

5.26 pm

Mr. Robert Kilroy-Silk (Knowsley, North): I well understand the deep feelings expressed by the hon. Member for Derbyshire, South (Mrs. Currie). I appreciate the emotion that underlay her words, but the issue must be decided not by emotion or feelings and not even by instinct, but as a result of a careful, objective and dispassionate analysis of the facts. That is the way in which the House should proceed. It is the way in which the House has proceeded in the past.

There are strong moral arguments against the reintroduction of capital punishment, but apart from them the practical arguments against the reintroduction of hanging are powerful and overwhelming. Capital punishment is inappropriate as a penalty and ineffective as a deterrent. Those who commit the overwhelming majority of murders in a family or domestic circumstances in a spasm of emotion or a fit of rage or as a result of mental instability, are not likely to kill again. In fact, most of them commit suicide shortly after they have committed the murder. In any event, they are not susceptible to an act of deterrence. The penalty would be inappropriate and ineffective for most murders.

Therefore, we have to search for other categories of offenders for whom capital punishment, might act as a deterrent. It is at this point that the debate becomes absurd and riddled with anomalies and totally indefensible injustices. For example, two of the amendments suggest that capital punishment should be available for the murder of a policeman or prison officer in the course of his duty. I do not wish to minimise the importance of the job carried out by policemen or prison officers, but I cannot accept that their lives are any more valuable than the life of a sub-postmistress or a security guard. I cannot even accept that they are in greater danger of death or disability than, for example, miners or construction workers. The evidence does not suggest that the return of capital punishment for the murder of policemen or prison officers is likely to act as a deterrent. The figures for the deaths of those two categories of individuals have not substantially changed since the Homicide Act 1957. The average is that, every year since 1957, there have been no murders to two murders of policmen, with the exception of two years.

The same consideration applies to the suggestion that capital punishment should be available for murders by shooting or explosions. Neither I nor my constituents can accept that they are any more despicable a means of killing people than a slow death by strangulation, garrotting or cutting someone's throat. The same considerations apply to murder during a theft. Why is a murder in the course of theft more horredous, despicable or shocking than murder in the course of rape? Why is it more shocking than the murder of a child? Of course it is not.

What hon. Members who support the motion and its amendments are asking is that we erect a hierarchy of murder and establish a scale with the more despicable murders at one end and the least repugnant at the other end. It is not possible to do that and if it were it would be indefensible and invidious. Those considerations apply most powerfully and convincingly to the suggestion that we reintroduce capital punishment for murders carried out in the course of terrorism. I agree with the right hon. Member for Old Bexley and Sidcup (Mr. Heath) that that is the least defensible of the amendments.

It is extraordinary and amazing, as the right hon. Member almost said, that the Home Secretary should suggest in a convoluted way and without substantial logic, evidence or experience that we should vote for the return of capital punishment for terrorism. Such an action is most likely to cause more innocent lives to be lost. It would be utterly unacceptable for a man's life to be taken judicially without the unanimous verdict of a jury. With a jury, it would be difficult if not impossible to obtain and sustain a conviction.

In any event, terrorists are by their nature unlikely to be deterred by capital punishment. They risk their lives every day that they carry a bomb or fire a weapon. They risk their lives to the extent that 229 of them have been killed while committing terrorists actions in the past 14 years. In 1981, another 10 took their lives by a long slow, agonising and painful process. Such men are not likely to be deterred by the thought of a British Government taking their lives in cold blood by judicial means. For the Government to do that would be to make martyrs and heroes of them. That would be utterly unacceptable to the British people.

We all know what happened as a result of the deaths of the 10 hunger strikers. We know of the sympathy that was wrongly aroused for them throughout the world and the enormous sums of money that poured into the IRA's coffers from Britain and especially the United States because 10 terrorists chose to take their own lives slowly. If that can happen, how much worse would it be if the British Government were seen to be taking those lives after a long, considered, and calculated assessment of the evidence? The consequences would be horrendous in terms of the taking of hostages and reprisals on the lives of innocent people.

The Home Secretary is wrong, as are those who support amendment (e), to suggest that, by reintroducing the death penalty for acts of terrorism, we would reduce terrorism or the number of innocent lives that are lost. Exactly the reverse would be the case. Those hon. Members who might be attracted to amendment (e), not least because it has been given official approval by the Home Secretary, must weigh carefully whether such an act is likely to lead to more rather than less violence and more rather than fewer deaths. I suggest that more innocent lives would be lost. For those reasons and many others I ask hon. Members not to be beguiled by the Home Secretary's erroneous arguments.

There are powerful arguments against following the Home Secretary's suggestion. There are also strong arguments against the reintroduction of capital punishment for any of the other categories. The debate is a side show. What we are discussing is irrelevant to the real problems. The real issues are unemployment and the serious rise in serious crime. We should be addressing ourselves to those issues. We delude ourselves if we believe that by passing any of the amendments or the motion we shall solve any of the real problems or make any significant contribution to the reduction, which we all want, in serious crime. In any event, the return of capital punishment is another Victorian practice that is favoured by the Prime Minister that the country can well do without.

5.34 pm

Sir Ian Percival (Southport): For once, I can agree with the hon. Member for Knowsley, North (Mr. Kilroy-Silk), when he said that these issues should not be decided on emotional grounds. I agree agree with him and with my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) that we are discussing only one part of the much wider subject of crime and punishment and that it is one which sometimes obscures the other issues. However, that does not in any way detract from the fact that on its own this is a subject of immense importance to the House and the country.

I also agree with my right hon. Friend the Member for Old Bexley and Sidcup that decisions on this issue are entirely a matter for individual judgment. But from there I part company with him and the hon. Member for Knowsley, North. My judgment is that the ultimate penalty should be part of the armoury of weapons with which the state should be equipped to protect its citizens from the risk of being murdered. In that judgment there is none of the morbid preoccupation of which the right hon. Member for Sparkbrook (Mr. Hattersley) spoke, and which seemed to characterise so much of what he said —and so much of what the right hon. Member for Glasgow, Hillhead (Mr. Jenkins) said. Nor is there the least element of a thirst for blood or revenge in my decision. I have formed the view which I shall now try to express by having listened in the House over the years to hours and hours of what I have always thought to be some of the best debates we have, in which hon. Members speak independently from their heads and their hearts.

I have reached my conclusions on two practical grounds. First, I believe that the ultimate penalty is a deterrent. I entirely accept that there is no way in which to prove that absolutely but, heavens above, there is nothing new about that. Many things are proved in court to the complete satisfaction of either the judge or the jury on much less than absolute cast-iron evidence. One does not normally get it. We have to approach the point in a practical way. No punishment deters everyone. Prison does not deter everyone. It ought to deter many people whom it does not deter, but I have not the least doubt that it does deter many people. Of course, the ultimate penalty does not deter, for instance, those who take the risk of killing quite deliberately. There are quite a lot of them. Nor does it deter the person who kills in a moment of passion. But I do believe that there must have been a substantial number of people who were deterred from killing, the thought having gone through their minds, by fear of the penalty.

The police gave us cogent evidence on this. In the early days during the debates about abolition, they said that the sophisticated up-market gangs who went for the big stuff would dismiss any of the gang who put a pistol in his pocket, because they knew the risks and how quickly a gun can be used even though its use was not intended, and how easily the entire gang could become liable to the death penalty. The police told us that if we removed that sanction such gangs would carry guns. They have been proved right. What we were told, what has happened and the logic of the argument impresses me. There is no way in which to measure deterrence but I am convinced, having listened to the arguments for many years that the death penalty was and would be a substantial deterrent. In my view, those who are at risk of being killed, and those whose duty it is to protect them, are entitled to demand of the state that it includes that deterrent in its armoury.

When I explain my second reason, I dare say that some people will accuse me of talking about retribution and revenge, but I am not. There are some killings that are so evil and deliberate than the only appropriate punishment —if we still think in terms of punishment, and I do— and the only form of expiation of sins—if we still think in those old-fashioned terms, and I do—is the exacting of the life of the person who took life.

Of course, I recognise the difficulties and the arguments put forward equally sincerly by others. I have considered those arguments over the years as carefully as I can. The possibility of mistakes is the most serious and places a heavy burden on those who have to administer the law when there is the ultimate penalty to ensure that there is no mistake. I recognise too the difficulty of identifying in which cases the penalty should be used, but here I differ in my conclusion from my right hon. and learned Friend the Home Secretary. I shall vote for all of the categories not because I want to see the death penalty in all of them but because I think we have first to decide the question in principle, and then get down to the identification of cases to which it is to be applicable. Once the principle has been decided, that second stage is of enormous importance.

I also recognise that questions must arise about the form of execution and its humanity or inhumanity. However, I think that the opponents of capital punishment too often overlook something. We are talking about taking life, but which is worse — leaving the State to take life in a humane way or to take somebody's life over 30 years, locked up in a cell with no liberty and disintegrating?

I see a sneer from a Member opposite but I ask hon. Members just to think about this. In these debates we have heard how, after 10 years in prison, a human being begins to cease to be a human being, disintegrates and becomes a cabbage. Those who say that execution is inhumane must

[Sir Ian Percival]

not draw the line there, but in espousing the alternative, locking somebody up for their natural life, must accept the inhumanity of that too.

Mrs. Jill Knight (Birmingham, Edgaston): While my right hon. and learned Friend is on this point, will he give us the benefit of his advice on, and knowledge of, a suggestion recently made that murderers who are particularly evil frequently take the lives of their fellow citizens while in prison and also those of warders and prison officers?

Sir Ian Percival: If my hon. Friend will forgive me, I will not develop that but it is something that has become more common since the repeal of capital punishment. Somebody in prison for the whole of his life has nothing to lose. However, I shall leave that point for others to develop, as I wish to be brief.

Execution in the case of terrorism is perhaps the most difficult part of the problem. Why is it different? First, it is because the acts in question are so often about as evil as one could possibly imagine. What could be more evil than blowing up a group of bandsmen in the park, or in fact worse still, of course, going to the door of a house and shooting the father in front of his children and wife as so often happens? The nature of the acts of terrorism are usually among the most evil that one can imagine, but that is not the end of the special seriousness of these acts. The motive for which they are carried out is to terrify people out of what they want to do or into doing what they do not want to do. It is the most direct intervention with the liberty of the subject by the most violent and evil conduct. If we are to have this penalty for anybody, why should we ever think of not having it for those who commit such evil crimes for such atrocious motives?

Rev. William McCrea (Mid-Ulster): I have come from looking at three charred bodies and the body of another of my constituents. Those four were brutally murdered today by the IRA. Does the right hon. and learned Gentleman agree that there are many hon. Members in this debate who seem to be more concerned about the guilty than about the innocent, and that the House owes it to the nation and to the widows and orphans of the innocent that the murderer is put down and the innocent allowed to live?

Sir Ian Percival: The hon. Gentleman has confirmed by a specific instance what I was saying about the evil nature of so many of these acts. However, I am sure that he will forgive me if I complete my speech in my own way.

Two reasons are given to show why one should not apply the death penalty to those who commit acts of terrorism. One is that we shall make martyrs, but this is the most upside-down argument I have ever heard. If some people are so evil that they will make martyrs of the people who have committed such evil, so be it. I do not believe that any significant number of right-thinking people will glorify such people.

The other and most serious reason given against executing terrorists, and the right hon. Member for Hillhead seemed to be getting close to it, is that we dare not do it because it would create more violence and there would be reprisals. I beg of the House one thing. If the House should reject capital punishment for terrorists, let it be made clear beyond any doubt whatever that it was not fear of reprisals that stopped us from doing it, for if it were to be thought that we were not doing it because we feared the consequences terrorism would indeed have scored an effective and important victory.

5.47 pm

Mr. Jack Ashley (Stoke-on-Trent, South): I was sorry to hear the intervention of the hon. Member for Mid-Ulster, (Rev. William McCrea), which seemed to suggest that those who support capital punishment believe that the opponents have no sympathy for the victim and are concerned only with the murderer. Nothing could be further from the truth. Those who are opposed to capital punishment—I am one of them—feel as deeply and as passionately as anybody else about the victims. There just happens to be a difference of view about what can be done about it.

We should be tough with violent crime. I am the only hon. Member who has introduced a Bill—this was some time ago—advocating that society should have the right of appeal against lenient sentences so that heavier sentences could be imposed on criminals. The Bill was defeated, but my proposal was that society should be able to appeal for heavier sentences, just as the criminal can appeal for lighter ones.

The right hon. and learned Member for Southport (Sir I. Percival) based his argument on two practical considerations, and I wish similarly to base my case for not restoring capital punishment on two practical considerations. I ask those hon. Members who are in doubt about voting tonight to bear in mind the experience of my constituent, Mr. John Preece who was convicted of the murder of a woman in Scotland. He was released eight years afterwards when it was discovered that the evidence on which he was convicted was bogus.

John Preece was convicted, not on some vague identification or some uncertain circumstantial evidence, but on the calm, cool, scientific evidence of a Home Office forensic scientist. Could anything be more impeccable than that? That was what the jury thought and convicted him of murder. Later, Dr. Clift, the forensic scientist, was discredited, both as a scientist and as a witness, by the Scottish Court of Appeal. His evidence was totally discredited.

If John Preece could be convicted on such evidence, which appeared to be foolproof, is it not much more certain that other people could be wrongly convicted? If there had been capital punishment when John Preece was convicted, he would almost certainly be a rotting corpse in a prison graveyard now, rather than walking the streets of Stoke-on-Trent.

That is just one example. There have been many more wrongful convictions. The House of Commons should not take it upon itself to impose such a risk, and such a shocking injustice, on innocent people, but that is what we shall do if we vote for the reintroduction of capital punishment.

Furthermore, I do not believe that capital punishment is a deterrent either to those who murder in hot blood or to those who murder in cold blood. By definition, those who murder in hot blood are not responsible for their actions and very few civilised societies accept that they should go to the gallows. Those who murder in cold blood regard death as an occupational hazard. In some cases they

regard it as a qualification for martyrdom. Let us not delude ourselves that terrorists will be deterred by capital punishment.

I was horrified by the Home Secretary's comments about the death penalty for terrorists, although not because I have the slightest sympathy for terrorists—either IRA terrorists or any of the other terrorists who come to Britain from all over the world. What will happen if a terrorist is condemned to hang as the result of our vote tonight? Hostages will be taken, and the Government will have to decide whether to go ahead with the execution of that terrorist or whether, in view of the threat to hostages, to back off. The British Government were faced with that dilemma in Palestine when terrorists captured two British sergeants and the Government said, "We will not give in to blackmail." "Fine" said the terrorists "in that case your two British soldiers will also die"—and die they did.

Let us assume that capital punishment is restored and that in a few months' time a terrorist is found guilty and sentenced to death. Terrorists from some countries are really ruthless. They will do the job properly. Let us realistically assume that they kidnap a dozen women and six children and threaten to kill those women and children if the condemned man is hanged. What would we do? No British Government can give way to blackmail, but no British Government could allow the death of 12 innocent women and six innocent children. That dilemma would have been created by those Members who voted for the restoration of capital punishment for terrorists.

I believe that terrorists should be punished very severely, but let us not send them to the gallows. That would only give them what they want and put the British Government in an impossible position. Those are the practical considerations which I would like the House to consider.

The call for capital punishment is a cry from the heart. It expresses an anxiety to do something about the evil of murder, and it must therefore be respected, but it is the wrong solution. It is impractical and does not deal with the real problem, which can be solved only by tackling the root of crime, by improving our police forces and by making many necessary improvements in our urban areas. Capital punishment is a dramatic, flawed and entirely false solution to the problem of capital crime.

5.58 pm

Mr. Albert McQuarrie (Banff and Buchan): I congratulate my hon. and learned Friend the Member for Fylde (Sir Edward Gardner) on giving us an opportunity to debate a subject of serious concern to the vast majority of the people of the United Kingdom. For many years there have been outbursts from the people that the punishment for crime has been far too lenient. Public outcry has followed the sentences for such crimes as the murder of policemen and prison officers, the rape of women and children leading to their death, and the murder of members of the general public because of the personal desires of political fanatics. It is small wonder that an estimated 87 per cent. of the total adult population have called for capital punishment to be made available to the courts again and I fully support that view.

During the past few weeks the media have consistently used the expressions "bringing back the rope" or "hanging", and today, the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) also used such expressions. There is no reference in the motion to the rope or to hanging or to the method by which capital punishment should be carried out.

Mr. Gerald Bermingham (St. Helens, South): The question is very simple. Will the supporters of the motion tell us what alternative method they have in mind? They have carefully sought to negate their arguments by saying that they are not talking about the rope, yet they will not say what they are talking about.

Mr. McQuarrie: If the hon. Gentleman had waited for a few seconds he would have heard my answer. I am confident that the judges and the men and women on the juries would be able to find a sufficient deterrent to fit the crime that had been carried out. I envisage punishment being meted out by people in the courts.

We must consider whether the restoration of capital punishment would be a sufficient deterrent to reduce the number of murders committed in the various categories that I have mentioned. We are discussing not only the criminal who commits solely one murder, but the restoration of the death penalty to deter terrorists who murder for their own political ends.

I am well aware that, as the right hon. Member for Sparkbrook said, the word "terrorist" is used mainly in the context of Northern Ireland. Like the Home Secretary, I wish to make it clear that the demand for the restoration of capital punishment for acts of terrorism applies to the United Kingdom. I need not remind hon. Members of the London and Birmingham bombings, the bus in Yorkshire, the pub in Guildford, the bandsmen in the park or the Horse Guards—to name but a few. All those killings, and many others, were carried out by those political fanatics, who kill without any thought for the lives that they destroy or for the misery that they leave with the bereaved families for the rest of their lives.

Those terrorists commit such acts because they are well aware that there is no deterrent that they will have to face if they are caught, that will result in their deaths. My right hon. Friend the Secretary of State for Northern Ireland has said that if we restore capital punishment for acts of terrorism that will affect Ireland more than any other area. I remind my right hon. Friend that it was he who presented the case in the House for the setting up of a Northern Ireland Assembly and urged us to vote in favour of it, on the basis that it would be a democratic vehicle to express Ulster's views.

I hope that it has not gone unnoticed by my right hon. Friend that last week the Assembly voted by 35 to 11 for the restoration of capital punishment, to include terrorism. My right hon. Friend set up that Assembly so that it could express its point of view about Ulster. If we say no to the amendment that I have tabled, along with other hon. Members, to the effect that capital punishment should be restored for acts of terrorism, we virtually concede victory to the terrorists.

The whole principle of terrorism, wherever it is carried out, is that by threatening death to members of the public, to police and prison officers, and to men from all services, its perpetrators can influence our political opinions. They therefore use the death penalty as their own deterrent to achieve their own ends. If my right hon. Friend the Secretary of State for Northern Ireland is so concerned about this matter, why cannot he give us factual information to show that the number of terrorist activities in the Province is being reduced?

[Mr. McQuarrie]

What about the man who has committed 20 murders in Ireland and cannot be found? What about intelligence, and the fact that we are unable to detect those who carry out terrorist activities? A man has committed 20 murders in the Province, yet he has not been located. Where is the intelligence service on that?

If it is accepted that terrorism will increase, it must also be accepted that it is high time that we managed to arrest those who carry out such a massive number of murders. It was not outwith the bounds of possibility for the Yorkshire Ripper to be captured, and it should therefore not be outwith the bounds of possibility for a criminal who has committed 20 murders to be apprehended as a result of intelligence work.

Another argument against the restoration of capital punishment for terrorism is that the hunger strikers were prepared to die for their cause, but do not let us forget — as the hon. Member for Knowsley, North (Mr. Kilroy-Silk) said—that they stopped at 10. They did so because they believed that the Government would stick to their policy and not give way to their demands. Who could name any one of those 10, with the exception of Bobby Sands? What can be said in truth is that they inflicted capital punishment upon themselves without the necessity of legislation.

If the amendment concerning those deaths that result from acts of terrorism is accepted, that will not suddenly stop the activities of the terrorists in Britain or Northern Ireland. On the contrary, it will give those cowards an additional incentive. But if we approach the matter properly, it will last only for a limited period. At present they have the capacity to carry on undetected, but they do not carry out their heinous crimes every day. If they could blow up the whole Household Cavalry they would do so right away, in one fell swoop. They would carry out bombings every day of the week. However, they do not do so because they want to create the impression that they are gentlemen and only do things now and again to prove their capability. Those terrorists try to create the impression that they are decent people. The concept that such men are brave in their comrades' eyes is bogus when one considers the cowards that they are. They commit their crimes only when they know that there is no chance of being caught or of any harm coming to them. They would carry on—just as the hunger strikers did—only until they reached a stage at which they could call it off, because by that time the deterrent will have been seen to be effective. If their own deaths were assured by their activities they would abandon those activities, because there are only so many martyrs who are prepared to go to their deaths. Those martyrs certainly do not include the leaders. Oh no; they stand back and direct the activities of highly trained fanatics who little realise the risk that they run and who have been brainwashed to think that it is all for the cause.

Those terrorists are trained to inflict the maximum damage without detection. They are trained by the PLO, in Lebanon and in Russia. Their training consists of an unusual political fanaticism. They are the fifth column of world domination by Communism. To them, death is irrelevant, and so their acts of terrorism justify the application of capital punishment that we seek. Cowardice is the character of these beasts and the only way to deter them is to place that power with the courts, to ensure that they will never again have an opportunity to repeat their acts. Such sentences will help to stop murder, but will not necessarily prevent it. There will always be those who act as vicious killers, and until they are caught such killings will continue.

If the House approves the restoration of capital punishment, the thought of the death penalty being applied might strike fear into the hearts of those terrorists. We must put an end to terrorism and to the violence that leads to murder. Those who oppose the restoration of capital punishment have produced all sorts of bogus figures in an endeavour to substantiate their case, but the sad fact is that between 1945 and 1964 there was no increase in the number of offences of murder and homicide that were made known to the police, despite the large increase in other crimes.

I hope that the Howard League for Penal Reform, which challenged my hon. Friend the Member for Southend, East (Mr. Taylor) and me to produce figures for the increases, will note that the post-1964 position showed a substantial rise to a new plateau that was almost double the pre-1964 figure. In England and Wales the average for the five years before abolition was 290, while the figure for the most recent five years is 590. In Scotland the comparable annual figure increased from 35 to 81.

My hon. and learned Friend the Member for Fylde said that there had been a sharp increase in the number of serious offences involving firearms. The total number of notifiable offences in which guns were used increased from 1,734 in 1971 to 8,067 in 1981. In addition, between 1971 and 1981 no fewer than 29 persons were convicted of homicide who had previously been convicted of that crime.

Those who oppose restoration say that the European Court of Human Rights would not permit the United Kingdom to reintroduce capital punishment. That is not true, because the European Court could not unreasonably delay hearing cases of capital punishment that were brought before it. Article 2 of the declaration excludes national capital punishment from its remit.

It is clearly established, and because of the public outcry should be accepted in that spirit, that capital punishment for terrorism is a unique deterrent. The hon. Member for Mid-Ulster (Rev. William McCrea) mentioned the dastardly act that was committed this morning in County Tyrone, in Northern Ireland, in which four UDA soldiers were killed by a remote-controlled bomb.

Mr. Merlyn Rees (Morley and Leeds, South): The hon. Gentleman has waxed lyrical about his knowledge of terrorists. The UDR members who were killed today by Republicans of some type were good and decent people. If the hon. Gentleman is putting forward an argument, he should get his facts right.

Mr. McQuarrie: I am not putting forward an argument — *[Interruption.]* Four good UDA soldiers from the Ulster Defence force—*[Interruption.]*

Rev. Ian Paisley: There is no need for hilarity. Anyone using the letters could make the mistake. The UDR is the Ulster Defence Regiment. The UDA is the Ulster Defence Association, which is a different organisation altogether.

Mr. Allan Rogers (Rhondda): It is a terrorist organisation.

Rev. Ian Paisley: The Labour Government would not ban it.

Mr. McQuarrie: I am grateful for the correction. I wanted to get the message home that the four UDR soldiers, who were in a convoy of five vehicles, were killed by a remote-controlled bomb detonated by a terrorist organisation. The IRA is said to have admitted responsibility. It threatened to take such action on the day of this debate. That not only illustrates its utter cowardice, but should be a sharp lesson to all hon. Members that the Province of Ulster must be protected from those beasts.

The people in that Province are entitled to as much protection as others in the United Kingdom. We would be failing in our duty as elected representatives of the public if we did not take the necessary action to safeguard the lives of our people. If we turned our heads and looked in the other direction, the terrorists would consider that the House was afraid to end the terrible outrages.

The terrorists must not drive fear into our hearts or coerce us into taking a decision adverse to the restoration of capital punishment. We have been elected to govern this country and we have not only the responsibility but the duty to ensure that terrorist activities are stopped. I hope that hon. Members will support this amendment.

I wish to quote statements made in the House and in the other place during previous debates. Lord Hailsham of St. Marylebone said during the Lords debate in 1974:

"I believe that when we end the day, sooner or later we have to recognise that society has the right and the duty to take human life deliberately on occasion. In our time we have fought two just wars. We recognise the right of self-defence and the right to take human life to save an innocent person by way of defence of that innocent life. In the last resort I believe that if society refuses in the end to allow this sanction to the judicial process as an ultimate resort, as the least of evils in certain irreducible cases, eventually we shall lose the values which we all desire to defend."—[*Official Report, House of Lords,* 12 December 1974; Vol. 355, c. 809.]

Mr. Jeff Rooker (Birmingham, Perry Barr): The noble lord has changed his mind since then.

Mr. McQuarrie: The noble lord may have changed his mind, but his views in 1974 are relevant today. The facts are relevant today.

The late John Mackintosh, a much respected Member of the House until his untimely death, said during the 1975 debate:

"We in this House must think carefully before we reject an opinion which is widely spread outside."—[*Official Report,* 11 December 1975; Vol. 902, c. 675.]

My hon. and learned Friend the Member for Burton (Mr. Lawrence) said in that debate:

"The IRA makes it quite clear that it considers capital punishment to be a deterrent. Why else does it administer capital punishment as the ultimate sanction against those who break its code? . . . O'Connell, the IRA leader, considered it necessary on the day we debated this subject about 12 months ago to threaten this House with the death of two British soldiers for every terrorist sentenced to death." — [*Official Report,* 11 December 1975, Vol. 902, c. 666-67.]

His views and those of others that I have quoted should be heeded by any Member who has not yet come to a decision on how he should vote this evening. The public demand action from us and we must not fail them. — *[Interruption.]* It is a sad reflection on the House that such a subject should be treated with levity by Opposition Members.

Finally, let us remember the late Rev. Robert Bradford, who was brutally murdered while helping his constituents. I also ask all right hon. and hon. Members, before they go through the Division Lobbies, to glance at the plaque above the entrance to the Chamber in memory of Airey Neave, who was killed within the precincts of the Palace of Westminster by terrorist activity. If ever there was a case for the restoration of capital punishment for terrorist activity, that plaque symbolises it.

Several Hon. Members *rose*——

Mr. Speaker: Order. I remind the House that many right hon. and hon. Members who have strong views wish to address the House, and 21-minute speeches will prevent them from so doing.

6.18 pm

Mr. Leo Abse (Torfaen): Until the speech by the hon. Member for Banff and Buchan (Mr. McQuarrie) we heard a succinct review of all the arguments that can be rehearsed in a debate on capital punishment. Inevitably, most were not innovatory and those of us who have been Members of the House for a long time are familiar with them. Indeed, we all have a sense of déjà vu.

I wish to draw attention to one matter which seems not to have been emphasised, but rather under-emphasised, if indeed mentioned at all. The churches have sent us a communication. The British Council of Churches has stated its continued opposition to capital punishment and has given three reasons for it. The third reason includes this statement:

"Since some find the thought of execution morbidly fascinating, capital punishment may positively excite a potential killer, and also be unwholesome in its emotional impact on others."

I do not dismiss the experience of the churches in putting forward the proposition that, far from being a deterrent, in some cases hanging is an attraction. That accords with my experience, and there can be few hon. Members left in this House with experience of dealing with those charged with murder while hanging was still the ultimate penalty. I, with many of my professional colleagues, discovered that those bizarre men, who do not possess the rationality that hon. Members sometimes attribute to them, continually resisted our legitimate attempts to save them from the rope. The more we adumbrated reasons why we could persuade the court that a man had acted with diminished responsibility, the more the killer's resentment grew. It became clear that he resented the attempts of his legal advisers to deny him the ultimate victory, as he saw it, which was to have the major part in the macabre theatre of the gallows.

I am not surprised that the churches seized upon that aspect of the matter, because we must take into account the fact that our community has great difficulty in dealing with the problem of masochism. However, in days gone by, because of the identification with the Passion, many would claim that masochism was dealt with therapeutically. Identification with the Crucifixion meant that masochism could be dealt with in a way that did not bring about far more miserable consequences. If some hon. Members doubt that masochism is widespread, they should look at pornography, where they will see spread forth for them the various, although monotonous, details of bondage. The yearning for punishment is extraordinarily deep-seated. If some hon. Members deny what the churches say, or dismiss as extravagant the suggestion that people could yearn for punishment and seek it—those

[Mr. Leo Abse]

who kill to die—I can give them some statistics. One third of those who commit murder then commit suicide, which means that they pre-empt the gallows or any other punishment. They kill to die. Those who are naive enough to believe that those people would be deterred by the rope are denying the facts. We would be presenting something to a band of murderers that is likely to excite and encourage them and which, far from containing murder, is likely to increase it.

The type of people who commit murders such as those with which we are dealing are the violent people in our prisons. Anyone who has experience of prisons knows that they are replete with examples of masochism, such as personal mutilation, the cutting off of fingers, and the grotesque use of razors. Those are commonplace to every criminal lawyer. We live in a society that cannot contain masochism and that uses pornography, not religion, to deal with it. Some say that hanging is a deterrent, but it is highly probable that it would be an attraction and would increase, not decrease, the incidence of murder.

Those who deny that are seeking to repudiate an uncomfortable phenomenon. If we examine how convicted terrorists are prepared to rationalise their masochism—to have it elevated to the claim that their acts are socially useful, nationalistic and libertarian, as they see them—we see how readily they die. If we have a culture of martyrdom, where those emphases can be so distorted that terrorists are created national heroes as a substitute for being beatified, we are in dangerous territory.

In common with all Opposition Members who have spoken, and with the right hon. Member for Old Bexley and Sidcup (Mr. Heath), I am astonished that a Home Secretary should expound the extraordinary proposition that an offence against the state is more heinous than an offence against a small child. I would understand such theories if they were being expounded in the Soviet Union. I would understand a Home Secretary, if there is such a character in eastern Europe, elevating the state above the individual so that a threat to the state would demand the ultimate punishment, whereas a threat to a small child could be regarded as something far less. I do not understand the philosophy, and it causes me grave discomfort that a Home Secretary should advance a proposition that is reminiscent of the doctrines of the Soviet Union. It is certainly not reminiscent of the doctrines of a Western country founded on the principle of the sanctity of the life of every human being.

I do not wish to trespass on the House's time, however tempting it may be to discuss how juries would fail to convict if they were faced with the proposition of determining someone's life or death. However many reasons there may be for capital punishment being unproductive, it is my firm conviction from my clinical experience that, apart from the familial and passionate murders—which presumably no hon. Member would wish to be mandatory capital offences—if we move forward in the way that is proposed, we would add to the burden of the community. It is time that this irrelevancy was put on one side. The actiology of crime is not easy to understand, and to discover the roots of crime is difficult. We find it in the conditions in our inner cities and in our dishevelled family lives. The House should be wrestling with those problems, not squandering its time upon an irrelevancy such as this debate.

6.29 pm

Mr. Humphrey Atkins (Spelthorne): I am sure that the House was interested to hear the hon. Member for Torfaen (Mr. Abse) say that the reintroduction of capital punishment, far from deterring murderers, would encourage them. I do not agree with that, and I shall return to the matter in a few moments.

First, I want to deal with an aspect of terrorism which was mentioned by my right hon. and learned Friend the Home Secretary and to which quite a number of other speakers have referred. I find myself in disagreement with my right hon. and learned Friend in this matter. As the House will remember, I held the office of Secretary of State for Northern Ireland for two and a half years, and the most serious problem then, as now, was terrorism and terrorist attacks. On this side of the Irish Sea many people consider those terrorists to be the IRA, but they include the Provisional IRA, the Irish National Liberation Army, the Ulster Volunteer Force, the Red Hand Commando, and so on. All the time that I was there—and, indeed, before—convicted terrorists were seeking to maintain and to get Her Majesty's Government to accept that in some way the crimes that they had committed were different from other crimes and should therefore be treated differently. Not suprisingly, in their view, their crimes were less heinous and should be treated more leniently than crimes committed by other people. They started with the protests in the Maze prison, when the prisoners refused to wear prison clothes, and refused to work or to come out of their cells. When the Government paid no attention to their demands, they increased the level of protest and started to smear their own excreta on the prison walls—the dirty protest, as it was then

During the whole time that I held that office I was supported by my Cabinet colleagues, by, I am glad to say, the whole House of Commons, and, I think, by the overwhelming majority of the British people, in my belief that there was no reason why those murderers, bombers, arsonists and criminals should be treated differently from anyone else who had committed the same crime for reasons that were not political. Finally, they escalated the process and tried what they believed was their ultimate weapon, before which they thought that we were bound to give way—the hunger strike. We did not give way. In spite of an upsurge in violence, as the figures show, and as all can see, and in spite of the pressure that was brought on us from all over the world—not by Governments, but by groups of people—to concede the point, we refused to do so.

We received support from one particularly influential quarter. In October 1980, the Pope visited the Republic of Ireland. He spoke, as he always does on his remarkable overseas tours, to huge audiences. In particular, he addressed a multitude of people at Drogheda. He was not talking about the death penalty, and I do not suggest for one moment that he did. He talked about the principle of which I have been speaking. His view expressed in three words, was plain: "murder", he said, " is murder." He was saying that there should be no differentiation. His views helped us, not so much in this country, but in defending our position in countries overseas.

It seems to me that it would be difficult for us, only two years later, completely to abandon the position to which we held so firmly. In fact, it would be more than difficult; it would be morally indefensible. One could not have said—at any rate, I could not have said—in 1981, "Of course, terrorist murderers must be treated the same as every other murderer", and then say in 1983, "Oh no, terrorist murderers are different from other murderers". So, in spite of what my right hon. and learned Friend said, I believe that it would be wrong to vote for amendment *(e)*, and I do not intend to do so.

I come now to the penalty itself. As the hon. Member for Torfaen said, the matter has exercised successive Parliaments. More than 27 years ago I made my maiden speech, in this Chamber—on this very subject. I do not recommend hon. Members to read it, because it was not a particularly good speech, but what I said then I still believe now: the only valid reason that can be put forward for the retention—as it was then—or the reintroduction—as it is now—of capital punishment is its deterrent value. I believed then and I believe now that it will deter some potential murderers.

I wish to say two things straight away. First, I cannot prove it. There is no way to prove it. My right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) said that we have to prove it. We cannot prove it. It could not be proved then and it cannot be proved now. In fact, my right hon. Friend the former Home Secretary, when we discussed the matter last year, said that the only conclusion that one could reach from studying the evidence was inconclusive. In my opinion, he was quite right. So one can rely—not on instinct, but only on judgment. After all, that judgment, such as it is, is what we are all sent here to exercise on behalf of our constituents.

There is another aspect of the penalty. I said that I thought that it would deter some potential murderers, but it will not deter all. That is certain. It would not deter the man who, in a sudden upsurge of rage and passion, as a result of circumstances which hit him so hard that his normal processes of thought and reason did not work, decided then and there to kill another human being. It would not stop him, because that man would not be thinking in a reasonable way at the time.

Moreover, I do not believe that it would stop terrorist organisations. Their view of death—or the view of some of their members—is somewhat different. Those who are determined to further their cause at whatever cost, even that of their own lives, will not be stopped. There might be a number of people on the margin who would not join so readily if they felt that it might be the end of their days, but it would have precious little effect on the terrorist organisations. That I freely admit.

There is another facet of terrorism, particularly in Northern Ireland. It has been said, and I wholly agree, that it would not be possible for us to operate the death penalty for murder by terrorists under the present system of trials in Northern Ireland. It would be quite wrong of us to place on the shoulders of one judge the burden of determining not only the man's guilt, but the sentence.

Some hon. Members have been rather gloomy during this debate about the state of affairs in Northern Ireland, saying that there could never be trial by jury. I do not accept that. When I held office there, there was constant pressure—not very serious, but pressure nevertheless—from the Opposition—indeed, from both sides of the House—for me to review the working of the Northern Ireland (Emergency Provisions) Act in Northern Ireland, which controls the operations of the so-called Diplock courts. I did not do that. However, my right hon. Friend the present Secretary of State has done it. On his behalf, an inquiry is being conducted by an eminent judge into the operation of the Act.

Regardless of this debate today, I would be surprised if my right hon. Friend did not come to the House in a few months' time to recommend changes. I accept that we would have to make substantial changes in the present system before we could operate the death penalty. Tonight we are being invited to say that this House favours the restoration of the death penalty for murder, which I do, but I accept that it could not be operated until the changes have taken place.

There is another point about terrorism, and it is the idea that if one executes terrorists it makes it easy for them to claim new martyrs. So it does. I agree with that, but they can have martyrs when they like. Today is Wednesday and only last Sunday parades were held in memory of the latest of the martyrs—the first of the hunger strikers to die. He was held up as a great and good man who had died for the cause. If terrorist organisations want martyrs they will get them, even if they have to kill their own people to do it.

Mr. John Hume (Foyle): Why give it to them?

Mr. Atkins: We should not be deterred from going ahead with what we think is right.

Another point that was mentioned by two or three hon. Members—I think by the right hon. Member for Stoke-on-Trent, South (Mr. Ashley) and the hon. Member for Knowsley, North (Mr. Kilroy-Silk)—was that if a terrorist is condemned to die there will be terrible trouble in the form of kidnappings, reprisal killings and all sorts of difficulties. I feel strongly that if we are to be deterred from doing what we believe to be right by the threat that a small number of people—only about 500—will cause so much trouble that it would not be worth while, that would be the road to anarchy. We must never allow ourselves to be prevented from doing what we think is right by the threat of a small number of people to make life impossible for us. I accept that many hon. Members do not agree with me, but that is not a valid reason for doing nothing. Anybody can find an excuse for doing nothing, but a society that does nothing dies.

Mr. Kilroy-Silk: The right hon. Gentleman is right, but neither I nor, I suggest, any other hon. Member who has argued that there are likely to be reprisals, is suggesting that a British Government should be frightened into cowardice by the threat of IRA action. We are suggesting that in such a situation one must assess what course of action is likely to bring about the greatest reduction in the loss of innocent lives. I was suggesting that the reintroduction of capital punishment for terrorism was likely to increase the number of innocent lives that would be lost rather than to reduce them.

Mr. Atkins: I thank the hon. Gentleman for that explanation, which shows that I misunderstood the purport of his and other hon. Members' remarks. I thought that he was saying that we should not act because it would create too much trouble.

If those two groups will not be much deterred, who would? There are two obvious groups of people who

[Mr. Atkins]

spring to mind who would be deterred by the thought that if they committed murder and were apprehended they would lose their lives. One is the individual who, for whatever reason, sits down and works out that it is to his advantage to kill another person. I say "sits down and works out" because when he does that he takes into consideration all the relevant factors, and this would be one of them.

The other group does the same, and that is the group of people who set out not to kill somebody but to commit some other crime, usually to steal or rob. They plan big, even small, robberies meticulously and take everything into account. I am convinced that in doing so such people must take into account the penalty that they can expect if they commit murder. If we can think of no higher penalty than capital punishment—I cannot—that must act as a deterrent.

If we can save even a few innocent lives—the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) did not seem to think that mattered very much, but I do—is it not our duty to do so? I believe that it is my duty to do that, which is why I shall vote for the main motion tonight.

6.43 pm

Dame Judith Hart (Clydesdale): I gave every attention to what the right hon. Member for Spelthorne (Mr. Atkins) said, but may we return to the basic proposition because that inevitably, clearly and logically embraces all the others? If we believe—some of the Home Secretary's remarks before the end of his speech on the use of the death penalty for terrorists were inclined in this direction—that it is wrong in principle, or wrong because there is no evidence that it would act as a deterrent, to reintroduce the death penalty, none of the categories within the amendments on which we shall be voting tonight can be made an exception to that general principle. That is the logic of the situation.

To go on from that point, the Home Secretary, the right hon. Member for Spelthorne and many others have said clearly that there is no conclusive evidence one way or the other about how far capital punishment might, if reintroduced, act as a deterrent. There is much evidence to show that it does not act as a deterrent. Indeed, the tenor of the arguments that have come from those who are likely to support the reintroduction of the death penalty tonight, as emerged from the speech of the right hon. Member for Spelthorne, is that there may not be any evidence but that they feel in their bones that it would be a deterrent.

I am sure that such hon. Members would agree that that is not a matter of logic. As the right hon. Gentleman said, it is a matter of judgment, although judgment based not on facts or evidence but on something that is felt in one's bones. I shall not go deeply into how far capital punishment might be effective as a deterrent for terrorists. Many convincing arguments have already been produced to counter suggestions that it is. I merely want to say that if we are in doubt, as clearly we are, about whether capital punishment can ever be a deterrent there is no factual evidence to support that proposition with regard to terrorists. We have not had sufficient experience since the Homicide Act 1957 and Sydney Silverman's Murder (Abolition of Death Penalty) Act 1965. I was privileged to be in the House at that time, although not at the time of the 1957 Act.

We must make our own judgments in this House, quite rightly, but it is interesting that other countries which have come to considered conclusions about dealing with terrorism—for example, West Germany—have decided that the reintroduction of the death penalty would not deter or reduce terrorism. That is why, if we were to vote in what is in my view the wrong way tonight we would be the only country in western Europe, apart from Turkey, to have capital punishment. That is why — not that we should necessarily be influenced by others—there have been letters from the president of the European Parliament, why the synod of the Church voted as it did, and why the barristers have said what they have. They have judgments too, and I venture to suggest that some of their judgments may be a little better informed than those of some hon. Members from whom we have heard today. I do not include the right hon. Member for Spelthorne.

We must accept and be clear about the fact that there is no difference in our concern about those crimes that it is proposed this evening should warrant the death penalty. There is no lack of concern among the abolitionists who do not wish to see the death penalty restored for matters such as deaths in Northern Ireland and in Hyde park, the murders of old ladies and young children, and for all the horrors with which we are all too familiar at the moment. Nor is there any difference in the concern that is felt about the increasing use of firearms or other manifestations of increasing violence in our society. We should all do ourselves the honour of accepting that we share that concern.

The degree of concern is not the indicator of how we shall vote tonight. What matters is how we approach the use of violence and firearms. I agree with the right hon. Member for Old Bexley and Sidcup (Mr. Heath) that—I paraphrase a little—if we get this issue out of the way once and for all, we can begin to approach the problems of increasing violence and find the appropriate solutions. While we are all intimidated by the question whether we should vote in favour of a return to capital punishement, we shall not be able to approach these questions clearly.

We can look at the ways in which we can approach the subject of criminality. We can try to reform people, as we do in many cases, often successfully, and we can seek to deter. One piece of evidence that has never been contradicted is that the most powerful deterrent is the certainty of detection and being brought to trial. That is incontrovertible.

That leads me to the subject of more money for the police, what the police should be doing, and so on. One view is that the so-called preventive penalties should be imposed on criminals. Much importance should be attached to that. The person who is capable of committing violence upon another human being, can be cold and calculating, someone who commits a crime of passion or psychopathic. I find it incomprehensible that anyone capable of crimes of violence can be other than, at the very least, deeply distrubed. I cannot regard that violence as being within the framework of normal human behaviour. Whatever the background to the crime, the aim of the preventive approach is to keep such a person safely out of society.

That brings us to the whole matter of sentencing—what is meant by a life sentence, and the kind of

institutions in which we should keep people when we believe that they will continue to be a danger to society. A tremendous amount of work must be done if one takes the view that, at the very least, one should prevent people from committing further crimes.

I believe that, no matter how much some of right hon. and hon. Members seek to keep it from themselves, they are motivated by the concepts of retribution. They are deluding themselves if they think that they are not. Retribution is a primitive instinct stretching back to lex talionis—an eye for an eye and a tooth for a tooth. We have heard radio discussions in the past week or so on this matter. It is clear that this is the prime motive for most people, although they do not realise it.

If we deeply abhor the use of violence against the individual, it is morally and philosophically incompatible for society to exercise violence against the individual. If any hon. Members evade that logical proposition, and are tempted to vote in favour of the propositions advanced this evening, they must ask themselves why.

Probably the reason is that they have a natural horror of violent crime without appreciating that something subconsciously creates a feeling that it is right that a person who has killed should be killed. That does not make sense. It is not morality. It is not a philosophical basis upon which society should act.

Those who support the reintroduction of the death penalty do not pay enough attention to those who may later be proved innocent of the crime for which they are executed. My right hon. Friend the Member for Birmingham, Sparkbrook (Mr. Hattersley) mentioned one case. one of my constituents has served several years in prison after being found guilty of murder — a nasty murder. It is now possible that new forensic evidence will prove that he is not guilty. The Lord Advocate knows of the case so I shall not go into detail. If the motion had been agreed by the House it would be too late for that constituent.

If society decides to use retributive violence—that is what is would be because there is no escaping the fact that that is the principle upon which the judgment is to be made, whether it relates to the general proposition or to terrorism or anything else—it is too late to call back a life. If that happens, society, by using violence, will have killed an innocent person.

Mrs. Elaine Kellett-Bowman (Lancaster): Will the right hon. Lady give way?

Dame Judith Hart: I shall not give way because I am about to conclude my speech. I have not taken as much time as some Government Members.

I beg hon. Members to vote tonight with an awareness of what motivates them and an awareness of the House of Commons' real responsibility on the issue. I hope that all the proposals will be defeated and that this is the last time that the issue comes before the House.

Several Hon. Members *rose*——

Mr. Speaker: Order. The House knows that I have no means of controlling the length of speeches, but only 10 Back Benchers have been called so far. That is not very good in a debate of this kind. I appeal for brief speeches. If right hon. and hon. Members could keep their speeches to 10 minutes that would be immensely helpful.

6.58 pm

Mr. Eldon Griffiths (Bury St. Edmunds): The first duty of the House is not simply to debate what punishment we can place upon criminals. It is also to protect the lives of our people and to safeguard the innocent. I congratulate my right hon. and learned Friend the Home Secretary on having, in his first speech, robustly placed before the House his intention to protect the innocent and to safeguard the lives of our citizens. I welcome what he said.

I was in the House when we abolished the capital sentence. We did so largely in the belief that life imprisonment would be an effective deterrent in its place. It has not worked out that way. On the contrary, violence and murder have increased rapidly.

The British public are alarmed. That is why, as they listen to the debate today, I think that they will be less concerned about the problems of those who may be called upon to try, convict and, if necessary, execute criminals and murderers—although those matters are important—than with other grave issues.

The first is the practical question of how we are to prevent the killing of many more innocent people. Secondly, how are we to protect more policemen from being shot down in the pursuit of their duties? Thirdly, can we avoid the death penalty continuing to be imposed, whatever the House may say, by those who, having lost confidence in the ability of the state to protect them, take the law into their hands—as has happened in Northern Ireland—and by armed criminals, and conceivably, by armed policemen seeking to protect themselves and society against those criminals? Those are the practical questions that the British public are looking to the House to tackle.

The best speeches this afternoon were made by those who spoke about what they know. I admired the speeches by my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) and the right hon. Member for Glasgow, Hillhead (Mr. Jenkins), who spoke for the Liberal-SDP alliance. Both have carried heavy responsibility, as has my right hon. Friend the Member for Spelthorne (Mr. Atkins). I, too, shall speak only of that which I know.

As the House knows, I have a connection with the police service. When the capital sentence was abolished the Police Federation warned the House that it would lead to a dramatic increase in the carrying and use of firearms. That is exactly what has happened. In the year before abolition the number of guns used in crimes in London was 43; last year, the number was closer to 2,000. That is a 25-fold increase. Before abolition, when a professional gang planned a job the elder members frisked the younger members to ensure that they were not carrying guns. They did so because they knew, to put it in the vernacular, "If you kill a cop we all get topped". It is no longer that way. Today, it is the norm and not the exception for criminals to carry guns when they commit robberies. They do so for the simple reason that they know that their lives are not at risk.

There is also a new balance of risk for the police officer. When a policeman confronts a criminal with a gun, the odds are tilted against him. In that split second when the armed robber must decide whether to pull the trigger and shoot the policeman, the robber knows that if he surrenders, he will go to prison for, perhaps, five to seven years for armed robbery. But if he shoots the policeman,

[Mr. Eldon Griffiths]

he eliminates the witness and greatly improves his chances of getting away with the loot. And even if he is caught and convicted of murder the worst that can happen to him is life imprisonment. With remission, that can mean little more than 10½ years, though I noted what my right hon. and learned Friend said about the length of sentence served by the murderers of policemen. I do not accept, and I doubt if the House would accept that the difference between five to seven years for armed robbery and only 10 years for murder is worth the life of a police officer.

Mr. Jeff Rooker (Birmingham, Perry Barr) *rose*——

Mr. Griffiths: No. In deference to Mr. Speaker's wishes I shall seek to end my speech as quickly as possible.

Mr. Rooker: But the hon. Gentleman's statement is not true.

Mr. Griffiths: There is a further consequence. Whereas, before abolition, unarmed police officers would not hesitate to tackle armed criminals because they knew or they believed that they were protected by the invisible bullet-proof waistcoat of the capital sentence, today even the bravest of policemen hesitates. He often sends for a gun.

What the Police Federation and I predicted when the House abolished the capital sentence has come to pass. We have put an end to the once-proud tradition of our unarmed police force. We therefore face the risk, whether or not we like it, that we have not succeeded in abolishing the capital sentence. On the contrary, it will be administered more and more not by due process of law and by the courts, but by armed criminals and, on occasion, by armed police officers defending themselves and the public.

I wish to deal briefly with terrorism. I declare an interest in that I frequently visit Northern Ireland and have some connection with the Royal Ulster Constabulary. I say one thing to my right hon. Friend the Secretary of State for Northern Ireland. He made an eloquent statement—and I respect his judgment—about Northern Ireland, but I find it singular that he should have consulted the Chief Constable of Northern Ireland and arrived at conclusions on his advice, while making no attempt to consult the statutory body that the House has set up, the Northern Ireland Police Federation — 100 or more of whose members have died. Their view is the direct opposite to that in his statement. They want the capital sentence and that fact should be placed upon the record.

I say with some temerity in the presence of Northern Ireland Members that not long ago I stood in the ruins of a dance hall in Ballymena where dozens of young people were killed, maimed and blown to bits. I reached one firm conclusion — that it is the victims, past present and future, who have a far stronger call on Paliament's sympathy and practical assistance than any murderer or terrorist.

I wish also to give one warning to the House. We all know that technology plays an important part in terror. The advance of micro-miniaturisation is tilting the balance in favour of the terrorist and against the security services. There are new micro-detonators which can be secreted in body orifices. Precision guided missiles are also becoming increasingly available to terrorists not only in Northern Ireland but all over the world. I must further warn the House of a new threat—the advance of micro-circuitry that makes it possible for the bomb-maker to plant a device —perhaps 50lbs of gelignite—and to blow it up four months later. The possibilities that that engenders for, for example, the ceremony at the Cenotaph, with that kind of technology being available to terrorists illustrate the magnitude of the risks that we face.

I conclude with one simple point. The death sentence would not deter the terrorist fanatic. I concede that he might even welcome it. The death sentence might have some influence on those who are motivated into terror by a whole ragbag of emotions such as braggadocio, hero-worship, theatricality and so on. But what is certain is that the death sentence can have some impact on the professional assassins who, more and more, in Northern Ireland and internationally, do the terrorists' dirty work for them. The professional assassin—the jackal—is, above all, a calculator. He calculates the odds. It is right and moral that the professional assassin who prepares a bomb and places it in a public hall to blow up large numbers of innocent people, and does so for pay in advance, should take into account when calculating his crime the possibility that he, too, might suffer the same capital sentence that he himself imposes on the innocent without due process of law.

It is for that reason, as well as the others given by my right hon. and learned Friend the Home Secretary, that I shall vote in favour of the amendment on terrorism and also the other selected amendments.

7.10 pm

Mr. John Hume (Foyle): This debate is about law and order. There can be few Members whose constituents have such a desperate need for law and order as those whom I represent. I live in the middle of the Bogside in the city of Derry, an area so ravaged by violence and so disturbed by extremism that outsiders cannot usually understand how normal life can be possible there. Normal life, as it is understood by most people, is not possible in Derry because there is no law and order, in the usual sense of term. I therefore think that I can understand better than most the yearning for law and order that motivates those who support the motion.

The desire for order is innate in human nature. It is a deep and powerful instinct. It can protect us against chaos and can be the foundation of democracy and freedom. But because those who are lucky enough to have a system of law and order often seem complacent and because those who do not often seem turbulent or cowed into despair, many people forget that no people on earth yearn more for law and order than the deprived, the oppressed and the minorities. If the House does not understand that, it will never understand Ireland, will never understand our awful and terrible history, will never understand that what we all want to stop for ever is terrorism in Ireland.

My people want law and order more than any Member in this House because they need it more than any Member in this House. We must ask ourselves firmly, will the death penalty for terrorism, will hanging Irish terrorists, promote law and order in Northern Ireland or will it destroy law and order in Northern Ireland? That question is central to the debate. It has been made even more central by the remarkable position taken by the Home Secretary today.

It is a central question for other reasons. It is central statistically because far more murders are committed in

Northern Ireland than anywhere else in Great Britain. It is central legally because, as has already been said, it would be illogical to introduce the death penalty for Britain alone. It is central politically because the political consequences of hanging Irish terrorists would be so overwhelming as to dominate every other issue in Ireland for the foreseeable future.

Who are the terrorists who would be hanged? An Irish terrorist is a person who for good reasons distrusts British democracy and its application to Ireland and for bad reasons thinks that violence can solve the problems of Ireland. The distrust of British democracy in its application to Ireland is widely shared in Northern Ireland, for good reasons. It is shared by me and I do not have to give lectures on Irish history from 1912 onwards or on the silence of the House between 1920 and 1969 to explain why a substantial section of the people in Northern Ireland have a deep distrust of British democracy. Neither do I have to reiterate my opposition to violence because I do that on my own doorstep every day.

As almost everyone has admitted that the death penalty will not deter terrorists, we must ask ourselves what effect the death penalty would have on society, particularly on a society where terrorists flourish because they move among people who, because of their personal experience, are deeply distrustful of Government.

Mr. Tony Marlow (Northampton, North) *rose*—

Mr. Hume: I will not give way. Mr. Speaker has asked hon. Members to be brief.

As terrorists are moving in a society that is deeply distrustful of Government and which, in consequence, is deprived of any real sense of security, the effect of the introduction of the death penalty is certain—it would destroy any hope of democracy in Northern Ireland and, in addition, would undermine the reality of democracy in the Republic of Ireland. What is now a disaster in Northern Ireland would, if the death penalty were introduced become an unmanageable clamity throughout Ireland . There would be many more deaths, both in Britain and in Ireland. If we try to solve a problem by methods that will create even greater problems, is it sensible even to discuss the issue?

Mr. Marlow *rose*—

Mr. Hume: When reassessing the British decision to execute the leaders of the 1916 uprising in Dublin, Winston Churchill said that, as a consequence of that action,

"the keys of Ireland passed into the hands of those to whom hatred of England was the dominant and almost the only interest."

Hatred of Britain, the result of grisly experience of generations of Irish life, has, alas, strong roots in Northern Ireland, particularly among young people. It was magnified two years ago by the Government's handling of the hunger strike. Never in its wildest dreams could the IRA have expected to recruit the support that was won for it by the British Government's tragic mishandling of the hunger strike.

Rev. William McCrea *rose*—

Mr. Hume: Those who are interested in Northern Ireland will remember the images of that time; the black flags on almost every telegraph pole, the grotesque wall paintings, the nihilistic slogans, the pornography of death, the street violence and the deaths of innocent people.

That hatred, the instability and the macabre display of that time, are as nothing compared with the reaction that would take place in Ireland if Irish men or women were hanged under British law. If the House wants the IRA terrorists to win, then hang them.

Reference was made today to the murders which took place in Northern Ireland last night. A UDR convoy was blown up and four UDR soldiers were killed—

Rev. William McCrea *rose*—

Mr. Hume: An Attempt was made to kill every man in that convoy—

Rev William McCrea *rose*—

Mr. Hume: Does any hon. Member not believe that that attack was timed to influence the result of our debate? The leaders of terrorist organisations want to see the introduction of hanging. I live among them and I know their thinking. They would be delighted if hanging were introduced. Let not the House think that the leaders will be hanged. The leaders are not in gaol. It will be the young followers who are sucked into the organisations because of the desperate position in Northern Ireland.

If the House wants the whole of Ireland to be convulsed in a frenzy of hatred, if the House wants once and for all to remove the prospect of a lasting peace, a political solution to the problems of Northern Ireland and the prospect of friendship between our two peoples, nothing would be more certain to bring that about than the hanging of Irish people under British law. This House would then hand over the keys of the whole of Ireland to those who want to come to power by the bomb and the bullet.

Churchill was right when he wrote, in reference to British attitudes in Northern Ireland:

"The grass grows green on the battlefield, but never on the scaffold."

If the House again erects a scaffold in my country, it will turn the whole of Ireland into a savage and bloody battlefield. For the sake of democracy, for the sake of friendship, for the sake of ordinary men, women and children, and for the sake of peace, for God's sake, do not do it.

7.20 pm

Rev. Ian Paisley (Antrim, North): The gallows has already been erected in Northern Ireland, not by the hands of this House but by the hands of the Irish Republican Army. There is a cry to this House from those who have already been hung, drawn and quartered—murdered and tortured by the Irish Republican Army—and the hon. Member for Foyle (Mr. Hume) should keep that in mind.

It is all very well to say that if something happened here, there would be such an outrage that neither the North nor South of Ireland could be governed. I too have read Irish history and studied the situation in Northern Ireland, having been brought up there. There was a parallel in the history of the South of Ireland with what is happening in the North today. Irregulars under De Valera were doing the very same as the IRA is doing today—killing, bombing and murdering—to bring down the treaty Government of the Republic. They murdered not only ordinary individuals but their own colleagues who had fought against Britain in the war before the civil war. There is a page in Irish history that is not mentioned by Republicans; it is the darkest page of the troubles—the civil war when Republicans of various hues fought one another.

[Rev. Ian Paisley]

The result was that that treaty Government were going to fall and a man named Kevin O'Higgins, who understood Irish Republicans and their methods — he himself was one — realised that the only way to deal with the situation was by the ultimate deterrent, capital punishment. Therefore, he ordered that those with the gun and those who went to kill should themselves be killed.

There were, of course, deaths and outcries. But within two or three years the carnage was finished. De Valera disbanded his irregulars, went into politics and became the Prime Minister of the Irish Republic. Kevin O'Higgins had to suffer; he was killed. However, he brought peace to the South of Ireland. One can draw the parallel today. In the North of Ireland the killing is going on.

The hon. Member for Foyle said that the IRA wanted the return of capital punishment. That is strange. Joe Cahill was a condemned man in the cell but, because of the weakness of Government, was reprieved. He took part in the recent campaign of murder. He was regaled on our radio, and he warned the people of this Parliament not to dare to bring in capital punishment, or they would deal with the matter. The IRA is against capital punishment being re-enacted by this House. There was an hon. Member with close associations with terrorism in Fermanagh and South Tyrone. When did he come to this House? He was an absentee Member, though he was always here when there was going to be a vote on capital punishment.

I repeat — the IRA leaders are against capital punishment because it makes the recruiting sergeant's work impossible. At present he can say, "If you are captured you will go into the Maze prison, where immediately there will be a 50 per cent. cut in your sentence." In other words, a terrorist can act however he likes inside the prison, but automatically half his sentence is cut off. That is happening in our Province today.

Some amazing statements have been made in speeches today. For example, the right hon. Member for Old Bexley and Sidcup (Mr. Heath) said that the real way to deal with terrorism was to wean the population away from it, and that that was the policy which his Government followed.

The figures which I now give must stick in the mind of the hon. Member for Fylde; 102,000 votes—not the 500 to whom the right hon. Member for Spelthorne (Mr. Atkins) referred — or 43 per cent. of the entire nationalist vote, went to these murderers. They voted for the bomb, the gun and the bullet and for genocide of the Protestant community. There is no way that this House will wean people away from terrorism in the way the right hon. Member for Old Bexley and Sidcup claimed.

The right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) described the IRA as tough men. Of course it comprises tough men. They know that they have been dealing with weakness in successive British Governments. That is why they are doing so well in their campaign against this House and our people.

We were told by the right hon. Member for Glasgow, Hillhead (Mr. Jenkins) that we had to abolish jury trials. I remind him that in Standing Committee, when he was a member of the Labour party, the Socialists voted to a man against abolishing juries, as did the leader of the SDLP, and I voted against the abolition of juries. However, if we bring in capital punishment, we must return to jury trials. [HON. MEMBERS: "No".] Of course we must. We cannot have anything but a return to jury trials. *[Interruption.]* Right hon. and hon. Members occupying the Front Benches may laugh, but they do not know Northern Ireland. I assure the House that there can be jury trials in Northern Ireland.

It is interesting to recall what happened in Standing Committee. Lord Rawlinson, then a Law Officer, said that Protestant juries were perverse and therefore had to be abolished. When I asked him to prove that, he could not, but he won because one Roman Catholic Member was won over. Opposition Members were there. They took part in that debate, and they understand what happened on that occasion.

Jury trials can be reintroduced. Juries were not intimidated in Northern Ireland. Witnesses were intimidated, but the IRA did not know who would comprise the juries until they were picked. I repeat, if there is to be a return to capital punishment, there must be a return to jury trials.

I apologise, Mr. Speaker, if I have exceeded the time I should have taken. I am grateful for having been called to speak in the debate.

7.28 pm

Mr. Ron Lewis (Carlisle): Whatever views hon. Members take about the reintroduction of capital punishment, it is clear that all have spoken against the increase in violence in recent years. I regret to have to say that, like many hon. Members, I was deeply shocked two Sundays ago to learn of what occurred when soldiers were engaged in entertainment in my constituency. I can only express the hope that those who gave my city a bad name will be brought to book and punished.

My local newspaper, the *Cumberland News*, then said:

"There is no doubt that drink plays a major part in inciting unruly groups."

There must be a case for stronger measures to keep under control the sale of alcohol to crowds of youngsters. Subsequent to the debate, and possibly when we return in the autumn after the summer recess, I hope that the House will consider further whether anything can be done in non-partisan manner to try to curb the increase in violence that has besmirched the good name of many of our towns and cities.

I have made it clear at every election that I have fought that should the issue of capital punishment be raised I should oppose it or its reintroduction to the best of my ability. To those who are keeping one eye on their constituencies and taking account of popular opinion within them, I draw attention to the words of Edmund Burke, who said that a Member is not sent to this place as a delegate but as a free-thinking representative who is entitled to vote as his or her conscience dictates. That is the line of approach that I shall take this evening, as I have taken in the past. I have made my position clear to my constituents.

I disagree with the hon. Member for Antrim, North (Rev. Ian Paisley) — I am sorry that he has left the Chamber—because, as a Christian, as one who occupies the pulpit on most Sundays, I cannot find it in my power to advocate that the state should take human life. It is morally wrong on the part of anyone to take human life and it is morally wrong on the part of the state.

In previous Parliaments we have debated abortion. Hon. Members, both men and women, from both sides of the House have strongly condemned abortion, but in a

debate of this sort they will act against their stance on abortion and speak in favour of hanging and vote for it. I cannot understand how they can do that.

Mr. Vivian Bendall (Ilford, North) *rose*——

Mr. Lewis: This is a moral issue and I shall treat it as such. If by some mischance we were to agreed to bring back capital punishment, the problem would not be solved. The problem will remain whatever the House does, and events in the past have told us that if a person sets out to kill he will not be deterred by the thought of the gallows. Those who have murdered while under the influence of drink, when probably sex has been involved, have shown that they were not concerned about the rope. That applies to other murders and is not restricted to those in which sex has been a factor. In many instances deaths have resulted from brawls.

I shall allow my head to overrule my heart and I shall vote in accord with what I consider to be my duty. Speaking as a Christian with all my faults and failings —I am not holier than thou and I am not one of the do-gooders—I believe that if my master Jesus were in the Chamber and had to make a decision on this issue, he would vote against bringing back the rope.

7.37 pm

Sir Hugh Fraser (Stafford): I wish to answer one of the questions that was put to the House by my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath). He asked why the status quo should not be sufficiently and equitably maintained since our last major debate on this issue three years ago. There are two main reasons for changing the status quo. The first is the one to which the hon. Member for Carlisle (Mr. Lewis) referred, and that is the growth of violence against the person over the past three years. Secondly, and almost as alarming, is the chasm which is developing between the governed and those who attempt to govern from this place. For example, the leaders of the police often say that the death penalty should not be reintroduced. However, there is a solid vote for its reintroduction on the part of police officers who come into contact with crime day by day. There is the same position in the prison service. The public are baffled when they find that the two loudest voices protesting against the restoration of the death penalty in Northern Ireland are those of the supporters of the IRA and the Secretary of State himself. That confuses the public.

Outside the House there is confusion and a wish to see the death penalty restored, not just as a deterrent but for the simple reason that the British people believe that it would be an earnest of the intentions of the House to deal with violence. That has not happened, and we have seen what happened in Northern Ireland today.

In two elections since 1979, the Conservative party has been returned to office on a law and order ticket, among other things. We have promised the people bread and given them a stone.

The restoration of the death penalty is concerned not so much with the crime of murder as with the hierarchy of violence throughout society. Those who do not want the death penalty argue that it is not a deterrent. Of course it is not an absolute deterrent. There is no absolute deterrent, or there would be no martyrs singing in heaven. There may be no such thing as an absolute deterrent but there are dissuaders, and it is dissuasion from crime which is the important element.

I have had some experience in a small way of being a terrorist and I acted against terrorism while undertaking my duties in the Colonial Office. When I was behind the lines, I was told that anyone found in uniform or out of it would be shot out of hand. That dissuaded me from embarking on many acts of derring-do which otherwise I might have done—a result to my credit and to the credit of others.

The discipline in terrorist organisations is the discipline of the death sentence and the firing squad, whether it be the PLO or the IRA. To say that the death penalty is in no way a dissuader is complete nonsense, for dissuader it is.

That is not the main argument for the return of the death penalty. The issue is much wider. First, I believe that society expects an element of retribution. Support of the law depends not just on consent but on approbation. That is what the country demands. Secondly, the principle that it would be an error for the House ever to forget is that if there be violence and terror, it must not be the gangster who imposes the terror but the state. If there be a question of violence, the monopoly of violence must be the monopoly of the state, and those who break the monopoly will themselves be broken. That is the basis of a sufficient and effective state.

Whatever my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) says, I say that in the country today there is a feeling that if violence is not controlled or put under more effective control than over the past few years, other people will take law and order into their own hands. That will mean armed police and vigilantes. It will mean the sort of thing that we have seen in other countries. That is why I believe that at this stage it is important that this principle should be restored. It is the only principle which, in the hierarchy of punishment, can meet the variety of crimes that threaten our society.

7.42 pm

Mr. William Ross (Londonderry, East): Like many others from Northern Ireland, I am sometimes inclined to stumble over various designations and initials of organisations in Ulster. That is why I sympathised today with the hon. Member for Banff and Buchan (Mr. McQuarrie), who stumbled over the UDA and the UDR. I am sorry that right hon. and hon. Members forgot that the debate is being broadcast and listened to in Northern Ireland. They laughed at the hon. Gentleman. I wonder if they are thinking now what effect their laughter had on no fewer than six families in Ulster today. Six people were murdered in the Province today, two alleged informers on IRA activities and four members of the security forces.

Since the debate began I have been steadily forced to the conclusion that we have a most ineffective police force and court system because all that I have heard about are the mistakes that have been made and the innocent men who have been condemned to death. If innocent men were condemned to death and suffered the supreme penalty when the police investigations and trial procedures must have been the most meticulous, I must come to the logical conclusion that our prisons are now full of innocent men and women. If it is not so, more mistakes must be made in murder cases than in general crime investigations and criminal trials.

On the Diplock courts, I disagree with the hon. Member for Antrim, North (Rev. Ian Paisley) in one respect. He wants the return of jury trials if the death penalty is put into operation. However, I believe that there is no reason for

[Mr. William Ross]

slanging the Diplock courts. They have done a reasonably good job all the way down the line. If they are good enough for trying murderers and sentencing them to life imprisonment, they are good enough to send murderers to their deaths.

I also make it plain that I have always been against the principle of the Diplock courts. I have always believed that jurymen could have been found, who would have carried out their duty, even if it eventually cost them their lives. A society that is not prepared to produce jurymen even at the cost of their lives is a society that is on its way to die. We should bring back jury trial to Ulster for all cases as soon as possible. I see no reason why it should not be reintroduced immediately.

The debate has circulated around morality, practicality and deterrent value. For myself, morality would have to be judged on biblical grounds, but as so many hon. Members reject biblical morality and teaching, I fail to see why I should argue on the grounds of that morality today. I shall base my remarks in support of the death penalty on the practical effects that it will have on dealing with terrorists and murderers in Northern Ireland.

The right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) made it plain that even if he had been convinced that the death penalty would be successful, he would still have been against it. In taking that view he undermined and destroyed his case. Therefore, I ask right hon. and hon. Members to discount the conclusions that he reached, because I do not understand how an effective system and weapon can be lightly discarded just because one does not like it. It does not matter whether a weapon against terrorism, murder and violence is a nice weapon to use. If it is effective and gives us the desired result, it should be used. I stood in the ruins of the Ballykelly bombing. I saw what was pulled out. I did not like it. Anyone who thinks that hanging is a nasty sight should have gone to Ballykelly; he might have changed his mind rapidly.

The question is then raised of who is to be hanged. It is the question of the death penalty for murder, yet one gets the impression from the debate that all those who have killed another human being are considered murderers when in fact a clear line is always drawn between manslaughter and murder. Therefore, we are talking about two totally different classes of killing—for manslaughter a prison sentence that could be long or short, and for murder the death penalty. I would go across the board for murder, whether it is committed by an organisation engaged in terrorism or by a person who kills for profit in a cold, calculated and premeditated way.

The mentality of the terrorist murderer is largely a product of the modern world. We are concerned mainly with Irish terrorism, which is the most spectacular terrorism with which we have to deal. It is with us all the time. I should like to refer to the mentality and attitude of Irish terrorists.

There are those who are against the death penalty, such as the Chief Constable of the RUC, judges and leading churchmen, who have all proclaimed themselves against it. My hon. Friend the Member for Belfast, South (Rev. Martin Smyth) has declared himself for it, as have churchmen on the Government Benches. None of the people against it are at the cutting edge. The Police Federation, the constable on the road, the ordinary men and women who face terrorists and those who have suffered at their hands, take a different view. Those who are insulated from the terrorists are in no position to pronounce on the issue.

What will be the effect of reintroducing the death penalty for Irish terrorists, the IRA the UVF or any others? We have been told that there will be street violence. We have had street violence before. We have had 15 years of it. We have also had kidnapping, and the victims have been murdered. Undoubtedly terrorism will increase for a time, but what is the alternative? The alternative is that we retreat from violence and allow those who perpetuate street violence, murder and kidnapping to succeed in driving us from our chosen path. In other words, we shall allow terrorist organisation to defeat the forces of law and order and the House, which is the governing body of the nation.

Today, four members of the UDR have been murdered by cold-blooded, calculating members of the IRA. They are not the first and, I fear, they will not be the last. The hon. Member for Foyle (Mr. Hume) said that death would not and does not deter the IRA. The IRA does not believe that. Today, it has proved that it believes in the death penalty, as it killed two of its own because it thought that they were informers. For the purposes of terrorist organisations, it does not matter whether the two people that the IRA murdered as informers were guilty. All that matters is that the terrorists' power has been projected once again into its community. Members of the community in which it lives and moves have been told by the murders that if they do not stay in line they will be killed.

The second lesson to be learnt from today's events in Ulster relates to the murder of members of the UDR. Some will say that, by that action, the IRA is thumbing its nose at the House and telling us to do our worst. It is not. It is telling us that it intends to step up violence, to make our lives hell and to do everything it can to make our lives difficult. Beyond that comes the lesson from the hunger strikers. Once again, the wrong conclusions have consistently been drawn from that. I have an advantage over most hon. Members in that I knew one of the hunger strikers who died and one who came off the hunger strike.

The real lesson of the hunger strikers is not that 10 died but that only 10 died. The lesson is that by standing firm on that issue, the Government defeated the IRA. The real lesson is that if the IRA and other terrorist organisations are to be defeated, they must be met on their own ground. The organisation must be met every time it ups the bet. When it is met, it can and will be defeated. It will not be defeated by running away. If we are to break the terrorist organisations, we must break the power of the godfathers. To beat them, we must match their sentence; which is death.

What of the fanatics? We will always have fanatics and they will not be deterred. They are the most ruthless, cold-blooded and dangerous of all, death penalty or no. Until they are executed, imprisoned or killed they will not stop and that is the way to deal with them. We must fight and defeat the IRA. The death penalty is a practical step because it has a tremendous and unrealised deterrent value. It should be brought into effect at the earliest possible opportunity.

7.55 pm

Sir Ian Gilmour (Chesham and Amersham): I shall come back to the interesting remarks made by the hon.

Member for Londonderry, East (Mr. Ross) about the Diplock courts because I wish to confine my remarks to terrorism. Despite what the Home Secretary said and his powerful if rather vague advocacy of the death penalty for terrorism, the case for it is much weaker that it is for any other issue. I wish to take up two of my right hon. and learned Friend's points. I am sorry that he is not here, although I understand that he has a good reason.

My right hon. and learned Friend the Home Secretary and my right hon. and learned Friend the Member for Southport (Sir I. Percival) came to the wrong answer because to some extent they asked the wrong question. It is true that terrorists are evil and an affront to civilisation because they wage war against society, but that is not the end of the matter. As my right hon. Friend the Member for Spelthorne (Mr. Atkins) said, it is not a matter of doing what we think is right. What we think is right depends on its consequences.

If we intend to introduce the death penalty we must ask ourselves whethere we shall thereby diminish terrorism and aid the security forces, or whether we shall increase terrorism and make the task of the security forces even more difficult. We do not have to rely simply on our hunches to answer that question. Several countries have faced such circumstances. One has already been mentioned. Capital punishment existed in Franco's Spain, although Spain was rather chary of using it.

In September 1975 that country shot five terrorists for being guilty of shooting policemen. The result was that, within eight days, no fewer than nine policemen had been shot by terrorists in reprisals. The *Police Review* in Britain commented that

"whether it was right or wrong to execute the Spanish terrorists, subsequent events hardly bore out the case for bringing back the death penalty to deal with the situation in Britain."

I commend that comment to my right hon. and learned Friend the Home Secretary and to my hon. Friend the Member for Bury St. Edmunds (Mr. Griffiths).

The second precedent is Palestine after the second world war. The late Arthur Koestler wrote in his book "Promise and Fulfilment", about what happened when capital punishment was first used in 1947. He wrote:

"In April, four terrorists were hanged . . . The executions were followed by a new wave of assassinations, bomb-throwing and mine laying, which caused further deaths within the next few days; on the scene of each attack the terrorists left a hangman's noose as their signature".

Presumably those who favour reintroducing hanging in Britain think that the IRA would act differently from the ETA and the Irgun terrorists. I should like to know their evidence. We have heard no evidence to suggest that the IRA would act differently from the way in which it and other terrorist organisations have acted.

There is also the problem of communal violence. I remind the hon. Member for Londonderry, East that capital punishment in Northern Ireland was abolished because of the imminent execution of a Protestant. It was thought that such an execution would lead to considerable communal violence.

We must ponder something else. When I was concerned with these matters throughout the Conservative Government of 1970-74, and as an Opposition spokesman for the rest of the 1970s, I never came across one commander of security forces who favoured capital punishment for terrorism. Every one opposed it. I understand from my right hon. Friend the Secretary of State for Northern Ireland that that is still the case. They opposed it because they believed that capital punishment would lead to more rather than less terrorism and fewer convictions. That is hardly a desirable combination.

Why do my right hon. and hon. Friends who want to reintroduce hanging for terrorism decide on this issue alone to pay no attention to the security commanders? On any other, they would pay serious attention to them. For some reason, they have decided totally to ignore them on this issue.

My final point has already been touched on and is whether we should extend the penalty to Northern Ireland. I did not fully understand what my right hon. and learned Friend the Home Secretary was saying initially, but he has made it clear that he thinks that the death penalty should be extended to Northern Ireland. We would then have an absurd position. Virtually everybody—except my right hon. and learned Friend the Home Secretary—agrees that one cannot hang a man without a jury trial. The hon. Member for Antrim, North (Rev. Ian Paisley) said that he would welcome jury trial, but that is not a serious solution because it would lead to few convictions, because the witnesses and the jury would be intimidated. The result of bringing back hanging for terrorism in Northern Ireland would be that fewer terrorists would be convicted, which is not desirable.

My right hon. and learned Friend the Home Secretary tossed out an extraordinary suggestion when he said that it might be possible to have three judges sitting together, or just one judge and a couple of assessors. With all respect to him, that is not something that should come from the Home Secretary. It might come from me or one of my right hon. or hon. Friends on the Back Benches, but the Home Secretary should have settled proposals if he is to advocate to the House a serious matter, and this could hardly be a more serious matter. Instead of that, he said that one might have a couple of assessors. That would be intolerable for public opinion here and in Northern Ireland, and for the assessors. That is not a serious point of view.

We would still have an extremely difficult and impossible quandary. If we extend the death penalty to Northern Ireland there would have to be jury trials, which would mean no convictions, and if we do not extend the death penalty to Northern Ireland we will have hanging on this side of the Irish channel, where there is little terrorism, and not on the other side of the Irish channel, where there is a great deal of terrorism. Either way, that argument reduces the whole case for hanging for terrorism to absurdity.

The experience of other countries, the views of the security commanders and the realities of our judicial system all point in exactly the same direction and make the case against hanging for terrorism overwhelming.

8.2 pm

Mr. Alex Carlile (Montgomery): New Members, more than any others, have experienced the pressure of public opinion on this issue, or at least of assertions of what public opinion is said to be. I intend tonight to vote against the reintroduction of capital punishment, in any form, and for any form of murder. If I had thought that public opinion must rule my conscience I should not be in this House, for I should not have stood for election. I hope that many other new Members will take that view and vote with their consciences tonight.

I should like to concentrate on two specific matters—matters which are practical legal considerations. The first

[Mr. Alex Carlile]

concerns the meaning and nature of the legislation that would have to be introduced if capital punishment were reintroduced. The second concerns the administration of justice.

Let me deal first with the meaning and nature of the laws that would have to be created. We have seen many attempts to define different categories of murder. The intention behind those attempts has almost always been to define the most serious as the capital crimes.

The Homicide Act 1957 was a signal failure. It demonstrated plainly the arbitrariness of the distinctions that were created. It is too glib to say that those who draft statutes have now discovered the magic of definition, which would remove the arbitrariness from such distinctions. With the 1957 Act, the callous poisoner who, for motives of gain or lust, killed in a painful and calculated way escaped the gallows; whereas the social inadequate who went to steal from the gas meter and made a spur-of-the-moment decision, not to kill but to cause serious injury, rendered himself liable to be executed. Such an arbitrary distinction is not acceptable in a civilised legal system.

What is more, how do we define terrorism for the purposes of distinguishing between capital and non-capital crime? I have not heard from those hon. Members who wish to see execution for terrorists one word of explanation of how they would define terrorism so that we would have a legally workable definition in court.

There is also the problem of the definition of "police officer during the course of his duty." Every day, in many magistrates' courts, solicitors argue about the meaning of those very words. These are not cases of murder, but minor offences of assault.

Once again, we should see people executed because of arbitrary decisions based upon arbitrary legislation. How will the public react when they perceive that arbitrariness? How can we defend such laws against the accusation by our critics that the House had acted on emotion rather than on argument, and on gut feeling rather than on good judgement? The reintroduction of capital punishment, in whatever form, would create arbitrary laws; and arbitrary laws are thoroughly bad laws.

Secondly, there is the administration of justice. We all agree that it is of profound importance that murderers—all murderers if possible—should be brought to justice. Practitioners, and there will be some in the House, who have experience of capital trials in years gone by will say that, whatever public opinion may seem to be, juries were in fact reluctant to convict of capital crime, at least in England and Wales. In this regard, the statistics are persuasive. In 1955 and 1956, of those crimes that were reported by the police as murder, about 22 per cent. of the accused were convicted of murder. Between 1970 and 1972, the last years for which comparable statistics are available, and after the abolition of the death penalty, the rate had gone up to nearly 40 per cent. Capital punishment is a deterrent — a deterrent against the conviction of murderers by juries.

Another practical consideration is majority verdicts. One of the arguments deployed in the House when it was agreed that majority verdicts should be permitted was that no more capital verdicts were required, that is, no more verdicts that could lead to death. Are we to send people to the gallows on the basis of majority verdicts? Would majority verdicts have been introduced in the knowledge that capital punishment would be restored? This is extremely doubtful.

I have heard it said on the radio by an hon. Member that the answer to that problem was to have capital punishment only if there was a unanimous verdict. That is a naive proposition. It introduces an even less acceptable element of arbitrariness — the element of luck in finding an abolitionist on the jury.

My final point is also about juries. One of the main reasons for the revival of the debate on capital punishment has been the level of terrorism in Northern Ireland. It is less than intellectually honest to try to divert our attention to other forms of terrorism. When we talk of terrorism in this debate, we are all thinking of Northern Ireland. Terrorist trials in Northern Ireland are held in the Diplock courts because practical experience showed that it was not possible to find juries prepared to run the personal risk to themselves of convicting for terrorists offences, even offences falling far short of murder.

The reintroduction of capital punishment would inevitably mean that the House accepted executions without jury trial. That would be a change going to the very basis of our legal system. The suggestion that an individual man or woman should be killed as a result of the judicial verdict of another individual man or woman is horrific to any practising lawyer and should be horrific to the laymen too. The Home Secretary talks vaguely of having one or two assessors, but nobody knows what he means by that. Is he suggesting that people should be convicted of murder by something resembling a magistrates court?

We rely upon the checks and balances of the jury system. To suggest that we should do otherwise in capital cases is profoundly offensive to those of us involved with the practice and administration of justice. That was made plain yesterday by the overwhelming majority at the annual meeting of the Bar. It has been made plain by the majority of those judges who have let their views be known, and by those who have to manage the prisons.

These are practical problems. I hope that the House will give them full weight in deciding to vote against the reintroduction of capital punishment.

8.13 pm

Mr. Vivian Bendall (Ilford, North): I share the view of my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) that this debate should not have been called so early in this Parliament. We faced a similar situation in 1979, when a debate was called early in the Parliament. It would have been in the best interests of the House — especially the new Members — and of the general public, to hold the debate in the autumn. New Members of Parliament would then have been able to make a better assessment of the views of their constituents.

I am also somewhat concerned about the new stance taken by the Government on this issue. When we last debated this matter in a similar way in May 1982, the then Home Secretary, Viscount Whitelaw, in replying to the debate, commented upon the situation that would arise if the House were to vote in favour of the death penalty for any of the categories of murder. He said:

"In that event, the Government would need to consider the means of achieving the exact basis on which capital punishment was to be made available. As I said in the 1979 debate, the problems in bringing forward and seeking agreement on precise

legislative proposals to take account of the issues of principle and practice that have been raised in my contribution and many others would be an immensely difficult task. As Home Secretary, it would be my duty to prepare legislation to give effect to the will of the House, and that I should do." — [*Official Report*, 11 May 1982; Vol. 23, c. 637.]

The answer to a question last Thursday suggested to me that the Government may have changed their view. Apparently it is now the view of the Prime Minister and the Home Secretary that, if we vote in favour of the death penalty for any of the categories of murder, there should be a private Member's Bill. That is a complete turnaround by the Government on the assurances given a year ago to this House, given again by Viscount Whitelaw, during the election campaign and also referred to on "Panorama" in the middle of May when the Prime Minister was interviewed by Robin Day.

Mr. Dennis Canavan (Falkirk, West): Robin who?

Mr. Bendall: Sir Robin Day.

There has been a clear change in Government policy, and I do not believe that that change has been made clear to the general public. We should be given an explanation by either the Prime Minister or the Home Secretary.

Mr. Willie W. Hamilton (Fife, Central): Send for her.

Mr. Canavan: Send her to the gallows.

Mr. Bendall: We should be told why there has been such a change in Government policy. The Government have a duty to the House and to the British people to make the reasons plain.

The Secretary of State for Northern Ireland has made absolutely clear his views about the death penalty in relation to Northern Ireland. He has a right to do so, even though I may disagree with him. I fail to understand, however, why various other Ministers have not given us their reasons for the course of action they may wish to take. It is no good saying that the Secretary of State for Northern Ireland has special responsibilities. The Secretary of State for Scotland also has special responsibilities, so perhaps we ought to hear from him too.

Mr. Canavan: Where is he?

Mr. Bendall: Where indeed? We are debating a serious issue of national interest. There is no doubt that the people of this country will study this debate seriously. They have a right to know the views of important members of both Government and Opposition who would have to administer the law or to take decisions affected by our vote tonight.

In recent years there have been many opinion polls. Many hon. Members have recently taken straw polls. I do not necessarily believe that one should cast one's vote on the basis of a straw poll, but, in our democratic system, when we are considering issues that arouse the emotions of the general public, we should brief ourselves as fully as we can.

We are discussing a number of categories of murder. I am deeply concerned about some of the views expressed outside the House. The bishops, the judges and others have every right to their opinions — everyone has in a democratic society — but I am worried when judges, prosecuting counsel and others say that they may not be prepared to administer the law if Parliament decides to change th law in favour of the death penalty. I find that very dangerous. My answer to those who try to influence events in that way is that if the law changes and they feel that they cannot administer it, although it is the democratic will of Parliament, they should leave the positions that they hold. Otherwise, such a situation would take us into very dangerous waters.

I am bitterly disappointed about much of the role that the Church has recently played in politics — *[Interruption.]* I knew that some of my remarks would be unpopular but there are things that must be said. I should like the Church—regardless of which Church it is—to be more active in speaking out against violence. I should like it to exert more influence on that subject. We only seem to hear from the Church on certain aspects of politics. It does not seem to cover the wider spectrum. I have never heard the Church of England Synod refer to the victims in its debates on murder and capital punishment — *[Interruption.]* Again, that comment might be unpopular, but there are things that need to be said.

We have been battling for many years against one factor that has forced many people to seek the return of the death penalty. I refer to the fact that the measures taken after 1957 have basically failed to work, because life imprisonment has not meant exactly that. Murderers leave prison 10 to 12 years after committing their crimes and often serve much shorter sentences than, possibly the train robbers, the Crays, the Richardsons and others who have committed capital murders, although frequently against their own criminal kind — *[Interruption.]* That is one reason why the British public are concerned about what is happening. The sentences meted out to others who commit murder are minimal by comparison.

We have correctly heard that the number of policemen murdered since the abolition of the death penalty has nearly trebled. Much has been said about the serious acts of terrorism that are committed. I do not intend to go into the details, but hon. Members should bear in mind the sad situation that obtained at the Maze prison, and the fact that several hunger strikers committed suicide before sanity prevailed with their relatives, and came to the aid of others who wished to continue on that path. They realised that the Government were not prepared to give way. The problems must be brought closer to home. We must have more influence on the family unit, where the problems originate. We must also have more influence in the schools, where the problems also have their root. Those are the areas that we must tackle.

I admire the comments made by the Home Secretary today when he said that we should introduce capital punishment for terrorism. I am only sorry that he did not include the use of firearms and explosives. It is difficult to define whether a terrorist who robs a bank is committing a criminal act or an act of terrorism. However, if firearms and explosives are included, the difficulty is removed. That inclusion would make it clear that the use of firearms or explosives would warrant the death penalty. Therefore, I am sorry that the Home Secretary could not find it in his heart to go further. If he believes in the death penalty for terrorists, he must surely believe in the death penalty for those who use explosives and firearms. That is why I shall support the motion and the amendments, and I trust that other hon. Members will join me in the Lobby.

8.15 pm

Mrs. Renée Short (Wolverhampton, North-East): The hon. Member for Ilford, North (Mr. Bendall) has complained that the Church does not speak out against violence in our society, or on behalf of the victims.

[Mrs. Renée Short]

However, the Church has consistently spoken out about certain forms of violence. I think of the horrors of nuclear war, or perhaps the hon. Gentleman does not think that that is violence. In speaking out against nuclear war, does not the hon. Gentleman think that the Church is speaking on behalf of the potential victims? Perhaps the hon. Gentleman will think again about the role of the Church.

Mr. Bendall: Would the hon. Lady like to give way?

Mrs. Short: No, I do not think so.

Parliament, of course, must take responsibility for what it does, and we must be aware of the views of those who send us here, for we must answer to them for what we do. Indeed, several hon. Members have already made that point. I have received nine letters from my constituency, so my constituents are apparently not unduly concerned about what I might do tonight. They have not been whipped up by the press, which has been organising public opinion polls, just as it did during the election campaign, to try to whip up a feeling of hysteria.

We must answer to our constituents, but that does not mean that we must ignore our consciences and do what we believe in our hearts to be wrong. Parliament would be a poor place if we were to do that. I do not know whether hon. Members realise it, but we are discussing this fundamental issue on the anniversary of the judicial murder of a woman. The hanging of Ruth Ellis, as I well remember, was a horrific affair. I believe that the majority view then was that she should have been reprieved, but she was not, and she died what must have been, for her, an utterly terrifying and lonely death. That brought home to many of us the utter futility of the death penalty and the enormity of taking life, even when a life had been taken, and in circumstances that many people could well understand. Treachery and betrayal can call up the deepest emotions normally hidden in the human heart, and no one can say with any certainty that it could never happen to him.

The argument that the death penalty would, if reintroduced, prove a deterrent to terrorism is false. It did not deter in the past. Terrorism, in the context that many think of at present, has a long and terrible history. Hon. Members have already reminded us of some of the appalling events in Northern Ireland.

The fear of death was not in the minds of those who were deputed by their peers to commit those acts. In the past the prize of martyrdom acted almost as adrenalin to spur on the evil doers. It gave them the motivation and drive to carry out the murders of innocent people who stood in the way of their political goal. That has been the position throughout history. In every country there have been periods of prolonged terror with countless lives lost but little evidence to show that the guillotine or the hangman had any deterrent effect.

Almost 124 years ago the first Royal Commission was set up by the House to decide which murders should be punishable by death and which should not. That Royal Commission, even in 1864, favoured the abolition of the death penalty, but it tried to categorise murders into capital and non-capital offences because it felt that it had to make concession to public opinion as it believed public opinion to be at that time. Since then, debates of this type have become a ritual in the House. I hope to goodness that this will be the last. I wish that this debate could conclude with a clear vote against the death penalty and that that would settle the matter.

The judicial hanging of a human being has never, to my mind, served any useful purpose. I do not believe that this callous, cold-hearted ritual should ever be brought back into our lives. There is a paradox in the argument of hon. Members who say how wicked it is to take a human life when those who support the motion would do just that. Those of us who oppose the reimposition of the death penalty do not believe that the taking of human life is part of a civilised society and we renounce our right to do that. Society must be protected and criminals deterred, but there is no evidence that hanging is a deterrent. The dreadful risk is that if we vote in favour of the death penalty mistakes will again be made and innocent people hanged. The cases of Timothy Evans and Craig and Bentley spring to mind, but there were several others.

In earlier centuries the usual penalty for theft was to cut off the hand of the thief. That practice still operates in some middle east countries. No one would ever suggest bringing back that penalty in this country — or would they? One never knows with the Conservatives. We have been re-educated about that. I hope that Conservative Members are now being re-educated about hanging. Legalised murder is brutalising and degrading. It does not deter. Every criminal, petty or not thinks that he will get away with it. Those who kill in a fit of rage do not have time to think about whether there is capital punishment. When the rage is over, they are horrified at what they have done and are filled with remorse. I do not believe that the deterrent argument holds water.

If we reintroduce the death penalty for terrorism, we shall create a whole new mythology and literature of martyrdom. Songs will be sung for generations, plays will be written about the so-called martyrs, the literature will expand and new generations of terrorists will grow up with the desire to emulate and to exceed what has been done before.

The hon. and learned Member for Fylde (Sir E. Gardner) has not proved his case. As the right hon. Member for Old Bexley and Sidcup (Mr. Heath) said, revenge is not acceptable. It proves nothing, it deters no one and it serves only to make martyrs in evil causes. The right hon. Gentleman was also right that concentration on capital punishment prevents us from doing anything positive about penal reform.

It is largely, but not exclusively, in poverty that the seeds of crime are sown, and poverty is made more likely by the present Government. To do anything positive to reform the penal system and the way in which we deal with law-breakers is one of the most unpopular causes to plead in the House and in this allegedly enlightened land, as I know to my cost, but reform is certainly needed. Our prison system is a disgrace. A terrifying fate awaits any long-term prisoner in our overcrowded, overstaffed and insanitary prisons. Thousands of men suffer those overcrowded conditions and on the whole nothing is being done to re-educate or reform them.

I hope that the House will vote against the motion and that this will be the last debate of this kind.

8.33 pm

Mr. Terence Higgins (Worthing): It is now nearly 20 years since the House voted for the Second Reading of the Bill to abolish capital punishment. At that time I had

recently entered the House, having had the honour to be elected to represent Worthing. I well recall being greatly influenced by the speech of the then Mr. Henry Brooke, who had just left the office of Home Secretary. He said that he had changed his mind and strongly advocated that the House should vote for abolition.

Mr. Henry Brooke's remarks were reinforced from his own experience. In particular, he referred to the frame in the Home Secretary's office which contained a list of those due to be considered for reprieve, having been condemned to death. He referred to a Latin tag, which was translated as:

"No pause for thought is too long where the death of a man is concerned."

I hope that that frame will not be reinstated in the Home Secretary's office. Many of the arguments put forward by that Home Secretary are still relevant, although there are new arguments that did not exist 20 years ago, such as the impact of majority verdicts, trial without jury and terrorism.

Reference has been made to the difference of opinion in the House and to our constituents' view on the matter. That must be of great concern to every hon. Member. I have always believed that politics must be a two-way business so that one takes fully into account one's constituents' views. One also has a duty to explain to them the arguments expounded here and elsewhere. It is important to stress — I am disturbed by reports of colleagues who take a different view—that we are not sent here as pocket computers to register simply on the basis of numbers what our constituents believe. If we do that, we are failing in our duty. We have a far more difficult task, which is to take fully into account the arguments of our constituents, to listen to debates in the House, to examine all matters as fully as possible, and then to vote as our constituents would vote if they had the same opportunity as we do. We must explain to them, in Burke's immortal words, that we are here as representatives, not as delegates.

Much has been made of the argument that this is a matter for individual Members' consciences. The right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) and others laid great weight on that argument and appealed to hon. Members' consciences. I do not believe that it would be a problem of conscience if I were faced with the simple issue of saving the life of an innocent person or saving the life of someone guilty of murder. That would be a clear-cut decision, which is not a matter of conscience but one of judgment. However, in this debate, it is difficult to make up one's mind on the basis of judgment, taking all the arguments into account.

The crucial question, as is well established from this and earlier debates, is whether a vote for the restoration of capital punishment would save innocent lives. I have no sympathy for criminals or terrorists. My anxiety is for the community as a whole, but one must ask whether the case for deterrence has been proved, given the fact that mistakes have been made in murder cases. The onus of proof is on those who believe that capital punishment is a deterrent, and they have not made their case.

That does not mean that I am soft on crimes of violence, and preoccupation with this matter has distracted the attention of the House from the need for heavier penalties for crimes of violence. It might be argued that as the judiciary has discretion to impose sentences for robbery with violence and armed robbery, an amendment today stating that such crimes should have a sentence of at least 20 years served would do far more to deter bank robbers than would capital punishment.

Mr. Teddy Taylor (Southend, East): How does my right hon. Friend know?

Mr. Higgins: Our attention has been distracted from the main issue, which is the need for heavier sentences.

There is a real problem because of the introduction of majority verdicts. If a man were found guilty of murder, with two members of the jury believing him innocent, one could not go ahead and hang that man. However, if one goes for a unanimous verdict in such cases, there is a real danger that because a member of the jury is opposed to capital punishment on moral grounds the person would be acquitted and go free, receiving no punishment at all. It is perhaps unfortunate that my hon. and learned Friend the Home Secretary did not deal with this matter.

I shall deal briefly with terrorism and the various arguments that have been raised on that tragic subject. I have no sympathy whatever with terrorism, and I believe that the whole House shares my utter revulsion at and abhorrence for the deeds that have been carried out by terrorists. Several arguments have been put, in particular about the problem of creating martyrs.

Capital punishment would give the terrorists a real propaganda weapon. One cannot use the comparison of the hunger strikers. Someone rightly said that the Government stood firm and in the end the hunger strikes stopped. That would not happen if we reintroduced capital punishment. If murders and terrorist murders continued, the process of capital punishment would necessarily continue, and that would provide a propaganda weapon of a totally different order from that which existed when the people concerned decided to take their own lives. We should be concerned about that.

In the wider context of terrorism, I was much impressed by the remarks that were made by Sir Robert Mark at the time of the Balcombe street seige, when the terrorists were persuaded to surrender. He said that they would have been most unlikely to surrender if they knew that they would be hanged. That again is something that we should bear in mind.

There is also the problem of hostages. If capital punishment were imposed, with the long drawn-out process that would necessarily precede the hanging of any terrorist, there is the possibility that hostages would be taken. If I were convinced that the Government would stand firm in those circumstances I believe that the risk would be worth taking, but there is no guarantee that the Government would stand firm, faced with going ahead with capital punishment at a time when the lives of perhaps 20 or 30 hostages were at stake. If the Government did not stand firm the victory for the terrorists would be great, as would be the defeat for law and order.

Then there is the point that has been made on a number of occasions about whether we could have capital punishment for terrorists when the decision would be taken by a judge, or a judge and two assessors.

Mr. Brittan: Three judges.

Mr. Higgins: As my right hon. and learned Friend says, apparently, three judges. The number of judges is not relevant, with great respect. I am sorry that my right hon. and learned Friend did not spell out what he had in mind

[Mr. Higgins]

in greater detail. [HON. MEMBERS: "Hear, hear."] It is possible that public opinion would not find a decision of that nature acceptable. Indeed, it would place tremendous responsibility and strain on the individual judges, in a totally unprecedented situation—at any rate, in modern times. However, if we go back to a system of trial by jury in Northern Ireland, in particular, there is a risk of intimidation, with the result that people might be acquitted and suffer no penalty whatever. I am therefore not convinced that it would be right to restore capital punishment.

In view of the strength of argument in the debate 20 years ago, when it was almost unanimously agreed that it was impossible to differentiate between capital and non-capital murder—certainly, Mr. Henry Brooke stressed that aspect—and when it was rejected by the House on that occasion, I find it extraordinary that we now have a series of amendments on the Order Paper which seek to do precisely that. One cannot differentiate between different categories of murder, and certainly not, as has been stressed by several hon. Members, between terrorist and non-terrorist murders. As has been rightly said, those are equally terrible and it is right that the same penalty should be imposed. However, for the reasons that I have given, it would not be right to restore capital punishment in any of those cases.

8.44 pm

Mr. Willie W. Hamilton (Fife, Central): The debate was opened by two Queen's counsel — the hon. and learned Member for Fylde (Sir E. Gardner) and the Home Secretary. They both had expensive educations. I listened to them as a simple layman and I had no sense of deprivation in not having had a legal training. They did the cases that they put forward no justice.

The hon. and learned Member for Fylde almost admitted that there were no statistics to prove that capital punishment of whatever kind is a deterrent. The Home Secretary underlined that. All the figures produced by all the authorities that we can lay our hands on also underline that fact. That destroys the principal argument for the reintroduction of capital punishment.

If it does not deter, why is the argument for capital punishment put forward unless it is some form of retribution? But retribution does not solve the problem. We are still left with murders and violence of one kind or another, endemic to our society. They are increasing day by day.

At every general election in the past 20 years to my knowledge the Conservative party has promised that it is the party of law and order and will solve the problems. It has singularly failed to do so and it is in desperation that debates such as this are put forward from time to time. They are to try to prove the Conservative party's virility in one way or another by showing its firmness and determination to root out murder. But, of course, they do nothing of the kind.

The Home Secretary's speech was the most appalling that I have heard from a Home Secretary in the past 30 years. He is one of the most over-rated Members of the House. I have thought so ever since he became a Member. Whatever position he has held, I have had that view confirmed. He underlined it this afternoon by an almost off-the-cuff remark. He said that he would reintroduce capital punishment for terrorism. He said that we cannot have juries but that we shall have two or three assessors, a little quango the members of which will get together in a happy little knot to decide that somebody shall be for the rope.

Would there be a majority verdict, two to one? What would be the mechanics by which a man would hang, be shot, be poisoned, or whatever? For a prominent member of the Cabinet to make such a speech is absolutely disgraceful. It has rightly been shot down by almost everybody who has spoken in the debate.

The Home Secretary also said that the argument was raging in the country. It is doing no such thing. In a document in the Library I read that in a previous debate an hon. Member said that she had received 800 letters on the subject. I have never had 800 letters on any single subject under the sun in all the years that I have been in the House, and on this particular matter I have had precisely four. Right hon. and hon. Members can make of that what they like. They cannot presume that the country is seething and desperately anxious for the rope.

Even if that were so, it has been said repeatedly in the House that we are not here to govern by public opinion poll. We are here to make our own judgments, to exercise our own consciences and to take the rap in our constituencies for whatever we do or say. I have always made my views abundantly clear, and there has never been any threat to my existence in the House. My position has never been threatened by virtue of my attitude on this matter.

I forecast that, whatever the outcome tonight, no legislation on capital punishment will be passed by Parliament. I build a scenario. What will happen if the Home Secretary's advice is taken by the House—I do not believe that it will be — and we accept the proposition that there will be capital punishment for terrorism? A private Member will try to introduce legislation with the Government's advice. He might be better off without it. The Government must then define their terms. Many Prime Ministers all over the world have at one time been defined as terrorists—in Africa, South America and all over the former British Empire.

I can name 20 hon. Members who would like to be on a committee on capital punishment legislation, defining exclusions and the rest, but there is no prospect of succeeding with such a Bill. The Government know that no guillotine motion would be possible.

The Prime Minister, contrary to her promise during the election campaign, said that the Government would have nothing to do with this matter. The Government are divided. They see a way out. Even if the vote goes in favour of one proposition or another, there is no hope in hell that it will be translated into legislation.

The Government are gunning for the Home Secretary. His bacon will be saved by the device of a private Member's Bill. The legislation is dead, whatever the result tonight. That is why the Government are behaving in this hypocritical way. I hope that this is the end of this sad story and that we will get down to solving the undoubted problems of increasing violence. The greatest violence is to put nearly 4 million people on the dole.

8.54 pm

Mr. George Gardiner (Reigate): I commend to the House amendment (i) which stands in my name and which seeks to restore the death penalty for murders committed

in the course or furtherance of theft. Having heard this debate through, although the contributions from both sides have obviously been sincere I am left with the feeling that insufficient account has been taken of the weight of public opinion.

My amendment covers the category of murder that comes closest to ordinary people in their daily lives. It seeks to lessen the danger and the fear that they feel. My amendment would restore the possibility of capital punishment for those who take guns on raids on banks or wages vans with the intention of using them to shoot their way out of trouble. The scene of such a tragedy could be any high street bank to which our constituents go regularly in the course of their business. It could be a security van visiting a factory, office or other place of work.

The amendment seeks to restore the possibility of capital punishment for those who take weapons with them when burgling homes, knowing that they might use them to eliminate an unfortunate innocent witness to their crime. It seeks to restore the possibility of capital punishment for street thieves — for muggers and people who use violence and weapons other than guns at the cost of innocent victims' lives. It seeks to restore the possibility of capital punishment for that despicable crime that is becoming prevalent—breaking into a home, battering an old person, taking their savings and leaving the victim without any apparent concern about whether he or she lives or dies. Indifference to human life has become associated with many forms of crime. I find that most frightening of all.

A newspaper report a few weeks ago which did not take up much space, began with the words:

> "Two men who killed Mrs. Violet Beckett, 84, by putting tape over her eyes and mouth, tying her to her bed and leaving her, were both jailed for 12 years at Birmingham Crown court yesterday. The pair also stole the £400 she had saved to pay for her funeral."

That type of murder comes closest to people's experience in their daily lives. Ordinary people live in fear of that happening to them. Is it any wonder that the majority of people demand the further protection that they believe the possibility of the death sentence would give them?

I cannot accept the Home Secretary's contention that some exemplary sentences would cause the greatest public disquiet. That disquiet, anger ad fear exists now. The argument of the advocates of capital punishment is not about taking life, but about saving it. We have a duty to do whatever we can to ensure that men, women and children do not become the innocent victims of violent crime.

Many statistics have been used in the debate. In the past 10 years in that category of murder to which I refer—the furtherance of theft or gain—500 innocent people have lost their lives.

The Timothy Evans case is thrown at us as an example of a possible innocent life taken. We must remember the 500 innocent lives that have been lost in the last 10 years as a result of murder by those bent on theft. I cannot comprehend how abolitionists can disagree that at least some of those 500 innocent lives could have been saved if the possibility of capital punishment had obliged the criminals to pay a passing thought for their victims.

It is freely acknowledged on all sides that hon. Members have a difficult and moral decision to make. Moral questions are not easy. They are often difficult to decide. That is so tonight. The moral arguments are not all on one side. Many opponents of capital punishment this evening have talked about the possibility of error when a capital sentence is carried out. That is a possibility which I, in honesty, have to understand and accept. What if an innocent life is taken? I take that on board when considering the problem. But that is not the end of the moral argument. An equally moral question is whether we can continue to deny to citizens innocent of crime the final thin protection of obliging the criminal to show some consideration for their lives while pursuing his ends.

I agree that the death of Timothy Evans poses a moral problem, but so does the death of Mrs. Violet Beckett, left casually to die by those who had robbed her of £400. Her life should weigh on our consciences—together with the lives of many of the 500 killed during the process of theft in the past 10 years—as does the life of Timothy Evans.

I have no doubt where the balance of such moral argument lies. I shall vote accordingly tonight to save lives —the lives of those destined, under the law as it stands, to become innocent victims.

9.1 pm

Miss Betty Boothroyd (West Bromwich, West): The first argument presented to the House this afternoon was put by the hon. and learned Member for Fylde (Sir E. Gardner). It was that the public wishes the return of the death penalty for the crime of murder. I tend to think that perhaps the majority do wish for that. The return of the ultimate penalty would be regarded as a mark of determination by the House to deter the criminal. No doubt such symbols have a powerful attraction, but they are of little benefit when they do not produce the required results. From all that I have read over many years and heard today, it is hard to find real, substantial evidence to suggest that judicial killing is an act that deters.

I do not doubt that it does deter some, but it does not deter others. There is no real statistical evidence for believing that there is a clear correlation between the murder rate and the existence or otherwise of the death penalty. It cannot be proved one way or the other. Therefore, it must be a question of judgment.

The second argument before us is that of retribution. Many hon. Members bellowed in support of that emotional attitude. I find it difficult to argue with those who demand retribution because of the sheer single-mindedness of that approach. They believe that murderers should be hanged irrespective of the consequences of that decision. The retributionists tonight will not find much difficulty in making their decision. But I do not believe that revenge and retribution are the business of Parliament. The business of Parliament is justice and the protection of the innocent—justice in the form of harsh punishment for the guilty and justice in protecting the lives of the innocent and the values of our society. Retribution can never and should never have a place in the deliberations of a Parliament.

The third argument before us is that of selectivity. Those who do not believe in judicial killing are not being asked to throw their convictions overboard; they are being persuaded to make their convictions flexible. It has been suggested throughout the debate by those who have tabled amendments that a more flexible approach will suffice. They suggest that we should discriminate in applying the capital sentence. We are being asked to apply it not to all murders, but to killings in furtherance of certain types of crime, which are spelt out in the amendments. Many hon.

[Miss Betty Boothroyd]

Members have acknowledged that to restore selective judicial killing would present the judiciary with enormous problems.

Attempts to implement legislation which distinguishes between capital and non-capital murders have been unsuccessful. We have heard that earlier legislation produced anomalies despite years of study and examination in attempts to define different types of murder. We must face reality. Either we have the death penalty for all murders or we do not reinstate it. That is the issue before the House. We cannot distinguish between one category of murder and another.

Let us consider the issue in practice. I give as an example a raid on a post office or a bank in which a clerk is killed. Subsequently the prosecution produces evidence to suggest that he who killed the clerk had former associations with a terrorist organisation but that those associations had been severed some years before. The accused denies that he was politically motivated but insists that he was financially motivated. There would be grave suspicion and doubt in such a case. It could be that the individual who carried out the killing had no connection with a terrorist organisation but there was evidence to suggest that his associates were politically motivated. It would be an impossible task for juries to distinguish between motives. It would result in far fewer convictions. The legal system would be in disarray and brought into disrepute. It is a ghoulish proposition and an impossible task to draw moral distinctions, as some amendments seek to do, between different types of murder.

The fourth argument concerns the delusion that judicial killing would horrify and deter those prepared to commit major crimes of terrorism. I believe that the Home Secretary is wrong, and dangerously wrong, in what he said today. History disproves the case. History disproves the contention of deterrent. One has only to consider Ireland in the past, Palestine as it then was, Cyprus and more recently Spain. Reprisals on innocent people produced no evidence that the overall result of capital punishment is effective to deter the terrorist any more than it protects the innocent. This was acknowledged 10 years ago in relation to Northern Ireland. At that time, a courageous Conservative Home Secretary moved the abolition of the death penalty there. In doing so he said that he was absolutely convinced that in the days preceding and following any execution, police and soldiers would be at increased risk and that it would be likely to promote more shooting and more risk of death than to reduce it. That was later confirmed when that former Home Secretary was in Opposition. It has been upheld by Home Secretaries for 10 years.

I was saddened today after all those years to hear the astonishing views of the new Home Secretary in an incomplete, incoherent argument on a most crucial issue. We are dealing not with criminal thugs but with fanatics, and I do not think he recognises that. We are talking about people who put their lives at minimal cost in comparison with the cause for which they fight because they are hooked on the drug of fanaticism. Death is their business and their only fear is meeting death without the full glare of publicity.

Although martyrdom is an old and classic argument, it is still valid. It was demonstrated in the wave of emotion which followed the self-inflicted starvation of Maze prisoners. That produced money, prestige and support for the IRA, and I am in no doubt that judicial execution would see even greater escalation of that support for violence, swelling the ranks of the paramilitary ready for the grisly romanticism of martyrdom.

For those who perpetuate outrageous acts there is no shred of sympathy. They must be met with long, tough sentences. I make no bones about the fact that I welcome the practice of committal for decades and conviction for life, and I regret that the Home Secretary did not give the figures in relation to Northern Ireland.

I come now to the final argument, to the democratic process which brings into conflict individual conscience and majority opinion. The first question put to me at the first meeting of the election campaign was on this subject. Although over the years in the House I have demonstrated my opposition to capital punishment, I cannot say that all my constituents are aware of my views. But I am not a mandated delegate and this is not a delegated assembly. I owe respect for the point of view of those whom I represent. I also owe them my judgment in seeking what is best for the country as a whole.

It would not only be wrong in itself but wrong in the interests of the nation to reinstate capital punishment on the basis of outside opinion. That opinion I must face and convince. If I fail, my views and I can be rejected. However, it would be intolerable if I were to allow gunmen to blow me away from the opinions I hold. We all owe our unpressured opinions to the nation, and I shall act in that manner tonight.

9.13 pm

Mr. Norman St. John-Stevas (Chelmsford): I have listened to the debate carefully and tried to evaluate the arguments that have been put forward. As some hon. Members may know, I have for long held objections on grounds of conscience to capital punishment, but that cannot be the end of the matter. This is an issue, not only of the individual hon. Member's conscience but a question of the judgment of each one of us as to whether the restoration of capital punishment would increase the security of the nation.

We are obliged to take into account the views of the constituents who sent us here. As the hon. Member for West Bromwich, West (Miss Boothroyd) said—and this has been a burden throughout the debate; I agree with it on constitutional grounds — we are not mandated delegates. We are representatives and therefore must take into account the views of our constituents. That must be part of our judgment, but it cannot determine it.

Let us remember that it is the restoration of capital punishment that we are discussing. Hon. Members have spoken about abolitionists. Capital punishment has been abolished—it has gone—and the argument is whether it should be restored. We should be talking about restorationists not about abolitionists. The burden of proof is upon those who wish to reverse the decision of the House and return to another situation.

Mr. Ivan Lawrence (Burton): Why?

Mr. St. John-Stevas: As my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) said, the status quo has altered.

Mr. Lawrence *rose*——

Mr. St. John-Stevas: No, I shall not give way. Has the burden of proof been discharged? Has it been established in the debate that the death penalty is a unique deterrent that would increase the security of the country? That has not been established and my right hon. Friend the Member for Spelthorne (Mr. Atkins) said that it could not be. If that is so, the case cannot be made out for altering the status quo.

We know that it is probable that perhaps six people have been wrongly executed. There may have been more, but can we return to the death penalty in the light of the evidence that mistakes have been made? That question has not been answered in this debate.

Much of the debate has been devoted to execution for terrorists. My right hon. Friend the Home Secretary devoted a considerable part of his speech to that issue. I am the first to acknowledge that it is extremely difficult for someone to speak as Home Secretary on this subject. He has a dual role which it is extremely difficult to discharge adequately. We all respect the conscientious right of my right hon. and learned Friend as a Member of this place to have his own opinion and his own vote, but he has an additional and different role from that, which is just as important. As Home Secretary he has a particular responsibility in this area, and it is up to him to give guidance to the House from the beginning.

I have to say to my right hon. and learned Friend that I do not think that he was clear in the guidance that he gave. He was rightly challenged by successive contributors to the debate from both sides of the House to provide clarification. There were two issues. First, he was asked whether the death penalty for terrorists would apply in Northern Ireland as well as in Great Britain.

Mr. Teddy Taylor: That was made clear.

Mr. St. John-Stevas: Yes, that was eventually made clear.

Mr. Taylor: I made it clear.

Mr. St. John-Stevas: Possibly: in fact it was made clear in response to a question from a former Home Secretary, the right hon. Member for Glasgow, Hillhead (Mr. Jenkins). The second issue is just as crucial and it has not been answered. It is whether the Home Secretary believes that it is possible without a restoration of jury trial in Northern Ireland to bring back the death penalty for terrorism. Is that possible?

If we consider the whole of our constitutional history, even in our darkest days—and there have been some black ones—we find that no responsible person has ever put forward the proposition that someone should lose his life—suffer the supreme penalty—save by the judgment of his peers. On an issue of this sort we need the utmost clarity from my right hon. and learned Friend in what he tells us he is proposing.

Mr. Budgen *rose*——

Mr. St. John-Stevas: No, I shall not give way. It has been suggested that perhaps a judge in Northern Ireland sitting with assessors would be a substitute for a jury. Has my right hon. and learned Friend asked the Northern Ireland judiciary whether it would be willing to adopt such a role? If he has made such an inquiry, what has been the response? We in the House are entitled to that information if we are to make a considered judgment on the facts.

Mr. Budgen: Will my right hon. Friend give way.

Mr. St. John-Stevas: One of the most outstanding speeches in the debate was made by my hon. Friend the Member for Spelthorne. I served with him in the Cabinet when he was Secretary of State for Northern Ireland. I can vouch, though it is not necessary, for the truth of everything that he said about the events during that period. He pointed to something of even more importance than jury trial. That is the consistent view of the Government and Opposition that there is nothing special about terrorist activities as such in Northern Ireland. What are the IRA and the others? They are not political offenders. They are common criminals, and they should be treated in that way. My right hon. Friend made it clear, with all the authority that his experience must command, that he was not in favour of bringing back the death penalty for terrorism alone.

Even if the death penalty were brought back not for terrorists alone, we would still be faced with the problem. If one brought back the death penalty in general for murder, what would happen in Northern Ireland for offences of terrorism? One would be impaled on the horns of the same dilemma. What would one do? Would there be a death penalty for everything save for terrorist offences in Northern Ireland? It is outrageous even to suggest such a thing. The issue has not been thought through. Until it has been a great deal more thoroughly than it has been during the debate, it is the duty of the House to give a negative reply.

We have had a full debate. It is true that many people who are deeply anxious about violence and crime in our society—rightly so—think that some sort of short cut solution will come about through the death penalty. It will not. They may be wrong in thinking that, but continuous debates in the House and elsewhere on the subject foster and create that delusion. Let the verdict of the House tonight—no one knows what it will be—be one thing, and it is this. Let it be the final verdict on the issue.

Several hon. Members *rose*——

Mr. Speaker: Order. To bring the debate to an orderly conclusion I should like to call the right hon. Member for Morley and Leeds, South (Mr. Rees) at 9.30 pm and the hon. Member for Southend, East (Mr. Taylor) at 9.45 pm.

9.23 pm

Mr. Alfred Dubs (Battersea): Most civilised societies have already abolished capital punishment. Those who seek to bring back capital punishment are seeking to lower our standards below those of many other countries. When we had capital punishment 20 years and more ago, hanging was used only for a small and limited number of murderers. Had capital punishment been applied more widely, I think that it would have been abolished many years earlier. Not one hon. Member who spoke up in favour of capital punishment today argued that it should be used in a widespread manner. Every hon. Member said that it should be used in a particular and limited manner. That makes its function as a deterrent that much less effective.

I argue, as other Members have, that individuals who seek to bring back hanging or some other form of capital punishment have the onus firmly on their shoulders to prove that it should work as a deterrent. I appreciate that not all hon. Members who want to reintroduce capital punishment have argued that it would be a deterrent, but

[Mr. Alfred Dubs]

most have. Rather than simply saying that the death penalty would somehow be effective, they have a responsibility to say why it would be effective.

There are other aspects of our criminal law where the evidence for a penalty or punishment is clear-cut. On something as drastic as the death penalty, the least that we can demand is that some evidence of its effectiveness be produced. It is not as simple as saying, "We will have capital punishment as a deterrent or we will not." If we have it, consequences that could be damaging to society will follow. Supporters of capital punishment have not covered that point properly.

The Home Secretary did not argue that capital punishment should be reintroduced for acts of terrorism because it would be a deterrent. Indeed, if I remember correctly, he said that it would not be a deterrent. He said that terrorism is so reprehensible that, irrespective of whether the death penalty would be a deterrent, he wants to reintroduce it. He went further and said that he wants the death penalty for terrorism not because of the loss of life of individuals but because terrorism represents a threat to the state.

That is a long way from the anxieties of most hon. Members who have spoken today, who are worried about the threat to the lives of fellow citizens. Not so the Home Secretary. He talked about the state. In that, he is different from almost every Home Secretary that most of us can remember. All of them opposed capital punishment. Indeed, only one Secretary of State for Northern Ireland—the right hon. Member for Spelthorne (Mr. Atkins) — has believed that capital punishment is appropriate. Home Secretaries and Secretaries of State for Northern Ireland are in a better position to judge the effectiveness of the death penalty. Their views should be listened to with respect. If they oppose it, they must have real reasons that are based upon their experience for doing so.

Some countries use the death penalty as a weapon of repression. South Africa and Iraq are but two. It seems that we are in grave danger of lowering our standards to those of states that are not democratic and use the death penalty to repress their citizens. Surely we do not want to do that.

The death penalty brutalises any society that uses it. Most of us can remember people waiting outside Wandsworth or other prisons at dawn for the notice saying that someone had been executed. Some hon. Members have said today that they want a method of capital punishment other than hanging. That argument has not had much weight. If we are to consider hanging—the other methods are also brutal—it is worth pointing out that it is an obnoxious way in which to deal with someone in the name of the state, even if that person has committed a ghastly murder. It involves the noose being placed in such a way that it will break the neck. It involves arms being tied and a hood over the person's face. It involves the use of rubber underwear so that excrement does not fall from the hanged person or, if the person to be hanged is a woman, to prevent the womb falling out. Do we want all of that in the name of the state and then a body that is so disfigured that the relatives might not be allowed to see it?

The hon. and learned Member for Fylde (Sir E. Gardner) said that it was the duty of the state to protect its citizens. I agree with that, and having heard the arguments from both sides of the House, I submit that the best way to protect our citizens and make life in our country safer, more decent and more tolerable is to defeat every one of the amendments and the motion that seeks to reintroduce the death penalty.

9.30 pm

Mr. Merlyn Rees (Morley and Leeds, South): I start on a personal note. When I first came here 20 years ago, I listened to Sydney Silverman and agreed strongly with, and supported, his views on the abolition of the death penalty, as I still do. As the years have gone on, I have operated on a broader canvas related to responsibilities as Northern Ireland Secretary and Home Secretary. I shall relate my remarks to my experience and explain why, with that experience, I am still against capital punishment.

From holding those two posts, I know that Northern Ireland is a matter for the Northern Ireland Secretary and not for the Home Secretary. It used not to be that way. Northern Ireland was the responsibility of the Home Secretary and, apart from 1968-70 when my right hon. Friend the Member for Cardiff, South and Penarth (Mr. Callaghan) had responsibility, it was very much a backroom job. In the face of the events of 1972 the Northern Ireland Office was set up. The Province is a place apart and a divided community. Some 2,250 people have been killed there, with further killings recently. At least 25,000 have been injured, while 300 members of the Provisional IRA are lying dead in the Milltown cemetry in the Falls road. I was astounded that the Home Secretary spoke in favour of an amendment that is almost completely concerned with Irish terrorism, and that he floated ideas on which his Department, except vicariously, could not have commented, for which he had no responsibility and of which he has no knowledge.

I rest my general case on the speech of my right hon. Friend the Member for Birmingham, Sparkbrook (Mr. Hattersley), who spoke on the effect in general of the removal of the death penalty and against a return to the categorisation of murders. I am concerned about the frailty of the courts. One of the cases mentioned in the documentation that has been sent to us is an instance when I was linked to the reversal of a sentence for murder.

I understand the feelings of those who are concerned about the increase in crime. The way to deal with that is to control the number of guns that are available, consider the length of sentences and investigate the causes of crime, as my hon. Friend the Member for Torfaen (Mr. Abse) said. That is the way to proceed. They should not make pointless additions to party manifestos that cannot be carried out, which lead to disillusion among the electorate and cannot mean a return to capital punishment, as the right hon. Member for Stafford (Sir H. Fraser) said.

I found the Home Secretary's approach to terrorism strange. He floated ideas for which another Department is responsible. He has a responsibility for a terrorism in this country that is almost completely Irish. The Irish terrorism is our problem. It is not Soviet inspired and it does not come from Cuba, although there was a time when Libya funded both sides in the Northern Ireland conflict. The events in Northern Ireland follow 200 or 300 years of history, and the ghastly murders that have taken place should make us understand the feelings of the people who come from Northern Ireland, who live with this daily, and who believe that over here nobody is interested. The violence comes from Ireland.

Northern Ireland Members and others know that I have not been out since March 1974 without a police guard, or stayed in without a police guard on my house. I know what the Provisional IRA and the INLA and God knows what feel. I have seen the blood on the streets. I know about the 2,300 dead and about the terrorism. I locked up 600 terrorists in detention and I know the names of others who dabbled with terrorists at different times, but who have talked about democracy with their second breath.

Having had that experience—and I have a right to refer to it—I can assert that to hang Irish terrorists—or shoot them or kill them by whatever new means may be suggested—will not solve the Irish question. Matters would get worse even in advance of legislation. As the hon. Member for Foyle (Mr. Hume) points out, Ireland would burn the moment the first person died. There may be 30 or 40 terrorist groups in Northern Ireland. They spawn in the same way as pressure groups here. The only difference is that they kill. We have a Northern Ireland (Emergency Provisions) Act, which defines terrorism. I have not been able to find any other legislation in the world that defines terrorism. It is defined as using violence for political ends, including any use of violence to put people in fear.

Northern Ireland is a place that has elected five members of the Provisional Sinn Fein. That is a group that I legalised in order to get political action. It is a group that broke away from the Marxist Official IRA in 1969. One member of that group has been elected to this House. Two members of it, whom I know have been associated with murder, were elected to the Assembly. For the State to involve itself in hanging and capital punishment flies in the face of 300 or 400 years of Irish history.

I agree with the Secretary of State for Northern Ireland, not because I belong to his club—I belong to the Home Secretary's club as well—but because he knows what he is talking about. In his letter to the chairman of Waveney constituency association he made a number of good points that were based on his experience.

> "Most terrorists believe that they will not be caught. The defeat of terrorism depends on arresting and convicting . . . As I shall explain . . . capital punishment is likely to make it more difficult to secure evidence".

He had taken advice from the police in Northern Ireland. He then referred to the jury system, and so on.

The right hon. Gentleman is right, but his words are based on experience, in the face of which he changed his mind. What the Home Secretary has said today about Irish terrorism did not meet the facts or the feel of the Province. The present Secretary of State for Northern Ireland is not the first to have changed his mind. Viscount Whitelaw changed his mind in the face of the possible hanging of a Protestant and a Catholic.

The Home Secretary cannot simply float an idea. He cannot simply recommend to the the House that we should return to the death penalty for murder, having discussed it in the House. He had a duty to put forward the facts. Was he speaking for the Government?

Mr. Brittan: No.

Mr. Rees: We now hear that he was not speaking for the Government.

Mr. Brittan: There is no mystery about that. I made it perfectly clear that in my speech I was giving certain facts to the House and that I was also giving my personal view. As the House knows perfectly well, there is a free vote on all these matters. Whenever I gave my personal view, I made it clear that I was doing so. There has never been any doubt about that.

Mr. Rees: There is doubt about the right hon. and learned Gentleman's argument. He has argued that we should have capital punishment in the United Kingdom as a whole, but with a different system in Northern Ireland. He suggested that there should be two assessors. I voted in 1973 for the system of having two assessors with a judge. When I arrived in Northern Ireland I realised that the idea was rubbish. The Home Secretary should have consulted his right hon. Friend. He should not have floated his ideas here. Has he considered the question of jury trial? Even if I had not been Secretary of State for Northern Ireland, no member of my family would be a juror in Northern Ireland.

The right hon. and learned Gentleman does not know the facts if he can come to the Chamber and say, "I float this idea. Have a look at it on the basis of a private Member's Bill." The right hon. and learned Gentleman has not discussed the matter with the judiciary in Northern Ireland, and nor should he. That is the job of the Secretary of State for Northern Ireland. It is not good enough for the Home Secretary to come here with ideas that will not work. Of course, as Home Secretary, he is entitled to put them forward, but a Home Secretary should do his homework better.

We have made mistakes before. A Tory Government introduced the special category. We supported it but a Tory Government introduced it. The building of the H-blocks and the ending of the use of special category led to the Home Secretary's problems. But has he thought that in a sense he has argued this afternoon for a return to a special category for Irish terrorists? We should not treat Irish terrorists — whether Protestant or Catholic, Republican or Loyalist—as other than criminals. That is what they are. They are not, and should not be allowed to get away with the idea that they are separate and different.

There is a political side to this question. I agree with the hon. Member for Antrim, North (Rev. Ian Paisley). Whatever Joe Cahill says in a newspaper, I am sure that the Provisional IRA, the INLA, and the other organisations want the death penalty to be restored. I tell the House that they would love it. They would love a return to capital punishment. They would vote for it if they were here. They would want to be on the world scene. They would want embassies to burn and ambassadors abroad to be shot. That is what the Provisional IRA lives on. Unfortunately, as the hon. Member for Antrim, North mentioned, they also live on a substantial number of votes in Northern Ireland.

Mr. J. D. Concannon (Mansfield): My right hon. Friend is short of time and I appreciate the fact that he has given way. I have had to sit in the Chamber listening to hon. Members talk about terrorism in Northern Ireland. I confirm that my right hon. Friend gave me that brief to end the special category. However, the Home Secretary has today gone back on that. Sometimes Ministers have dirty, horrible jobs to do. I was certainly a Minister who had dirty and horrible jobs to do in Northern Ireland. I had to go to the Maze prison, as part of my duty to the House, to see certain groups of people. I have never said, or uttered a word about what they said to me. I have mentioned what I put to them, but they told me that their

[Mr. J. D. Concannon]

only disappointment about the way things were going was that they were not facing a Brit firing squad or were not to have Brit nooses put around their necks. That is what the House should consider tonight.

Mr. Rees: My right hon. Friend has told me that before. The people on hunger strike told him that they did not want to die by their own hands. It would have been better for their cause if they had died at the hands of the British Government. That is what we must consider in the months ahead. We may make the same sort of error as was made after the Easter rising. That rising was a flop, but in the heat of war the British Government shot the Irish patriots, killed the Redmond party and played a major part in the later development of the South.

Mr. Clifford Forsythe (Antrim, South): Gangsters.

Mr. Rees: They may be gangsters, but there are a lot of gangsters in Northern Ireland and on both sides. It is wrong to give the idea that they are all on one side. I could use an unparliamentary word to describe all those who believe that killing and murder is the way to proceed. However, I do not want to hang them, or to repeat the unstakes of the Easter rising. My advice to the Opposition is to vote against the main motion and the amendments. Terrorism is reinforced by the Home Secretary's attitude tonight. I say to my right hon. and hon. Friends: do not listen to the Home Secretary; listen to the Secretary of State for Northern Ireland. He has got it right.

9.44 pm

Mr. Teddy Taylor (Southend, East): It has been good for democracy and for Parliament that the debate on this exciting and emotive issue has been reasonble and thoughtful. I shall deal with terrorism and Ireland later. My principal task is to deal with the main argument about capital punishment. I merely say at this point that the right hon. Member for Mansfield (Mr. Concannon) and those who agree with him about the hunger strikes should remember that they stopped when the Government made it clear that they would not give in.

The case for capital punishment as presented by my hon. and learned Friend the Member for Fylde, (Sir E. Gardner) is, first, that it will prevent some murders, curb the carrying of guns and give more protection to the law-abiding public. It is argued by some that capital punishment is a just penalty for murder, but most of those who have spoken today have made it cler that it is the deterrence argument that influences them most.

Several hon. Members, including the right hon. Member for Clydesdale (Dame J. Hart), asked for proof. My right hon. Friend the Member for Chelsmford (Mr. St. John-Stevas) said that he would not vote for capital punishment unless it was proved that it would save lives. As he and every hon. Member knows, in dealing with human conduct there is no way of proving anything at all. We cannot say what will happen in the future. As with all policy—financial, social or whatever—we must consider the available evidence and make a judgment whether a reasonable person would conclude from the facts that a certain result would ensue. If hon. Members, especially those who are undecided, examine the available facts, they will undoubtedly conclude that the deterrent of capital punishment would save lives and be in the overall interest of this country.

What are the facts? One has not yet been mentioned, but I hope that every hon. Member will consider it before voting. The papers published by the Library show that during the 20 years after the second world war, despite a substantial increase in crime generally, there was no increase in the number of murders. The figure was almost static at about 300. Indeed, contrary to the view of my view of my right hon. Friend the Member for Old Bexley and Sidcup (Mr. Heath) the figures actually fell during that period, with 347 in 1946 and 296 in 1964. There was a big rise in crime and plenty of social upheaval, but there was no increase in the murder rate. That leads one to conclude that capital punishment had a deterrent effect in containing the number of murders.

What has happened since then? The figures show that since abolition there has been a sharp rise to a new plateau of killings, with an average of about 600 per year. As the Home Secretary told me in a parliamentary answer the other day, in the five years before abolition the number of killings was 290 per year, whereas in the past five years it has been 590. I challenge anyone to say that there is nothing in those figures to suggest that capital punishment was at least an influence on the situation.

Even if one throws that argument out of the window and says that it proves nothing, I ask every hon. Member before voting to consider why there has been such a dramatic increase in the use of guns by criminals since abolition. It is not a matter of a 2 or 3 per cent. increase. It is common knowledge that when we had the deterrent of capital punishment British criminals rarely carried guns. We were almost unique in the world in having criminals who went out of their way to avoid carrying guns. We all know what has happened since abolition. Guns are now used regularly in quite petty offences and robberies. The increase in the use of firearms is alarming. The Home Secretary told us that even during the past 10 years the number of serious offences involving firearms increased from about 1,700 to about 8,000.

Another figure which I hope hon. Members will consider is the horrifying one contained in the recently published criminal statistics, which shows that during the past 10 years 29 innocent humans in Britain were murdered by someone who had previously been convicted of murder, been imprisoned and then released. Although we hear about the possibility of hanging innocent men, we should also remember those 29 innocent people.

Some hon. Members, such as my right hon. Friend the Member for Chelmsford, asked, "Where is the evidence?" Those facts and others are enough to convince a reasonable person that there is a definite link between the abolition of capital punishment and the increase in murders and the use of firearms.

Mr. Nicholas Fairbairn (Perth and Kinross): I am upset by the concept that there is no argument showing that capital punishment is a deterrent, so may I give the House some figures?—[HON. MEMBERS: "No."] In Scotland, between 1950 and 1957, there were 7,500 assaults on the person each year. Between 1957 and 1964 there were an average of 17,000 such assaults. Since the abolition of capital punishment, the figure has been 80,000 a year, and last year there were 100,000 assaults. In 1957 there were 32 High Court cases in Scotland—*[Interruption.]—and last year three times as many people were killed.*

Mr. Taylor: My hon. and learned Friend's remarks emphasise the point that I have tried to make. The right

hon. Member for Birmingham, Sparkbrook (Mr. Hattersley), in a very good speech, said that even if he were convinced that capital punishment was a deterrent he would not vote for it. That is morally wrong. I hope that he realises the enormity of what he said, because it means that even if he believes that capital punishment is a deterrent he is prepared to condemn innocent people to die as a result. Some hon. Members have said that it is a simple question whether we vote for capital punishment, which is horrible and harrowing, or whether we do not. However, it is not so simple, because those who accept the figures must choose between hanging or judicially killing some murderers, or condemning some innocent people to death.

My right hon. Friend the Member for Old Bexley and Sidcup asked where our duty as Members lay. It was special pleasure for me, as I am sure it was for you, Mr. Speaker, to hear a former Chief Whip saying that we must be guided only by our consciences and by no other consideration. I remember the warmth and comradely friendship that he showed me when I had to explain to him that I would vote against the party's policies.

Mr. Heath: Perhaps my hon. Friend will tell the House when I as Chief Whip, influenced a free vote on a moral issue such as capital punishment. Perhaps he will also explain that he joined the Government of which I was Prime Minister at my invitation, on the basis that, because of his European views, he would resign if the Government introduced a Bill to enter the Community—which he did — and that later I invited him to rejoin the Government, which he also did. *[Interruption.]*

Mr. Speaker: Order. I think we should get back to the debate.

Mr. Taylor: I am sure that my right hon. Friend keeps careful notes. What he said is important. Where does our duty lie? Certainly it is right that we should vote for what we believe to be the right thing. On the other hand, it would be wrong wholly to disregard not only the extent of public feeling, but the depth of concern. Some people have given the impression that the only people who care about crime are strange females at Tory conferences who wave umbrellas. We know that that is not true. There are many mothers of young children and many parents of teenagers who are desperately concerned about them being out late at night and what is happening to them.

There are also those who argue that we should forget about deterrence because it does not influence human conduct. The hon. Member for Wolverhampton, North-East (Mrs. Short) said that she did not accept that deterrence mattered on any issue. I can accept that, but I hope that some of my hon. Friends who are thinking of voting tonight against capital punishment will examine the logic of saying that we as a nation are prepared to spend billions of pounds on the most horrifying weapons of nuclear destruction, not because we want to use them, but because we believe that they will deter foreign aggression, but are not prepared to have a deterrent that will deter crime at home. The two are widely different issues, of course, but, despite that, I hope that they will accept the argument.

Then there is the cleavage among the experts. Some experts argue that capital punishment will not save lives. Others argue that it will. I hope that before every hon. Member votes he will think about what Lord Devlin said this morning, that if the police, who are in the front line strongly hold the view that the death penalty is a weapon that they need, it is our duty not to deny them.

We should all accept that the issue of terrorism is not easy. Strong arguments are advanced on both sides, as has happened today. All I hope is that if we reject the argument on terrorism it will not be on the basis of some of the arguments that have been put in the debate. Basically, it has been argued that there is nothing much that we can do about terrorism and that if the IRA respond in a certain way there is nothing that we can do about it.

Surely the whole basis of terrorism is that those who carry it out hope that by inflicting illegal capital punishment, or threatening it, they influence the views of people like ourselves, or the people of Northern Ireland. The right hon. Member for Morley and Leeds, South (Mr. Rees) in a very sincere speech, said, as did the hon. Member for Foyle (Mr. Hume), that if one guilty terrorist is hanged, Ireland will go ablaze. What do we think about the relatives of the 2,000 innocent people who have been murdered by the IRA? Are we to assume that the only thing about which Ireland gets excited is the killing of a guilty terrorist?

I appeal to those who are in genuine doubt—as I know many are—on this vital issue of terrorism to remember that some of us reluctantly took the advice of the Secretary of State for Northern Ireland and walked into the Lobby to support the creation of the Northern Ireland Assembly, not because we believed in devolution, but because we were convinced by what he said about the need to have a democratic voice to express the views of the people of Northern Ireland.

If there is one thing in the history of Ireland that is clear, and on which I think everyone agrees, it is that far too many people think they know how to solve the problems of Northern Ireland but do not have to go through the agony of suffering as a result. [HON. MEMBERS: "Hear, hear."] Where there is doubt, we should take the advice of those who have to live with terrorism, those who have to suffer, and those who have to die.

As the police in Northern Irelnd and the Assembly have made it clear that they believe that capital punishment would save lives and give protection, I believe that we should take the necessary action. No one welcomes the introduction of capital punishment. *[Interruption.]* It is distasteful and harrowing. On the other hand, I believe that all of us in Parliament have to support and do things that are harsh and unpalatable because we believe that they are in the public interest. We shall be failing in our duty if we do not vote for the restoration of the deterrent which will smite fear into the heart of potential offenders and save innocent human lives.

Amendment (e) proposed: At the end of the motion to add

'resulting from acts of terrorism'.—*[Mr. McQuarrie.]*

Questions put, That the amendment be made:—

The House divided: Ayes 245, Noes 361.

Division No. 16] **[10 pm**

AYES	
Aitken, Jonathan	Atkinson, David *(B'm'th E)*
Alexander, Richard	Baker, Nicholas *(N Dorset)*
Alison, Rt Hon Michael	Baldry, Anthony
Amess, David	Batiste, Spencer
Ancram, Michael	Beggs, Roy
Arnold, Tom	Bellingham, Henry
Aspinwall, Jack	Bennett, Sir Frederic *(T'bay)*

Bevan, David Gilroy
Biffen, Rt Hon John
Biggs-Davison, Sir John
Blackburn, John
Blaker, Rt Hon Peter
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Boyson, Dr Rhodes
Braine, Sir Bernard
Brandon-Bravo, Martin
Bright, Graham
Brinton, Tim
Brittan, Rt Hon Leon
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Bulmer, Esmond
Butcher, John
Carlisle, John *(N Luton)*
Carttiss, Michael
Chalker, Mrs Lynda
Chapman, Sydney
Chope, Christopher
Churchill, W. S.
Clark, Hon A. *(Plym'th S'n)*
Clark, Dr Michael *(Rochford)*
Clark, Sir W. *(Croydon S)*
Cockeram, Eric
Colvin, Michael
Cope, John
Cranborne, Viscount
Currie, Mrs Edwina
Dickens, Geoffrey
Dicks, T.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert
Emery, Sir Peter
Evennett, David
Eyre, Reginald
Fairbairn, Nicholas
Fallon, Michael
Farr, John
Favell, Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Forsyth, Michael *(Stirling)*
Forsythe, Clifford *(S Antrim)*
Forth, Eric
Fowler, Rt Hon Norman
Fox, Marcus
Franks, Cecil
Fraser, Rt Hon Sir Hugh
Fry, Peter
Gale, Roger
Galley, Roy
Gardner, Sir Edward *(Fylde)*
Glyn, Dr Alan
Goodhart, Sir Philip
Gow, Ian
Grant, Sir Anthony
Greenway, Harry
Gregory, Conal
Griffiths, E. *(B'y St Edm'ds)*
Griffiths, Peter *(Portsm'th N)*
Grylls, Michael
Gummer, John Selwyn
Hamilton, Hon A. *(Epsom)*
Hamilton, Neil *(Tatton)*
Hannam, John
Hargreaves, Kenneth
Havers, Rt Hon Sir Michael
Hawkins, Sir Paul *(SW N'folk)*
Hawksley, Warren
Hayward, Robert
Heathcoat-Amery, David
Heddle, John
Hickmet, Richard
Hill, James
Hind, Kenneth
Hirst, Michael
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Sir Philip *(Gedling)*
Holt, Richard
Hooson, Tom
Howarth, Gerald *(Cannock)*
Howell, Ralph *(N Norfolk)*
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Jessel, Toby
Jones, Robert *(W Herts)*
Jopling, Rt Hon Michael
Kellett-Bowman, Mrs Elaine
Kilfedder, James A.
King, Roger *(B'ham N'field)*
Knight, Gregory *(Derby N)*
Knight, Mrs Jill *(Edgbaston)*
Knowles, Michael
Latham, Michael
Lawrence, Ivan
Lawson, Rt Hon Nigel
Leigh, Edward *(Gainsbor'gh)*
Lennox-Boyd, Hon Mark
Lightbown, David
Lord, Michael
Luce, Richard
McCrea, Rev William
McCrindle, Robert
McCusker, Harold
Macfarlane, Neil
MacGregor, John
MacKay, Andrew *(Berkshire)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Marland, Paul
Marlow, Antony
Mates, Michael
Mather, Carol
Maude, Francis
Mawhinney, Dr Brian
Merchant, Piers
Miller, Hal *(B'grove)*
Mills, Ian *(Meriden)*
Mills, Sir Peter *(West Devon)*
Moate, Roger
Molyneaux, James
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morris, M. *(N'hampton, S)*
Morrison, Hon P. *(Chester)*
Moynihan, Hon C.
Murphy, Christopher
Neale, Gerrard
Neubert, Michael
Nicholls, Patrick
Nicholson, J.
Normanton, Tom
Norris, Steven
Oppenheim, Philip
Oppenheim, Rt Hon Mrs S.
Osborn, Sir John
Ottaway, Richard
Page, John *(Harrow W)*
Page, Richard *(Herts SW)*
Paisley, Rev Ian
Parkinson, Rt Hon Cecil
Pattie, Geoffrey
Pawsey, James
Peacock, Mrs Elizabeth
Percival, Rt Hon Sir Ian
Pink, R. Bonner
Pollock, Alexander
Porter, Barry
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Ridley, Rt Hon Nicholas
Ridsdale, Sir Julian
Rippon, Rt Hon Geoffrey
Roberts, Wyn *(Conwy)*
Robinson, P. *(Belfast E)*
Roe, Mrs Marion
Ross, Wm. *(Londonderry)*
Rost, Peter
Rumbold, Mrs Angela
Shaw, Sir Michael *(Scarb')*
Shelton, William *(Streatham)*
Shepherd, Richard *(Aldridge)*
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Sir Dudley *(Warwick)*
Smyth, Rev W. M. *(Belfast S)*
Speed, Keith
Speller, Tony
Spence, John
Spencer, D.
Spicer, Jim *(W Dorset)*
Stanbrook, Ivor
Stanley, John
Steen, Anthony
Stern, Michael
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stewart, Rt Hon D. *(W Isles)*
Stokes, John
Sumberg, David
Taylor, John *(Strangford)*
Taylor, John *(Solihull)*
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Terlezki, Stefan
Thatcher, Rt Hon Mrs M.
Thompson, Donald *(Calder V)*
Thompson, Patrick *(N'ich N)*
Thorne, Neil *(Ilford S)*
Thornton, Malcolm
Thurnham, Peter
Townend, John *(Bridlington)*
Tracey, Richard
Trippier, David
Trotter, Neville
Twinn, Dr Ian
van Straubenzee, Sir W.
Vaughan, Dr Gerard
Viggers, Peter
Waddington, David
Wakeham, Rt Hon John
Walker, Cecil *(Belfast N)*
Walker, William *(T'side N)*
Wall, Sir Patrick
Ward, John
Wardle, C. *(Bexhill)*
Warren, Kenneth
Watts, John
Wells, Bowen *(Hertford)*
Whitfield, John
Whitney, Raymond
Wiggin, Jerry
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wolfson, Mark
Wood, Timothy
Woodcock, Michael
Yeo, Tim

Tellers for the Ayes:
Mr. George Gardiner and
Mr. Vivian Bendall.

NOES

Abse, Leo
Adams, Allen *(Paisley N)*
Adley, Robert
Alton, David
Amery, Rt Hon Julian
Anderson, Donald
Archer, Rt Hon Peter
Ashby, David
Ashdown, Paddy
Ashley, Rt Hon Jack
Ashton, Joe
Atkins Robert *(South Ribble)*
Atkinson, N. *(Tottenham)*
Bagier, Gordon A. T.
Baker, Kenneth *(Mole Valley)*
Banks, Robert *(Harrogate)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beaumont-Dark, Anthony
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Bennett, A. *(Dent'n & Red'sh)*
Benyon, William
Bermingham, Gerald
Berry, Hon Anthony
Best, Keith
Bidwell, Sydney
Blair, Anthony
Body, Richard
Boothroyd, Miss Betty
Bottomley, Peter
Boyes, Roland
Bray, Dr Jeremy
Brooke, Hon Peter
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, N. *(N'c'tle-u-Tyne E)*
Brown, R. *(N'c'tle-u-Tyne N)*
Bruce, Malcolm
Bryan, Sir Paul
Buchan, Norman
Buchanan-Smith, Rt Hon A.
Buck, Sir Antony
Budgen, Nick
Burt, Alistair
Butler, Hon Adam
Butterfill, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Cartwright, John
Channon, Rt Hon Paul
Clark, Dr David *(S Shields)*
Clarke Kenneth *(Rushcliffe)*
Clarke, Thomas
Clay, Robert
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Coleman, Donald
Concannon, Rt Hon J. D.
Conlan, Bernard
Conway, Derek
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Coombs, Simon
Corbett, Robin
Corbyn, Jeremy
Couchman, James
Cowans, Harry
Cox, Thomas *(Tooting)*
Craigen, J. M.
Critchley, Julian
Crouch, David

Crowther, Stan
Cunliffe, Lawrence
Cunningham, Dr John
Dalyell, Tam
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ronald *(Caerphilly)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Dorrell, Stephen
Douglas, Dick
Douglas-Hamilton, Lord J.
Dubs, Alfred
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Durant, Tony
Dykes, Hugh
Eadie, Alex
Eastham, Ken
Edwards, Rt Hon N. *(P'broke)*
Edwards, R. *(W'hampt'n SE)*
Evans, Ioan *(Cynon Valley)*
Evans, John *(St. Helens N)*
Ewing, Harry
Fatchett, Derek
Faulds, Andrew
Field, Frank *(Birkenhead)*
Flannery, Martin
Fletcher, Alexander
Fookes, Miss Janet
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Freeson, Rt Hon Reginald
Freud, Clement
Garel-Jones, Tristan
Garrett, W. E.
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Godman, Dr Norman
Golding, John
Goodlad, Alastair
Gorst, John
Gould, Bryan
Gourlay, Harry
Gower, Sir Raymond
Grist, Ian
Ground, Reginald
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hampson, Dr Keith
Hanley, Jeremy
Hardy, Peter
Harman, Ms Harriet
Harris, David
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Harvey, Robert
Haselhurst, Alan
Hattersley, Rt Hon Roy
Hayes, J.
Hayhoe, Barney
Haynes, Frank
Healey, Rt Hon Denis
Heath, Rt Hon Edward
Heffer, Eric S.
Henderson, Barry
Heseltine, Rt Hon Michael
Higgins, Rt Hon Terence L.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Hordern, Peter
Howarth, Alan *(Stratf'd-on-A)*
Howell, Rt Hon D. *(G'ldford)*
Howell, Rt Hon D. *(S'heath)*
Howells, Geraint
Hoyle, Douglas
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Sean *(Knowsley S)*
Hughes, Simon *(Southwark)*
Hume, John
Hurd, Rt Hon Douglas
Irving, Charles
Janner, Hon Greville
Jenkin, Rt Hon Patrick
Jenkins, Rt Hon Roy *(Hillh'd)*
John, Brynmor
Johnson-Smith, Sir Geoffrey
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Jones, Gwilym *(Cardiff N)*
Joseph, Rt Hon Sir Keith
Kaufman, Rt Hon Gerald
Kennedy, Charles
Key, Robert
Kilroy-Silk, Robert
King, Rt Hon Tom
Kinnock, Neil
Kirkwood, Archibald
Knox, David
Lambie, David
Lamond, James
Lamont, Norman
Lawler, Geoffrey
Leadbitter, Ted
Leighton, Ronald
Lester, Jim
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lloyd, Tony *(Stretford)*
Lofthouse, Geoffrey
Loyden, Edward
Lyell, Nicholas
McCartney, Hugh
McCurley, Mrs Anna
McDonald, Dr Oonagh
McKay, Allen *(Penistone)*
MacKay, John *(Argyll & Bute)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNamara, Kevin
McTaggart, Robert
Madden, Max
Madel, David
Maginnis, Ken
Major, John
Malone, Gerald
Maples, John
Marek, Dr John
Marshall, David *(Shettleston)*
Marshall, Michael *(Arundel)*
Martin, Michael
Mason, Rt Hon Roy
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Meadowcroft, Michael
Mellor, David
Meyer, Sir Anthony
Michie, William
Mikardo, Ian
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Miscampbell, Norman
Mitchell, Austin *(G't Grimsby)*
Mitchell, David *(NW Hants)*
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morrison, Hon C. *(Devizes)*
Mudd, David
Needham, Richard
Nellist, David
Nelson, Anthony
Newton, Tony
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Park, George
Parris, Matthew
Parry Robert
Patchett, Terry
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Rt Hon J. E. *(S Down)*
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Prentice, Rt Hon Reg
Prescott, John
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Raffan, Keith
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Richardson, Ms Jo
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Robinson, G. *(Coventry NW)*
Robinson, Mark *(N'port W)*
Rogers, Allan
Rooker, J. W.
Ross, Ernest *(Dundee W)*
Ross, Stephen *(Isle of Wight)*
Rossi, Hugh
Rowe, Andrew
Rowlands, Ted
Ryder, Richard
Ryman, John
Sackville, Hon Thomas
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Scott, Nicholas
Sedgemore, Brian
Shaw, Giles *(Pudsey)*
Sheerman, Barry
Sheldon, Rt Hon R.
Shepherd, Colin *(Hereford)*
Shersby, Michael
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, C.*(Isl'ton S & F'bury)*
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soames, Hon Nicholas
Soley, Clive
Spearing, Nigel
Spicer, Michael *(S Worcs)*
Squire, Robin
Steel, Rt Hon David
Stewart, Ian *(N Hertf'dshire)*
Stott, Roger
Stradling Thomas, J.
Strang, Gavin
Straw, Jack
Tapsell, Peter
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thomas, Dr R. *(Carmarthen)*
Thompson, J. *(Wansbeck)*
Thorne, Stan *(Preston)*
Tinn, James
Townsend, Cyril D. *(B'heath)*
Varley, Rt Hon Eric G.
Wainwright, R.
Waldegrave, Hon William
Walden, George
Walker, Rt Hon P. *(W'cester)*
Wallace, James
Waller, Gary
Walters, Dennis
Wardell, Gareth *(Gower)*
Wareing, Robert
Weetch, Ken
Wells, John *(Maidstone)*
Welsh, Michael
Wheeler, John
White, James
Wigley, Dafydd
Williams, Rt Hon A.
Wilson, Gordon
Winnick, David
Woodall, Alec
Wrigglesworth, Ian
Young, David *(Bolton SE)*
Young, Sir George *(Acton)*
Younger, Rt Hon George

Tellers for the Noes:
Mr. D. N. Campbell-Savours
and
Mr. Mark Fisher.

Question accordingly negatived.

Amendment (f) proposed: At the end of the motion to add:—

'of a police officer during the course of his duties.'—*[Mr. Eldon Griffiths.]*

Question put, That the amendment be made:—

The House divided: Ayes 263, Noes 344.

Division No. 17] **[10.15 pm**

AYES

Adley, Robert
Aitken Jonathan
Alexander, Richard
Alison, Rt Hon Michael
Amess, David
Ancram, Michael
Arnold, Tom
Aspinwall, Jack

Atkins Robert *(South Ribble)*
Atkinson, David *(B'm'th E)*
Baker, Nicholas *(N Dorset)*
Baldry, Anthony
Banks, Robert *(Harrogate)*
Batiste, Spencer
Beaumont-Dark, Anthony
Beggs, Roy
Bellingham, Henry
Berry, Hon Anthony
Bevan, David Gilroy
Biffen, Rt Hon John
Biggs-Davison, Sir John
Blackburn, John
Blaker, Rt Hon Peter
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Boyson, Dr Rhodes
Braine, Sir Bernard
Brandon-Bravo, Martin
Bright, Graham
Brinton, Tim
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Bryan, Sir Paul
Bulmer, Esmond
Butcher, John
Butler, Hon Adam
Carlisle, John *(N Luton)*
Chalker, Mrs Lynda
Channon, Rt Hon Paul
Chapman, Sydney
Chope, Christopher
Churchill, W. S.
Clark, Hon A. *(Plym'th S'n)*
Clark, Dr Michael *(Rochford)*
Clark, Sir W. *(Croydon S)*
Clegg, Sir Walter
Cockeram, Eric
Colvin, Michael
Coombs, Simon
Corrie, John
Cranborne, Viscount
Currie, Mrs Edwina
Dickens, Geoffrey
Dicks, T.
Douglas-Hamilton, Lord J.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert
Durant, Tony
Emery, Sir Peter
Evennett, David
Eyre, Reginald
Fairbairn, Nicholas
Fallon, Michael
Farr, John
Favell, Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Forsyth, Michael *(Stirling)*
Forsythe, Clifford *(S Antrim)*
Forth, Eric
Fox, Marcus
Franks, Cecil
Fraser, Rt Hon Sir Hugh
Fry, Peter
Gale, Roger
Gardner, Sir Edward *(Fylde)*
Glyn, Dr Alan
Goodhart, Sir Philip
Gorst, John
Gower, Sir Raymond
Grant, Sir Anthony
Gregory, Conal
Griffiths, E. *(B'y St Edm'ds)*
Griffiths, Peter *(Portsm'th N)*
Grylls, Michael
Hamilton, Hon A. *(Epsom)*
Hamilton, Neil *(Tatton)*
Hampson, Dr Keith
Hanley, Jeremy
Hannam, John
Hargreaves, Kenneth
Havers, Rt Hon Sir Michael
Hawkins, Sir Paul *(SW N'folk)*
Hawksley, Warren
Hayward, Robert
Heddle, John
Henderson, Barry
Hickmet, Richard
Hicks, Robert
Hill, James
Hind, Kenneth
Hirst, Michael
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Sir Philip *(Gedling)*
Holt, Richard
Hooson, Tom
Hordern, Peter
Howard, Michael
Howarth, Gerald *(Cannock)*
Howell, Ralph *(N Norfolk)*
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Jessel, Toby
Jones, Robert *(W Herts)*
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Key, Robert
Kilfedder, James A.
King, Roger *(B'ham N'field)*
Knight, Mrs Jill *(Edgbaston)*
Knowles, Michael
Lang, Ian
Latham, Michael
Lawler, Geoffrey
Lawrence, Ivan
Lawson, Rt Hon Nigel
Leigh, Edward *(Gainsbor'gh)*
Lightbown, David
Lord, Michael
McCrea, Rev William
McCrindle, Robert
McCusker, Harold
Macfarlane, Neil
MacGregor, John
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Marland, Paul
Marlow, Antony
Mates, Michael
Mather, Carol
Mawhinney, Dr Brian
Merchant, Piers
Meyer, Sir Anthony
Miller, Hal *(B'grove)*
Mills, Ian *(Meriden)*
Mills, Sir Peter *(West Devon)*
Mitchell, David *(NW Hants)*
Moate, Roger
Molyneaux, James
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morrison, Hon P. *(Chester)*
Moynihan, Hon C.
Mudd, David
Murphy, Christopher
Neale, Gerrard
Neubert, Michael
Nicholls, Patrick
Nicholson, J.
Normanton, Tom
Norris, Steven
Oppenheim, Philip
Oppenheim, Rt Hon Mrs S.
Osborn, Sir John
Ottaway, Richard
Page, John *(Harrow W)*
Page, Richard *(Herts SW)*
Paisley, Rev Ian
Parkinson, Rt Hon Cecil
Pattie, Geoffrey
Pawsey, James
Peacock, Mrs Elizabeth
Percival, Rt Hon Sir Ian
Pink, R. Bonner
Pollock, Alexander
Porter, Barry
Price, Sir David
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Ridley, Rt Hon Nicholas
Ridsdale, Sir Julian
Rippon, Rt Hon Geoffrey
Roberts, Wyn *(Conwy)*
Robinson, P. *(Belfast E)*
Roe, Mrs Marion
Ross, Wm. *(Londonderry)*
Rost, Peter
Rumbold, Mrs Angela
Sackville, Hon Thomas
Shaw, Giles *(Pudsey)*
Shaw, Sir Michael *(Scarb')*
Shelton, William *(Streatham)*
Shepherd, Colin *(Hereford)*
Shepherd, Richard *(Aldridge)*
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Sir Dudley *(Warwick)*
Smyth, Rev W. M. *(Belfast S)*
Speed, Keith
Speller, Tony
Spence, John
Spencer, D.
Spicer, Jim *(W Dorset)*
Spicer, Michael *(S Worcs)*
Stanbrook, Ivor
Stanley, John
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stewart, Rt Hon D. *(W Isles)*
Stewart, Ian *(N Hertf'dshire)*
Stokes, John
Sumberg, David
Taylor, John *(Strangford)*
Taylor, John *(Solihull)*
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Terlezki, Stefan
Thatcher, Rt Hon Mrs M.
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Thornton, Malcolm
Thurnham, Peter
Townend, John *(Bridlington)*
Tracey, Richard
Trippier, David
Trotter, Neville
Twinn, Dr Ian
van Straubenzee, Sir W.
Vaughan, Dr Gerard
Viggers, Peter
Waddington, David
Walker, Cecil *(Belfast N)*
Walker, William *(T'side N)*
Wall, Sir Patrick
Ward, John
Wardle, C. *(Bexhill)*
Warren, Kenneth
Watson, John
Watts, John
Wells, Bowen *(Hertford)*
Wells, John *(Maidstone)*
Whitfield, John
Whitney, Raymond
Wiggin, Jerry
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wolfson, Mark
Wood, Timothy
Woodcock, Michael
Yeo, Tim
Younger, Rt Hon George

Tellers for the Ayes:
Mr. George Gardiner and
Mr. Vivian Bendall.

NOES

Abse, Leo
Adams, Allen *(Paisley N)*
Alton, David
Amery, Rt Hon Julian
Anderson, Donald
Archer, Rt Hon Peter
Ashby, David
Ashdown, Paddy
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(Tottenham)*
Bagier, Gordon A. T.
Baker, Kenneth *(Mole Valley)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Bennett, A. *(Dent'n & Red'sh)*
Benyon, William
Bermingham, Gerald
Best, Keith
Bidwell, Sydney
Blair, Anthony
Body, Richard
Boothroyd, Miss Betty
Bottomley, Peter
Boyes, Roland
Bray, Dr Jeremy
Brittan, Rt Hon Leon
Brooke, Hon Peter
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, N. *(N'c'tle-u-Tyne E)*
Brown, R. *(N'c'tle-u-Tyne N)*
Bruce, Malcolm
Buchan, Norman
Buchanan-Smith, Rt Hon A.
Buck, Sir Antony
Budgen, Nick
Burt, Alistair
Butterfill, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Cartwright, John
Clark, Dr David *(S Shields)*
Clarke Kenneth *(Rushcliffe)*
Clarke, Thomas

Clay, Robert
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Coleman, Donald
Concannon, Rt Hon J. D.
Conlan, Bernard
Conway, Derek
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Cope, John
Corbett, Robin
Corbyn, Jeremy
Couchman, James
Cowans, Harry
Cox, Thomas *(Tooting)*
Craigen, J. M.
Critchley, Julian
Crouch, David
Crowther, Stan
Cunliffe, Lawrence
Cunningham, Dr John
Dalyell, Tam
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ronald *(Caerphilly)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Dorrell, Stephen
Douglas, Dick
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Dykes, Hugh
Eadie, Alex
Eastham, Ken
Edwards, Rt Hon N. *(P'broke)*
Edwards, R. *(W'hampt'n SE)*
Evans, Ioan *(Cynon Valley)*
Evans, John *(St. Helens N)*
Ewing, Harry
Fatchett, Derek
Faulds, Andrew
Field, Frank *(Birkenhead)*
Fisher, Mark
Flannery, Martin
Fletcher, Alexander
Fookes, Miss Janet
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Freeson, Rt Hon Reginald
Freud, Clement
Garel-Jones, Tristan
Garrett, W. E.
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Godman, Dr Norman
Golding, John
Goodlad, Alastair
Gould, Bryan
Gourlay, Harry
Gow, Ian
Grist, Ian
Ground, Reginald
Gummer, John Selwyn
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hardy, Peter
Harman, Ms Harriet
Harris, David
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Harvey, Robert
Haselhurst, Alan
Hattersley, Rt Hon Roy
Hayes, J.
Hayhoe, Barney
Haynes, Frank
Healey, Rt Hon Denis
Heath, Rt Hon Edward
Heathcoat-Amery, David
Heffer, Eric S.
Heseltine, Rt Hon Michael
Higgins, Rt Hon Terence L.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Howarth, Alan *(Stratf'd-on-A)*
Howell, Rt Hon D. *(S'heath)*
Howells, Geraint
Hoyle, Douglas
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Sean *(Knowsley S)*
Hughes, Simon *(Southwark)*
Hume, John
Hurd, Rt Hon Douglas
Irving, Charles
Janner, Hon Greville
Jenkin, Rt Hon Patrick
Jenkins, Rt Hon Roy *(Hillh'd)*
John, Brynmor
Johnson-Smith, Sir Geoffrey
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Jones, Gwilym *(Cardiff N)*
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaufman, Rt Hon Gerald
Kennedy, Charles
Kilroy-Silk, Robert
King, Rt Hon Tom
Kinnock, Neil
Knox, David
Lambie, David
Lamond, James
Lamont, Norman
Leadbitter, Ted
Leighton, Ronald
Lennox-Boyd, Hon Mark
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Lilley, Peter
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lloyd, Tony *(Stretford)*
Lofthouse, Geoffrey
Loyden, Edward
Luce, Richard
Lyell, Nicholas
McCartney, Hugh
McCurley, Mrs Anna
McDonald, Dr Oonagh
McKay, Allen *(Penistone)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNamara, Kevin
McTaggart, Robert
Madden, Max
Madel, David
Maginnis, Ken
Major, John
Malone, Gerald
Maples, John
Marek, Dr John
Marshall, David *(Shettleston)*
Martin, Michael
Mason, Rt Hon Roy
Maude, Francis
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Meadowcroft, Michael
Mellor, David
Michie, William
Mikardo, Ian
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Miscampbell, Norman
Mitchell, Austin *(G't Grimsby)*
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morris, M. *(N'hampton, S)*
Morrison, Hon C. *(Devizes)*
Needham, Richard
Nellist, David
Nelson, Anthony
Newton, Tony
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Park, George
Parry Robert
Patchett, Terry
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Rt Hon J. E. *(S Down)*
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Prentice, Rt Hon Reg
Prescott, John
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Raffan, Keith
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Robinson, G. *(Coventry NW)*
Robinson, Mark *(N'port W)*
Rogers, Allan
Rooker, J. W.
Ross, Ernest *(Dundee W)*
Ross, Stephen *(Isle of Wight)*
Rossi, Hugh
Rowe, Andrew
Rowlands, Ted
Ryder, Richard
Ryman, John
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Scott, Nicholas
Sedgemore, Brian
Sheerman, Barry
Sheldon, Rt Hon R.
Shersby, Michael
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, C.*(Isl'ton S & F'bury)*
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soames, Hon Nicholas
Soley, Clive
Spearing, Nigel
Squire, Robin
Steel, Rt Hon David
Steen, Anthony
Stern, Michael
Stott, Roger
Stradling Thomas, J.
Strang, Gavin
Straw, Jack
Tapsell, Peter
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thomas, Dr R. *(Carmarthen)*
Thompson, J. *(Wansbeck)*
Thompson, Patrick *(N'ich N)*
Thorne, Stan *(Preston)*
Tinn, James
Townsend, Cyril D. *(B'heath)*
Varley, Rt Hon Eric G.
Wainwright, R.
Wakeham, Rt Hon John
Waldegrave, Hon William
Walden, George
Walker, Rt Hon P. *(W'cester)*
Wallace, James
Waller, Gary
Walters, Dennis
Wardell, Gareth *(Gower)*
Wareing, Robert
Weetch, Ken
Welsh, Michael
Wheeler, John
White, James
Wigley, Dafydd
Williams, Rt Hon A.
Wilson, Gordon
Winnick, David
Woodall, Alec
Wrigglesworth, Ian
Young, David *(Bolton SE)*
Young, Sir George *(Acton)*

Tellers for the Noes:
Ms. Jo Richardson and
Mr. Alfred Dubs.

Question accordingly negatived.

Amendment (g) proposed: At the end of the motion to add

'of a prison officer during the course of his duties'.—*[Mr. Blaker.]*

Question put, That the amendment be made:—

The House divided: Ayes 252, Noes 348.

Division No. 18] **[10.30 pm**

AYES

Adley, Robert
Aitken Jonathan
Alexander, Richard
Amess, David

Arnold, Tom
Atkins Robert *(South Ribble)*
Atkinson, David *(B'm'th E)*
Baker, Nicholas *(N Dorset)*
Baldry, Anthony
Banks, Robert *(Harrogate)*
Batiste, Spencer
Beaumont-Dark, Anthony
Beggs, Roy
Bellingham, Henry
Berry, Hon Anthony
Bevan, David Gilroy
Biffen, Rt Hon John
Biggs-Davison, Sir John
Blackburn, John
Blaker, Rt Hon Peter
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Boyson, Dr Rhodes
Braine, Sir Bernard
Brandon-Bravo, Martin
Bright, Graham
Brinton, Tim
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Bryan, Sir Paul
Bulmer, Esmond
Butcher, John
Butler, Hon Adam
Carlisle, John *(N Luton)*
Chalker, Mrs Lynda
Channon, Rt Hon Paul
Chapman, Sydney
Chope, Christopher
Churchill, W. S.
Clark, Hon A. *(Plym'th S'n)*
Clark, Dr Michael *(Rochford)*
Clark, Sir W. *(Croydon S)*
Clegg, Sir Walter
Cockeram, Eric
Colvin, Michael
Coombs, Simon
Corrie, John
Cranborne, Viscount
Currie, Mrs Edwina
Dickens, Geoffrey
Dicks, T.
Douglas-Hamilton, Lord J.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert
Durant, Tony
Emery, Sir Peter
Evennett, David
Eyre, Reginald
Fairbairn, Nicholas
Fallon, Michael
Farr, John
Favell, Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Forsyth, Michael *(Stirling)*
Forsythe, Clifford *(S Antrim)*
Forth, Eric
Fox, Marcus
Fraser, Rt Hon Sir Hugh
Fry, Peter
Gale, Roger
Gardner, Sir Edward *(Fylde)*
Glyn, Dr Alan
Goodhart, Sir Philip
Gower, Sir Raymond
Grant, Sir Anthony
Gregory, Conal
Griffiths, E. *(B'y St Edm'ds)*
Griffiths, Peter *(Portsm'th N)*
Grylls, Michael
Hamilton, Hon A. *(Epsom)*
Hamilton, Neil *(Tatton)*
Hanley, Jeremy
Hannam, John
Hargreaves, Kenneth
Havers, Rt Hon Sir Michael
Hawkins, Sir Paul *(SW N'folk)*
Hawksley, Warren
Hayward, Robert
Heddle, John
Henderson, Barry
Hickmet, Richard
Hicks, Robert
Hill, James
Hind, Kenneth
Hirst, Michael
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Sir Philip *(Gedling)*
Holt, Richard
Hooson, Tom
Hordern, Peter
Howard, Michael
Howarth, Gerald *(Cannock)*
Howell, Ralph *(N Norfolk)*
Hunt, David *(Wirral)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Jessel, Toby
Jones, Robert *(W Herts)*
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Key, Robert
Kilfedder, James A.
King, Roger *(B'ham N'field)*
Knight, Mrs Jill *(Edgbaston)*
Knowles, Michael
Latham, Michael
Lawler, Geoffrey
Lawrence, Ivan
Lawson, Rt Hon Nigel
Leigh, Edward *(Gainsbor'gh)*
Lightbown, David
Lord, Michael
McCrea, Rev William
McCrindle, Robert
McCusker, Harold
Macfarlane, Neil
MacGregor, John
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Marland, Paul
Marlow, Antony
Mates, Michael
Mather, Carol
Mawhinney, Dr Brian
Merchant, Piers
Meyer, Sir Anthony
Miller, Hal *(B'grove)*
Mills, Ian *(Meriden)*
Mills, Sir Peter *(West Devon)*
Mitchell, David *(NW Hants)*
Moate, Roger
Molyneaux, James
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morrison, Hon P. *(Chester)*
Moynihan, Hon C.
Mudd, David
Murphy, Christopher
Neale, Gerrard
Neubert, Michael
Nicholls, Patrick
Nicholson, J.
Normanton, Tom
Norris, Steven
Oppenheim, Rt Hon Mrs S.
Osborn, Sir John
Ottaway, Richard
Page, John *(Harrow W)*
Page, Richard *(Herts SW)*
Paisley, Rev Ian
Parkinson, Rt Hon Cecil
Pattie, Geoffrey
Pawsey, James
Peacock, Mrs Elizabeth
Percival, Rt Hon Sir Ian
Pink, R. Bonner
Pollock, Alexander
Porter, Barry
Price, Sir David
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Ridley, Rt Hon Nicholas
Ridsdale, Sir Julian
Roberts, Wyn *(Conwy)*
Robinson, P. *(Belfast E)*
Roe, Mrs Marion
Ross, Wm. *(Londonderry)*
Rost, Peter
Rumbold, Mrs Angela
Sackville, Hon Thomas
Shaw, Giles *(Pudsey)*
Shaw, Sir Michael *(Scarb')*
Shelton, William *(Streatham)*
Shepherd, Colin *(Hereford)*
Shepherd, Richard *(Aldridge)*
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Sir Dudley *(Warwick)*
Smyth, Rev W. M. *(Belfast S)*
Speed, Keith
Speller, Tony
Spence, John
Spencer, D.
Spicer, Jim *(W Dorset)*
Spicer, Michael *(S Worcs)*
Stanbrook, Ivor
Stanley, John
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stewart, Rt Hon D. *(W Isles)*
Stewart, Ian *(N Hertf'dshire)*
Stokes, John
Sumberg, David
Taylor, John *(Strangford)*
Taylor, John *(Solihull)*
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Terlezki, Stefan
Thatcher, Rt Hon Mrs M.
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Thornton, Malcolm
Thurnham, Peter
Townend, John *(Bridlington)*
Tracey, Richard
Trippier, David
Trotter, Neville
Twinn, Dr Ian
van Straubenzee, Sir W.
Vaughan, Dr Gerard
Waddington, David
Walker, Cecil *(Belfast N)*
Walker, William *(T'side N)*
Wall, Sir Patrick
Ward, John
Wardle, C. *(Bexhill)*
Warren, Kenneth
Watson, John
Watts, John
Wells, Bowen *(Hertford)*
Wells, John *(Maidstone)*
Whitfield, John
Whitney, Raymond
Wiggin, Jerry
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wolfson, Mark
Wood, Timothy
Woodcock, Michael
Younger, Rt Hon George

Tellers for the Ayes:
Mr. George Gardiner and
Mr. Vivian Bendall.

NOES

Abse, Leo
Adams, Allen *(Paisley N)*
Alton, David
Amery, Rt Hon Julian
Ancram, Michael
Anderson, Donald
Archer, Rt Hon Peter
Ashby, David
Ashdown, Paddy
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(Tottenham)*
Bagier, Gordon A. T.
Baker, Kenneth *(Mole Valley)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Bennett, A. *(Dent'n & Red'sh)*
Benyon, William
Bermingham, Gerald
Best, Keith
Bidwell, Sydney
Blair, Anthony
Body, Richard
Boothroyd, Miss Betty
Boyes, Roland
Bray, Dr Jeremy
Brittan, Rt Hon Leon
Brooke, Hon Peter
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, N. *(N'c'tle-u-Tyne E)*
Brown, R. *(N'c'tle-u-Tyne N)*
Bruce, Malcolm
Buchan, Norman
Buchanan-Smith, Rt Hon A.
Buck, Sir Antony
Budgen, Nick
Burt, Alistair
Butterfill, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Cartwright, John
Clark, Dr David *(S Shields)*
Clarke Kenneth *(Rushcliffe)*
Clarke, Thomas
Clay, Robert
Cocks, Rt Hon M. *(Bristol S)*
Cohen, Harry
Coleman, Donald
Concannon, Rt Hon J. D.
Conlan, Bernard
Conway, Derek
Cook, Frank *(Stockton North)*

Cook, Robin F. *(Livingston)*
Cope, John
Corbett, Robin
Corbyn, Jeremy
Couchman, James
Cowans, Harry
Cox, Thomas *(Tooting)*
Craigen, J. M.
Critchley, Julian
Crouch, David
Crowther, Stan
Cunliffe, Lawrence
Cunningham, Dr John
Dalyell, Tam
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ronald *(Caerphilly)*
Davis, Terry *(B'ham, H'ge H'll)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Dorrell, Stephen
Douglas, Dick
Dubs, Alfred
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Dykes, Hugh
Eadie, Alex
Eastham, Ken
Edwards, Rt Hon N. *(P'broke)*
Edwards, R. *(W'hampt'n SE)*
Evans, Ioan *(Cynon Valley)*
Evans, John *(St. Helens N)*
Ewing, Harry
Fatchett, Derek
Faulds, Andrew
Field, Frank *(Birkenhead)*
Fisher, Mark
Flannery, Martin
Fletcher, Alexander
Fookes, Miss Janet
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Freeson, Rt Hon Reginald
Freud, Clement
Garel-Jones, Tristan
Garrett, W. E.
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Godman, Dr Norman
Golding, John
Goodlad, Alastair
Gorst, John
Gould, Bryan
Gourlay, Harry
Gow, Ian
Grist, Ian
Ground, Reginald
Gummer, John Selwyn
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hampson, Dr Keith
Hardy, Peter
Harman, Ms Harriet
Harris, David
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Harvey, Robert
Haselhurst, Alan
Hattersley, Rt Hon Roy
Hawkins, C. *(High Peak)*
Hayes, J.
Hayhoe, Barney
Haynes, Frank
Healey, Rt Hon Denis
Heath, Rt Hon Edward
Heathcoat-Amery, David
Heffer, Eric S.
Heseltine, Rt Hon Michael
Higgins, Rt Hon Terence L.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Howarth, Alan *(Stratf'd-on-A)*
Howell, Rt Hon D. *(S'heath)*
Howells, Geraint
Hoyle, Douglas
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Sean *(Knowsley S)*
Hughes, Simon *(Southwark)*
Hume, John
Hurd, Rt Hon Douglas
Irving, Charles
Janner, Hon Greville
Jenkin, Rt Hon Patrick
Jenkins, Rt Hon Roy *(Hillh'd)*
John, Brynmor
Johnson-Smith, Sir Geoffrey
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Jones, Gwilym *(Cardiff N)*
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaufman, Rt Hon Gerald
Kennedy, Charles
Kilroy-Silk, Robert
King, Rt Hon Tom
Kinnock, Neil
Kirkwood, Archibald
Knox, David
Lambie, David
Lamond, James
Lamont, Norman
Leadbitter, Ted
Leighton, Ronald
Lennox-Boyd, Hon Mark
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Lilley, Peter
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lloyd, Tony *(Stretford)*
Lofthouse, Geoffrey
Loyden, Edward
Luce, Richard
Lyell, Nicholas
McCartney, Hugh
McCurley, Mrs Anna
McDonald, Dr Oonagh
McKay, Allen *(Penistone)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNamara, Kevin
McTaggart, Robert
Madden, Max
Madel, David
Maginnis, Ken
Major, John
Malone, Gerald
Maples, John
Marek, Dr John
Marshall, David *(Shettleston)*
Martin, Michael
Mason, Rt Hon Roy
Maude, Francis
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Meadowcroft, Michael
Mellor, David
Michie, William
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Miscampbell, Norman
Mitchell, Austin *(G't Grimsby)*
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morris, M. *(N'hampton, S)*
Morrison, Hon C. *(Devizes)*
Needham, Richard
Nellist, David
Nelson, Anthony
Newton, Tony
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Park, George
Parry Robert
Patchett, Terry
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Rt Hon J. E. *(S Down)*
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Prentice, Rt Hon Reg
Prescott, John
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Raffan, Keith
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Richardson, Ms Jo
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Robinson, G. *(Coventry NW)*
Robinson, Mark *(N'port W)*
Rogers, Allan
Rooker, J. W.
Ross, Ernest *(Dundee W)*
Ross, Stephen *(Isle of Wight)*
Rossi, Hugh
Rowe, Andrew
Rowlands, Ted
Ryder, Richard
Ryman, John
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Scott, Nicholas
Sedgemore, Brian
Sheerman, Barry
Sheldon, Rt Hon R.
Shersby, Michael
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, C.*(Isl'ton S & F'bury)*
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soames, Hon Nicholas
Soley, Clive
Spearing, Nigel
Squire, Robin
Steel, Rt Hon David
Steen, Anthony
Stern, Michael
Stott, Roger
Stradling Thomas, J.
Strang, Gavin
Straw, Jack
Tapsell, Peter
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thomas, Dr R. *(Carmarthen)*
Thompson, J. *(Wansbeck)*
Thompson, Patrick *(N'ich N)*
Thorne, Stan *(Preston)*
Tinn, James
Townsend, Cyril D. *(B'heath)*
Varley, Rt Hon Eric G.
Wainwright, R.
Waldegrave, Hon William
Walden, George
Walker, Rt Hon P. *(W'cester)*
Wallace, James
Waller, Gary
Walters, Dennis
Wardell, Gareth *(Gower)*
Wareing, Robert
Weetch, Ken
Welsh, Michael
Wheeler, John
White, James
Wigley, Dafydd
Williams, Rt Hon A.
Wilson, Gordon
Winnick, David
Woodall, Alec
Wrigglesworth, Ian
Yeo, Tim
Young, David *(Bolton SE)*
Young, Sir George *(Acton)*

Tellers for the Noes:
Mr. Ian Mikardo and
Mr. Peter Bottomley.

Question accordingly negatived.

Amendment (h) proposed: At the end of the motion to add:

'by shooting or causing an explosion'.—*[Mr. Bendall.]*

Question put, That the amendment be made:—

The House divided: Ayes 204, Noes 374.

Division No. 19] **[10.42**

AYES

Alexander, Richard
Alison, Rt Hon Michael
Amess, David
Aspinwall, Jack
Atkinson, David *(B'm'th E)*
Baldry, Anthony
Beaumont-Dark, Anthony
Beggs, Roy

Bellingham, Henry
Bennett, Sir Frederic *(T'bay)*
Bevan, David Gilroy
Biggs-Davison, Sir John
Blackburn, John
Blaker, Rt Hon Peter
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bowden, Gerald *(Dulwich)*
Boyson, Dr Rhodes
Braine, Sir Bernard
Brinton, Tim
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Butcher, John
Carlisle, John *(N Luton)*
Chapman, Sydney
Chope, Christopher
Churchill, W. S.
Clark, Hon A. *(Plym'th S'n)*
Clark, Dr Michael *(Rochford)*
Clark, Sir W. *(Croydon S)*
Cockeram, Eric
Colvin, Michael
Conway, Derek
Coombs, Simon
Corrie, John
Cranborne, Viscount
Currie, Mrs Edwina
Dickens, Geoffrey
Dicks, T.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert
Emery, Sir Peter
Evennett, David
Eyre, Reginald
Fairbairn, Nicholas
Fallon, Michael
Farr, John
Favell, Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Forsyth, Michael *(Stirling)*
Forsythe, Clifford *(S Antrim)*
Forth, Eric
Fox, Marcus
Franks, Cecil
Fraser, Rt Hon Sir Hugh
Fry, Peter
Gale, Roger
Gardner, Sir Edward *(Fylde)*
Glyn, Dr Alan
Goodhart, Sir Philip
Grant, Sir Anthony
Gregory, Conal
Griffiths, E. *(B'y St Edm'ds)*
Griffiths, Peter *(Portsm'th N)*
Grylls, Michael
Hamilton, Hon A. *(Epsom)*
Hamilton, Neil *(Tatton)*
Hargreaves, Kenneth
Hawkins, Sir Paul *(SW N'folk)*
Hawksley, Warren
Hayward, Robert
Heddle, John
Henderson, Barry
Hickmet, Richard
Hicks, Robert
Hill, James
Hind, Kenneth
Hirst, Michael
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Sir Philip *(Gedling)*
Holt, Richard
Hooson, Tom
Howard, Michael
Howarth, Gerald *(Cannock)*
Howell, Rt Hon D. *(G'ldford)*
Howell, Ralph *(N Norfolk)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Jessel, Toby
Jones, Robert *(W Herts)*
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Kilfedder, James A.
Knight, Mrs Jill *(Edgbaston)*
Knowles, Michael
Lawrence, Ivan
Leigh, Edward *(Gainsbor'gh)*
Lightbown, David
Lord, Michael
McCrea, Rev William
McCusker, Harold
Macfarlane, Neil
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Marland, Paul
Marlow, Antony
Mather, Carol
Maude, Francis
Mawhinney, Dr Brian
Miller, Hal *(B'grove)*
Mills, Ian *(Meriden)*
Mitchell, David *(NW Hants)*
Molyneaux, James
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morrison, Hon P. *(Chester)*
Moynihan, Hon C.
Mudd, David
Murphy, Christopher
Neale, Gerrard
Neubert, Michael
Nicholls, Patrick
Nicholson, J.
Normanton, Tom
Norris, Steven
Oppenheim, Rt Hon Mrs S.
Osborn, Sir John
Ottaway, Richard
Page, John *(Harrow W)*
Page, Richard *(Herts SW)*
Paisley, Rev Ian
Parkinson, Rt Hon Cecil
Pattie, Geoffrey
Pawsey, James
Peacock, Mrs Elizabeth
Percival, Rt Hon Sir Ian
Pink, R. Bonner
Porter, Barry
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Ridsdale, Sir Julian
Rippon, Rt Hon Geoffrey
Roberts, Wyn *(Conwy)*
Robinson, P. *(Belfast E)*
Roe, Mrs Marion
Ross, Wm. *(Londonderry)*
Rost, Peter
Rumbold, Mrs Angela
Shaw, Sir Michael *(Scarb')*
Shelton, William *(Streatham)*
Shepherd, Richard *(Aldridge)*
Silvester, Fred
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Sir Dudley *(Warwick)*
Smyth, Rev W. M. *(Belfast S)*
Speller, Tony
Spence, John
Spencer, D.
Spicer, Jim *(W Dorset)*
Stanbrook, Ivor
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stewart, Rt Hon D. *(W Isles)*
Stokes, John
Sumberg, David
Taylor, John *(Strangford)*
Taylor, Teddy *(S'end E)*
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Terlezki, Stefan
Thatcher, Rt Hon Mrs M.
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Thornton, Malcolm
Thurnham, Peter
Townend, John *(Bridlington)*
Trippier, David
Trotter, Neville
Twinn, Dr Ian
Waddington, David
Walker, Cecil *(Belfast N)*
Walker, William *(T'side N)*
Wall, Sir Patrick
Ward, John
Wardle, C. *(Bexhill)*
Warren, Kenneth
Watts, John
Wells, John *(Maidstone)*
Whitfield, John
Wiggin, Jerry
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wolfson, Mark
Woodcock, Michael

Tellers for the Ayes:
Mr. George Gardiner and
Mr. Vivian Bendall.

NOES

Abse, Leo
Adams, Allen *(Paisley N)*
Alton, David
Amery, Rt Hon Julian
Ancram, Michael
Anderson, Donald
Archer, Rt Hon Peter
Arnold, Tom
Ashby, David
Ashdown, Paddy
Ashley, Rt Hon Jack
Ashton, Joe
Atkins Robert *(South Ribble)*
Atkinson, N. *(Tottenham)*
Bagier, Gordon A. T.
Baker, Kenneth *(Mole Valley)*
Banks, Robert *(Harrogate)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Bennett, A. *(Dent'n & Red'sh)*
Benyon, William
Bermingham, Gerald
Berry, Hon Anthony
Best, Keith
Bidwell, Sydney
Biffen, Rt Hon John
Blair, Anthony
Body, Richard
Boothroyd, Miss Betty
Bottomley, Peter
Boyes, Roland
Bray, Dr Jeremy
Bright, Graham
Brittan, Rt Hon Leon
Brooke, Hon Peter
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, N. *(N'c'tle-u-Tyne E)*
Brown, R. *(N'c'tle-u-Tyne N)*
Bruce, Malcolm
Buchan, Norman
Buchanan-Smith, Rt Hon A.
Buck, Sir Antony
Budgen, Nick
Bulmer, Esmond
Burt, Alistair
Butler, Hon Adam
Butterfill, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Cartwright, John
Chalker, Mrs Lynda
Channon, Rt Hon Paul
Clark, Dr David *(S Shields)*
Clarke, Kenneth *(Rushcliffe)*
Clarke, Thomas
Clay, Robert
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Coleman, Donald
Concannon, Rt Hon J. D.
Conlan, Bernard
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Cope, John
Corbett, Robin
Corbyn, Jeremy
Couchman, James
Cowans, Harry
Cox, Thomas *(Tooting)*
Craigen, J. M.
Critchley, Julian
Crouch, David
Crowther, Stan
Cunliffe, Lawrence
Cunningham, Dr John
Dalyell, Tam
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ronald *(Caerphilly)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Dorrell, Stephen
Douglas, Dick
Douglas-Hamilton, Lord J.
Dubs, Alfred
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Dykes, Hugh
Eadie, Alex
Eastham, Ken
Edwards, Rt Hon N. *(P'broke)*
Edwards, R. *(W'hampt'n SE)*
Evans, Ioan *(Cynon Valley)*
Evans, John *(St. Helens N)*
Ewing, Harry
Fatchett, Derek
Faulds, Andrew
Field, Frank *(Birkenhead)*
Fisher, Mark
Flannery, Martin
Fletcher, Alexander

Fookes, Miss Janet
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Freeson, Rt Hon Reginald
Freud, Clement
Garel-Jones, Tristan
Garrett, W. E.
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Godman, Dr Norman
Golding, John
Goodlad, Alastair
Gorst, John
Gould, Bryan
Gourlay, Harry
Gow, Ian
Grist, Ian
Ground, Reginald
Gummer, John Selwyn
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hampson, Dr Keith
Hanley, Jeremy
Hardy, Peter
Harris, David
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Harvey, Robert
Haselhurst, Alan
Hattersley, Rt Hon Roy
Hawkins, C. *(High Peak)*
Hayes, J.
Hayhoe, Barney
Haynes, Frank
Healey, Rt Hon Denis
Heath, Rt Hon Edward
Heathcoat-Amery, David
Heffer, Eric S.
Heseltine, Rt Hon Michael
Higgins, Rt Hon Terence L.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Hordern, Peter
Howarth, Alan *(Stratf'd-on-A)*
Howell, Rt Hon D. *(S'heath)*
Howells, Geraint
Hoyle, Douglas
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Sean *(Knowsley S)*
Hughes, Simon *(Southwark)*
Hume, John
Hunt, David *(Wirral)*
Hurd, Rt Hon Douglas
Irving, Charles
Janner, Hon Greville
Jenkin, Rt Hon Patrick
Jenkins, Rt Hon Roy *(Hillh'd)*
John, Brynmor
Johnson-Smith, Sir Geoffrey
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Jones, Gwilym *(Cardiff N)*
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaufman, Rt Hon Gerald
Kennedy, Charles
Key, Robert
Kilroy-Silk, Robert
King, Rt Hon Tom
Kinnock, Neil
Kirkwood, Archibald
Knox, David
Lambie, David
Lamond, James
Lamont, Norman
Latham, Michael
Lawler, Geoffrey
Lawson, Rt Hon Nigel
Leadbitter, Ted
Leighton, Ronald
Lennox-Boyd, Hon Mark
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Lilley, Peter
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lloyd, Tony *(Stretford)*
Lofthouse, Geoffrey
Loyden, Edward
Luce, Richard
Lyell, Nicholas
McCartney, Hugh
McCurley, Mrs Anna
McDonald, Dr Oonagh
MacGregor, John
McKay, Allen *(Penistone)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNamara, Kevin
McTaggart, Robert
Madden, Max
Madel, David
Maginnis, Ken
Major, John
Malone, Gerald
Maples, John
Marek, Dr John
Marshall, David *(Shettleston)*
Martin, Michael
Mason, Rt Hon Roy
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Meadowcroft, Michael
Mellor, David
Meyer, Sir Anthony
Michie, William
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Miscampbell, Norman
Mitchell, Austin *(G't Grimsby)*
Moate, Roger
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morris, M. *(N'hampton, S)*
Morrison, Hon C. *(Devizes)*
Needham, Richard
Nellist, David
Nelson, Anthony
Newton, Tony
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Park, George
Parry Robert
Patchett, Terry
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Rt Hon J. E. *(S Down)*
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Prentice, Rt Hon Reg
Prescott, John
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Raffan, Keith
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Richardson, Ms Jo
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Robinson, G. *(Coventry NW)*
Robinson, Mark *(N'port W)*
Rogers, Allan
Rooker, J. W.
Ross, Ernest *(Dundee W)*
Ross, Stephen *(Isle of Wight)*
Rossi, Hugh
Rowe, Andrew
Rowlands, Ted
Ryder, Richard
Ryman, John
Sackville, Hon Thomas
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Scott, Nicholas
Sedgemore, Brian
Shaw, Giles *(Pudsey)*
Sheerman, Barry
Sheldon, Rt Hon R.
Shepherd, Colin *(Hereford)*
Shersby, Michael
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, C.*(Isl'ton S & F'bury)*
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soames, Hon Nicholas
Soley, Clive
Spearing, Nigel
Spicer, Michael *(S Worcs)*
Squire, Robin
Steel, Rt Hon David
Steen, Anthony
Stern, Michael
Stott, Roger
Stradling Thomas, J.
Strang, Gavin
Straw, Jack
Tapsell, Peter
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thomas, Dr R. *(Carmarthen)*
Thompson, J. *(Wansbeck)*
Thompson, Patrick *(N'ich N)*
Thorne, Stan *(Preston)*
Tinn, James
Townsend, Cyril D. *(B'heath)*
Varley, Rt Hon Eric G.
Wainwright, R.
Wakeham, Rt Hon John
Waldegrave, Hon William
Walden, George
Walker, Rt Hon P. *(W'cester)*
Wallace, James
Waller, Gary
Walters, Dennis
Wardell, Gareth *(Gower)*
Wareing, Robert
Weetch, Ken
Wells, Bowen *(Hertford)*
Welsh, Michael
Wheeler, John
White, James
Wigley, Dafydd
Williams, Rt Hon A.
Wilson, Gordon
Winnick, David
Woodall, Alec
Wrigglesworth, Ian
Yeo, Tim
Young, David *(Bolton SE)*
Young, Sir George *(Acton)*
Younger, Rt Hon George

Tellers for the NOes:
Ms. Harriet Harman and
Mr. Ian Mikardo.

Question accordingly negatived.

Amendment (i) proposed: At the end of the motion to add:—

'in the course or furtherance of theft'. — *[Mr. George Gardiner.]*

Question put, That the amendment be made:—

The House divided: Ayes 194, Noes 369.

Division No. 20] **[10.57 pm**

AYES

Adley, Robert
Alexander, Richard
Amess, David
Atkinson, David *(B'm'th E)*
Beggs, Roy
Bellingham, Henry
Bevan, David Gilroy
Biggs-Davison, Sir John
Blackburn, John
Blaker, Rt Hon Peter
Bonsor, Sir Nicholas
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Boyson, Dr Rhodes
Braine, Sir Bernard
Brandon-Bravo, Martin
Brinton, Tim
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Butcher, John
Carlisle, John *(N Luton)*
Chalker, Mrs Lynda
Chapman, Sydney
Chope, Christopher
Churchill, W. S.
Clark, Hon A. *(Plym'th S'n)*
Clark, Sir W. *(Croydon S)*
Clegg, Sir Walter
Cockeram, Eric
Colvin, Michael
Coombs, Simon

Corrie, John
Cranborne, Viscount
Currie, Mrs Edwina
Dickens, Geoffrey
Dicks, T.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert
Durant, Tony
Eyre, Reginald
Fallon, Michael
Farr, John
Favell, Anthony
Fenner, Mrs Peggy
Finsberg, Geoffrey
Forsyth, Michael *(Stirling)*
Forsythe, Clifford *(S Antrim)*
Forth, Eric
Fowler, Rt Hon Norman
Fox, Marcus
Fraser, Rt Hon Sir Hugh
Fry, Peter
Gale, Roger
Gardner, Sir Edward *(Fylde)*
Glyn, Dr Alan
Gorst, John
Grant, Sir Anthony
Gregory, Conal
Griffiths, E. *(B'y St Edm'ds)*
Griffiths, Peter *(Portsm'th N)*
Grylls, Michael
Hamilton, Neil *(Tatton)*
Hanley, Jeremy
Hargreaves, Kenneth
Hawkins, Sir Paul *(SW N'folk)*
Hawksley, Warren
Hayward, Robert
Heddle, John
Hickmet, Richard
Hicks, Robert
Hill, James
Hirst, Michael
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Sir Philip *(Gedling)*
Holt, Richard
Hooson, Tom
Howarth, Gerald *(Cannock)*
Howell, Ralph *(N Norfolk)*
Hunter, Andrew
Jessel, Toby
Jones, Robert *(W Herts)*
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Key, Robert
Kilfedder, James A.
King, Roger *(B'ham N'field)*
Knight, Gregory *(Derby N)*
Knight, Mrs Jill *(Edgbaston)*
Knowles, Michael
Lawrence, Ivan
Lawson, Rt Hon Nigel
Leigh, Edward *(Gainsbor'gh)*
Lightbown, David
Lord, Michael
McCrea, Rev William
McCusker, Harold
Macfarlane, Neil
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Marland, Paul
Marlow, Antony
Mather, Carol
Maude, Francis
Mawhinney, Dr Brian
Miller, Hal *(B'grove)*
Mills, Ian *(Meriden)*
Mitchell, David *(NW Hants)*
Molyneaux, James
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Moynihan, Hon C.
Mudd, David
Murphy, Christopher
Neale, Gerrard
Neubert, Michael
Nicholls, Patrick
Nicholson, J.
Normanton, Tom
Norris, Steven
Oppenheim, Philip
Oppenheim, Rt Hon Mrs S.
Osborn, Sir John
Ottaway, Richard
Page, John *(Harrow W)*
Paisley, Rev Ian
Parkinson, Rt Hon Cecil
Pawsey, James
Peacock, Mrs Elizabeth
Percival, Rt Hon Sir Ian
Pink, R. Bonner
Porter, Barry
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Ridsdale, Sir Julian
Roberts, Wyn *(Conwy)*
Robinson, P. *(Belfast E)*
Roe, Mrs Marion
Ross, Wm. *(Londonderry)*
Rumbold, Mrs Angela
Shaw, Sir Michael *(Scarb')*
Shelton, William *(Streatham)*
Shepherd, Richard *(Aldridge)*
Shersby, Michael
Silvester, Fred
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Sir Dudley *(Warwick)*
Smyth, Rev W. M. *(Belfast S)*
Speller, Tony
Spence, John
Spencer, D.
Spicer, Jim *(W Dorset)*
Stanbrook, Ivor
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stewart, Rt Hon D. *(W Isles)*
Stokes, John
Sumberg, David
Taylor, John *(Solihull)*
Taylor, Teddy *(S'end E)*
Terlezki, Stefan
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Thornton, Malcolm
Thurnham, Peter
Townend, John *(Bridlington)*
Tracey, Richard
Trippier, David
Trotter, Neville
Twinn, Dr Ian
Walker, Cecil *(Belfast N)*
Walker, William *(T'side N)*
Wall, Sir Patrick
Ward, John
Wardle, C. *(Bexhill)*
Warren, Kenneth
Watts, John
Wells, Bowen *(Hertford)*
Wells, John *(Maidstone)*
Whitfield, John
Wiggin, Jerry
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wolfson, Mark
Wood, Timothy
Yeo, Tim

Tellers for the Ayes:
Mr. George Gardiner and
Mr. Vivian Bendall.

NOES

Abse, Leo
Adams, Allen *(Paisley N)*
Alton, David
Amery, Rt Hon Julian
Ancram, Michael
Anderson, Donald
Archer, Rt Hon Peter
Arnold, Tom
Ashby, David
Ashdown, Paddy
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(Tottenham)*
Bagier, Gordon A. T.
Baker, Kenneth *(Mole Valley)*
Baldry, Anthony
Banks, Robert *(Harrogate)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beaumont-Dark, Anthony
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Bennett, A. *(Dent'n & Red'sh)*
Benyon, William
Bermingham, Gerald
Berry, Hon Anthony
Best, Keith
Bidwell, Sydney
Biffen, Rt Hon John
Blair, Anthony
Body, Richard
Boothroyd, Miss Betty
Bottomley, Peter
Boyes, Roland
Bray, Dr Jeremy
Bright, Graham
Brittan, Rt Hon Leon
Brooke, Hon Peter
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, N. *(N'c'tle-u-Tyne E)*
Brown, R. *(N'c'tle-u-Tyne N)*
Bruce, Malcolm
Bryan, Sir Paul
Buchan, Norman
Buchanan-Smith, Rt Hon A.
Buck, Sir Antony
Budgen, Nick
Bulmer, Esmond
Burt, Alistair
Butler, Hon Adam
Butterfill, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Cartwright, John
Channon, Rt Hon Paul
Clark, Dr David *(S Shields)*
Clarke Kenneth *(Rushcliffe)*
Clarke, Thomas
Clay, Robert
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Coleman, Donald
Concannon, Rt Hon J. D.
Conlan, Bernard
Conway, Derek
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Cope, John
Corbett, Robin
Corbyn, Jeremy
Couchman, James
Cowans, Harry
Cox, Thomas *(Tooting)*
Craigen, J. M.
Critchley, Julian
Crouch, David
Crowther, Stan
Cunliffe, Lawrence
Cunningham, Dr John
Dalyell, Tam
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ronald *(Caerphilly)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Dorrell, Stephen
Douglas, Dick
Douglas-Hamilton, Lord J.
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Dykes, Hugh
Eadie, Alex
Eastham, Ken
Edwards, Rt Hon N. *(P'broke)*
Edwards, R. *(W'hampt'n SE)*
Evans, Ioan *(Cynon Valley)*
Evans, John *(St. Helens N)*
Ewing, Harry
Fatchett, Derek
Faulds, Andrew
Field, Frank *(Birkenhead)*
Fisher, Mark
Flannery, Martin
Fletcher, Alexander
Fookes, Miss Janet
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Freeson, Rt Hon Reginald
Freud, Clement
Garel-Jones, Tristan
Garrett, W. E.
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Godman, Dr Norman
Golding, John
Goodlad, Alastair
Gould, Bryan
Gourlay, Harry
Gow, Ian
Grist, Ian
Ground, Reginald
Gummer, John Selwyn
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hampson, Dr Keith
Hardy, Peter
Harman, Ms Harriet
Harris, David
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith

Harvey, Robert
Haselhurst, Alan
Hattersley, Rt Hon Roy
Havers, Rt Hon Sir Michael
Hawkins, C. *(High Peak)*
Hayhoe, Barney
Haynes, Frank
Healey, Rt Hon Denis
Heath, Rt Hon Edward
Heathcoat-Amery, David
Heffer, Eric S.
Heseltine, Rt Hon Michael
Higgins, Rt Hon Terence L.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Howarth, Alan *(Stratf'd-on-A)*
Howell, Rt Hon D. *(S'heath)*
Howells, Geraint
Hoyle, Douglas
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Sean *(Knowsley S)*
Hughes, Simon *(Southwark)*
Hume, John
Hunt, David *(Wirral)*
Hurd, Rt Hon Douglas
Irving, Charles
Janner, Hon Greville
Jenkin, Rt Hon Patrick
Jenkins, Rt Hon Roy *(Hillh'd)*
John, Brynmor
Johnson-Smith, Sir Geoffrey
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Jones, Gwilym *(Cardiff N)*
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaufman, Rt Hon Gerald
Kennedy, Charles
Kilroy-Silk, Robert
Kinnock, Neil
Kirkwood, Archibald
Knox, David
Lambie, David
Lamond, James
Lamont, Norman
Latham, Michael
Lawler, Geoffrey
Leadbitter, Ted
Leighton, Ronald
Lennox-Boyd, Hon Mark
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Lilley, Peter
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lloyd, Tony *(Stretford)*
Lofthouse, Geoffrey
Loyden, Edward
Luce, Richard
Lyell, Nicholas
McCartney, Hugh
McCurley, Mrs Anna
McDonald, Dr Oonagh
MacGregor, John
McKay, Allen *(Penistone)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
Macmillan, Rt Hon M.
McNair-Wilson, M. *(N'bury)*
McNamara, Kevin
McTaggart, Robert
Madden, Max
Madel, David
Maginnis, Ken
Major, John
Malone, Gerald
Maples, John
Marek, Dr John
Marshall, David *(Shettleston)*
Martin, Michael
Mason, Rt Hon Roy
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Meadowcroft, Michael
Mellor, David
Merchant, Piers
Meyer, Sir Anthony
Michie, William
Mikardo, Ian
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Miscampbell, Norman
Mitchell, Austin *(G't Grimsby)*
Moate, Roger
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morris, M. *(N'hampton, S)*
Morrison, Hon C. *(Devizes)*
Needham, Richard
Nellist, David
Nelson, Anthony
Newton, Tony
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Page, Richard *(Herts SW)*
Park, George
Parry Robert
Patchett, Terry
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Pollock, Alexander
Powell, Rt Hon J. E. *(S Down)*
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Prentice, Rt Hon Reg
Prescott, John
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Raffan, Keith
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Robinson, G. *(Coventry NW)*
Robinson, Mark *(N'port W)*
Rogers, Allan
Rooker, J. W.
Ross, Ernest *(Dundee W)*
Ross, Stephen *(Isle of Wight)*
Rossi, Hugh
Rowe, Andrew
Rowlands, Ted
Ryder, Richard
Ryman, John
Sackville, Hon Thomas
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Scott, Nicholas
Sedgemore, Brian
Shaw, Giles *(Pudsey)*
Sheerman, Barry
Sheldon, Rt Hon R.
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, C.*(Isl'ton S & F'bury)*
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soames, Hon Nicholas
Soley, Clive
Spearing, Nigel
Spicer, Michael *(S Worcs)*
Squire, Robin
Steel, Rt Hon David
Steen, Anthony
Stern, Michael
Stott, Roger
Stradling Thomas, J.
Strang, Gavin
Straw, Jack
Tapsell, Peter
Taylor, John *(Strangford)*
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thomas, Dr R. *(Carmarthen)*
Thompson, J. *(Wansbeck)*
Thompson, Patrick *(N'ich N)*
Thorne, Stan *(Preston)*
Tinn, James
Townsend, Cyril D. *(B'heath)*
Varley, Rt Hon Eric G.
Wainwright, R.
Waldegrave, Hon William
Walden, George
Walker, Rt Hon P. *(W'cester)*
Wallace, James
Waller, Gary
Walters, Dennis
Wardell, Gareth *(Gower)*
Wareing, Robert
Weetch, Ken
Welsh, Michael
Wheeler, John
White, James
Wigley, Dafydd
Williams, Rt Hon A.
Wilson, Gordon
Winnick, David
Woodall, Alec
Wrigglesworth, Ian
Young, David *(Bolton SE)*
Young, Sir George *(Acton)*
Younger, Rt Hon George

Tellers for the Noes:
Ms. Jo Richardson and
Mr. Alf Dubs.

Question accordingly negatived.

Main Question put, That this House favours the restoration of the death penalty for murder:—

The House divided: Ayes 223, Noes 368.

Division No. 21] **[11.11 pm**

AYES

Adley, Robert
Alexander, Richard
Alison, Rt Hon Michael
Amess, David
Aspinwall, Jack
Atkins, Rt Hon H. *(S'thorne)*
Atkins Robert *(South Ribble)*
Atkinson, David *(B'm'th E)*
Batiste, Spencer
Beaumont-Dark, Anthony
Beggs, Roy
Bellingham, Henry
Bendall, Vivian
Bennett, Sir Frederic *(T'bay)*
Berry, Hon Anthony
Bevan, David Gilroy
Biggs-Davison, Sir John
Blackburn, John
Blaker, Rt Hon Peter
Bonsor, Sir Nicholas
Boscawen, Hon Robert
Bowden, A. *(Brighton K'to'n)*
Bowden, Gerald *(Dulwich)*
Boyson, Dr Rhodes
Braine, Sir Bernard
Brandon-Bravo, Martin
Brinton, Tim
Brown, M. *(Brigg & Cl'thpes)*
Browne, John
Bruinvels, Peter
Butcher, John
Carlisle, John *(N Luton)*
Carttiss, Michael
Chapman, Sydney
Churchill, W. S.
Clark, Hon A. *(Plym'th S'n)*
Clark, Sir W. *(Croydon S)*
Cockeram, Eric
Conway, Derek
Coombs, Simon
Corrie, John
Cranborne, Viscount
Currie, Mrs Edwina
Dickens, Geoffrey
Dicks, T.
Dover, Denshore
du Cann, Rt Hon Edward
Dunn, Robert
Durant, Tony
Emery, Sir Peter
Evennett, David
Eyre, Reginald
Fairbairn, Nicholas
Fallon, Michael
Farr, John
Fenner, Mrs Peggy
Finsberg, Geoffrey
Fookes, Miss Janet
Forsyth, Michael *(Stirling)*
Forsythe, Clifford *(S Antrim)*
Forth, Eric
Fowler, Rt Hon Norman
Fox, Marcus
Franks, Cecil
Fraser, Rt Hon Sir Hugh
Fry, Peter
Gale, Roger
Galley, Roy
Gardiner, George *(Reigate)*
Gardner, Sir Edward *(Fylde)*
Glyn, Dr Alan
Goodhart, Sir Philip
Gower, Sir Raymond
Grant, Sir Anthony
Gregory, Conal
Griffiths, E. *(B'y St Edm'ds)*
Griffiths, Peter *(Portsm'th N)*
Grylls, Michael

Hamilton, Neil *(Tatton)*
Hargreaves, Kenneth
Hawkins, Sir Paul *(SW N'folk)*
Hawksley, Warren
Hayward, Robert
Heddle, John
Hickmet, Richard
Hicks, Robert
Hill, James
Hirst, Michael
Hogg, Hon Douglas *(Gr'th'm)*
Holland, Sir Philip *(Gedling)*
Holt, Richard
Howarth, Gerald *(Cannock)*
Howell, Ralph *(N Norfolk)*
Hunt, John *(Ravensbourne)*
Hunter, Andrew
Jackson, Robert
Jessel, Toby
Jones, Robert *(W Herts)*
Kellett-Bowman, Mrs Elaine
Kershaw, Sir Anthony
Key, Robert
Kilfedder, James A.
King, Roger *(B'ham N'field)*
Knight, Gregory *(Derby N)*
Knight, Mrs Jill *(Edgbaston)*
Knowles, Michael
Lang, Ian
Latham, Michael
Lawrence, Ivan
Leigh, Edward *(Gainsbor'gh)*
Lightbown, David
Lord, Michael
McCrea, Rev William
McCusker, Harold
Macfarlane, Neil
MacKay, Andrew *(Berkshire)*
MacKay, John *(Argyll & Bute)*
McNair-Wilson, P. *(New F'st)*
McQuarrie, Albert
Malins, Humfrey
Malone, Gerald
Marland, Paul
Marlow, Antony
Mates, Michael
Mather, Carol
Mawhinney, Dr Brian
Maxwell-Hyslop, Robin
Merchant, Piers
Mills, Ian *(Meriden)*
Mills, Sir Peter *(West Devon)*
Mitchell, David *(NW Hants)*
Molyneaux, James
Monro, Sir Hector
Montgomery, Fergus
Moore, John
Morrison, Hon P. *(Chester)*
Moynihan, Hon C.
Mudd, David
Neale, Gerrard
Neubert, Michael
Nicholls, Patrick
Nicholson, J.
Normanton, Tom
Norris, Steven
Oppenheim, Philip
Oppenheim, Rt Hon Mrs S.
Osborn, Sir John
Ottaway, Richard
Page, John *(Harrow W)*
Paisley, Rev Ian
Parkinson, Rt Hon Cecil
Parris, Matthew
Pattie, Geoffrey
Pawsey, James
Peacock, Mrs Elizabeth
Percival, Rt Hon Sir Ian
Pink, R. Bonner
Pollock, Alexander
Porter, Barry
Proctor, K. Harvey
Rees, Rt Hon Peter *(Dover)*
Ridley, Rt Hon Nicholas
Ridsdale, Sir Julian
Roberts, Wyn *(Conwy)*
Robinson, P. *(Belfast E)*
Roe, Mrs Marion
Ross, Wm. *(Londonderry)*
Rumbold, Mrs Angela
Sayeed, Jonathan
Shaw, Sir Michael *(Scarb')*
Shelton, William *(Streatham)*
Shepherd, Richard *(Aldridge)*
Silvester, Fred
Sims, Roger
Skeet, T. H. H.
Smith, Cyril *(Rochdale)*
Smith, Sir Dudley *(Warwick)*
Smyth, Rev W. M. *(Belfast S)*
Speller, Tony
Spence, John
Spencer, D.
Spicer, Jim *(W Dorset)*
Stanbrook, Ivor
Steen, Anthony
Stevens, Lewis *(Nuneaton)*
Stevens, Martin *(Fulham)*
Stewart, Allan *(Eastwood)*
Stewart, Andrew *(Sherwood)*
Stewart, Rt Hon D. *(W Isles)*
Stewart, Ian *(N Hertf'dshire)*
Stokes, John
Sumberg, David
Tebbit, Rt Hon Norman
Temple-Morris, Peter
Terlezki, Stefan
Thatcher, Rt Hon Mrs M.
Thompson, Donald *(Calder V)*
Thorne, Neil *(Ilford S)*
Thornton, Malcolm
Thurnham, Peter
Townend, John *(Bridlington)*
Trippier, David
Trotter, Neville
Twinn, Dr Ian
van Straubenzee, Sir W.
Viggers, Peter
Waddington, David
Walker, Cecil *(Belfast N)*
Walker, William *(T'side N)*
Wall, Sir Patrick
Ward, John
Wardle, C. *(Bexhill)*
Warren, Kenneth
Watts, John
Wells, John *(Maidstone)*
Whitfield, John
Wiggin, Jerry
Wilkinson, John
Winterton, Mrs Ann
Winterton, Nicholas
Wolfson, Mark
Woodcock, Michael
Younger, Rt Hon George

Tellers for the Ayes:
Mr. Teddy Taylor and
Mr. Christopher Murphy.

NOES

Abse, Leo
Adams, Allen *(Paisley N)*
Alton, David
Amery, Rt Hon Julian
Ancram, Michael
Anderson, Donald
Archer, Rt Hon Peter
Ashby, David
Ashdown, Paddy
Ashley, Rt Hon Jack
Ashton, Joe
Atkinson, N. *(Tottenham)*
Bagier, Gordon A. T.
Baker, Kenneth *(Mole Valley)*
Baldry, Anthony
Banks, Robert *(Harrogate)*
Banks, Tony *(Newham NW)*
Barnett, Guy
Barron, Kevin
Beckett, Mrs Margaret
Beith, A. J.
Bell, Stuart
Bennett, A. *(Dent'n & Red'sh)*
Benyon, William
Bermingham, Gerald
Best, Keith
Bidwell, Sydney
Biffen, Rt Hon John
Blair, Anthony
Body, Richard
Boothroyd, Miss Betty
Boyes, Roland
Bray, Dr Jeremy
Bright, Graham
Brittan, Rt Hon Leon
Brooke, Hon Peter
Brown, Gordon *(D'f'mline E)*
Brown, Hugh D. *(Provan)*
Brown, N. *(N'c'tle-u-Tyne E)*
Brown, R. *(N'c'tle-u-Tyne N)*
Bruce, Malcolm
Bryan, Sir Paul
Buchan, Norman
Buchanan-Smith, Rt Hon A.
Buck, Sir Antony
Budgen, Nick
Bulmer, Esmond
Burt, Alistair
Butler, Hon Adam
Butterfill, John
Caborn, Richard
Callaghan, Rt Hon J.
Callaghan, Jim *(Heyw'd & M)*
Campbell, Ian
Campbell-Savours, Dale
Canavan, Dennis
Carlile, Alexander *(Montg'y)*
Carlisle, Kenneth *(Lincoln)*
Carter-Jones, Lewis
Cartwright, John
Chalker, Mrs Lynda
Channon, Rt Hon Paul
Clark, Dr David *(S Shields)*
Clarke, Kenneth *(Rushcliffe)*
Clarke, Thomas
Clay, Robert
Cocks, Rt Hon M. *(Bristol S.)*
Cohen, Harry
Coleman, Donald
Colvin, Michael
Concannon, Rt Hon J. D.
Conlan, Bernard
Cook, Frank *(Stockton North)*
Cook, Robin F. *(Livingston)*
Cope, John
Corbett, Robin
Corbyn, Jeremy
Couchman, James
Cowans, Harry
Cox, Thomas *(Tooting)*
Craigen, J. M.
Critchley, Julian
Crouch, David
Crowther, Stan
Cunliffe, Lawrence
Cunningham, Dr John
Dalyell, Tam
Davies, Rt Hon Denzil *(L'lli)*
Davies, Ronald *(Caerphilly)*
Davis, Terry *(B'ham, H'ge H'l)*
Deakins, Eric
Dewar, Donald
Dixon, Donald
Dobson, Frank
Dormand, Jack
Dorrell, Stephen
Douglas, Dick
Douglas-Hamilton, Lord J.
Dubs, Alfred
Duffy, A. E. P.
Dunwoody, Hon Mrs G.
Dykes, Hugh
Eadie, Alex
Eastham, Ken
Edwards, Rt Hon N. *(P'broke)*
Edwards, R. *(W'hampt'n SE)*
Evans, Ioan *(Cynon Valley)*
Evans, John *(St. Helens N)*
Ewing, Harry
Fatchett, Derek
Faulds, Andrew
Field, Frank *(Birkenhead)*
Fisher, Mark
Flannery, Martin
Fletcher, Alexander
Foot, Rt Hon Michael
Forman, Nigel
Forrester, John
Foster, Derek
Foulkes, George
Fraser, J. *(Norwood)*
Fraser, Peter *(Angus East)*
Freeman, Roger
Freeson, Rt Hon Reginald
Freud, Clement
Garel-Jones, Tristan
Garrett, W. E.
George, Bruce
Gilbert, Rt Hon Dr John
Gilmour, Rt Hon Sir Ian
Godman, Dr Norman
Golding, John
Goodlad, Alastair
Gorst, John
Gould, Bryan
Gourlay, Harry
Gow, Ian
Grist, Ian
Ground, Reginald
Gummer, John Selwyn
Hamilton, James *(M'well N)*
Hamilton, W. W. *(Central Fife)*
Hampson, Dr Keith
Hanley, Jeremy
Hardy, Peter
Harman, Ms Harriet
Harris, David
Harrison, Rt Hon Walter
Hart, Rt Hon Dame Judith
Harvey, Robert
Haselhurst, Alan
Hattersley, Rt Hon Roy
Havers, Rt Hon Sir Michael
Hawkins, C. *(High Peak)*
Hayhoe, Barney
Haynes, Frank
Healey, Rt Hon Denis
Heath, Rt Hon Edward
Heathcoat-Amery, David
Heffer, Eric S.
Heseltine, Rt Hon Michael
Higgins, Rt Hon Terence L.
Hogg, N. *(C'nauld & Kilsyth)*
Holland, Stuart *(Vauxhall)*
Home Robertson, John
Hooson, Tom

Hordern, Peter
Howarth, Alan *(Stratf'd-on-A)*
Howell, Rt Hon D. *(S'heath)*
Howells, Geraint
Hoyle, Douglas
Hughes, Mark *(Durham)*
Hughes, Robert *(Aberdeen N)*
Hughes, Roy *(Newport East)*
Hughes, Sean *(Knowsley S)*
Hughes, Simon *(Southwark)*
Hume, John
Hunt, David *(Wirral)*
Hurd, Rt Hon Douglas
Irving, Charles
Janner, Hon Greville
Jenkin, Rt Hon Patrick
Jenkins, Rt Hon Roy *(Hillh'd)*
John, Brynmor
Johnson-Smith, Sir Geoffrey
Johnston, Russell
Jones, Barry *(Alyn & Deeside)*
Jones, Gwilym *(Cardiff N)*
Jopling, Rt Hon Michael
Joseph, Rt Hon Sir Keith
Kaufman, Rt Hon Gerald
Kennedy, Charles
Kilroy-Silk, Robert
King, Rt Hon Tom
Kinnock, Neil
Kirkwood, Archibald
Knox, David
Lambie, David
Lamond, James
Lamont, Norman
Lawler, Geoffrey
Lawson, Rt Hon Nigel
Leadbitter, Ted
Leighton, Ronald
Lester, Jim
Lewis, Sir Kenneth *(Stamf'd)*
Lewis, Ron *(Carlisle)*
Lewis, Terence *(Worsley)*
Lilley, Peter
Litherland, Robert
Lloyd, Ian *(Havant)*
Lloyd, Peter, *(Fareham)*
Lloyd, Tony *(Stretford)*
Lofthouse, Geoffrey
Loyden, Edward
Luce, Richard
Lyell, Nicholas
McCartney, Hugh
McCrindle, Robert
McCurley, Mrs Anna
McDonald, Dr Oonagh
MacGregor, John
McKay, Allen *(Penistone)*
McKelvey, William
Mackenzie, Rt Hon Gregor
Maclennan, Robert
Macmillan, Rt Hon M.
McNamara, Kevin
McTaggart, Robert
Madden, Max
Madel, David
Maginnis, Ken
Major, John
Maples, John
Marek, Dr John
Marshall, David *(Shettleston)*
Marshall, Michael *(Arundel)*
Martin, Michael
Mason, Rt Hon Roy
Maude, Francis
Mayhew, Sir Patrick
Maynard, Miss Joan
Meacher, Michael
Meadowcroft, Michael
Mellor, David
Meyer, Sir Anthony
Michie, William
Millan, Rt Hon Bruce
Miller, Dr M. S. *(E Kilbride)*
Miscampbell, Norman
Mitchell, Austin *(G't Grimsby)*
Moate, Roger
Morris, Rt Hon A. *(W'shawe)*
Morris, Rt Hon J. *(Aberavon)*
Morris, M. *(N'hampton, S)*
Morrison, Hon C. *(Devizes)*
Needham, Richard
Nellist, David
Nelson, Anthony
Newton, Tony
Oakes, Rt Hon Gordon
O'Brien, William
O'Neill, Martin
Onslow, Cranley
Orme, Rt Hon Stanley
Owen, Rt Hon Dr David
Park, George
Parry Robert
Patchett, Terry
Patten, Christopher *(Bath)*
Patten, John *(Oxford)*
Pavitt, Laurie
Pendry, Tom
Penhaligon, David
Pike, Peter
Powell, Rt Hon J. E. *(S Down)*
Powell, Raymond *(Ogmore)*
Powell, William *(Corby)*
Prentice, Rt Hon Reg
Prescott, John
Prior, Rt Hon James
Pym, Rt Hon Francis
Radice, Giles
Raffan, Keith
Randall, Stuart
Rathbone, Tim
Redmond, M.
Rees, Rt Hon M. *(Leeds S)*
Renton, Tim
Rhodes James, Robert
Rhys Williams, Sir Brandon
Richardson, Ms Jo
Roberts, Allan *(Bootle)*
Roberts, Ernest *(Hackney N)*
Robertson, George
Robinson, G. *(Coventry NW)*
Robinson, Mark *(N'port W)*
Rogers, Allan
Rooker, J. W.
Ross, Ernest *(Dundee W)*
Ross, Stephen *(Isle of Wight)*
Rossi, Hugh
Rowe, Andrew
Rowlands, Ted
Ryder, Richard
Ryman, John
Sackville, Hon Thomas
Sainsbury, Hon Timothy
St. John-Stevas, Rt Hon N.
Scott, Nicholas
Sedgemore, Brian
Shaw, Giles *(Pudsey)*
Sheerman, Barry
Sheldon, Rt Hon R.
Shersby, Michael
Shore, Rt Hon Peter
Short, Ms Clare *(Ladywood)*
Short, Mrs R.*(W'hampt'n NE)*
Silkin, Rt Hon J.
Skinner, Dennis
Smith, C.*(Isl'ton S & F'bury)*
Smith, Rt Hon J. *(M'kl'ds E)*
Smith, Tim *(Beaconsfield)*
Snape, Peter
Soames, Hon Nicholas
Soley, Clive
Spearing, Nigel
Spicer, Michael *(S Worcs)*
Squire, Robin
Steel, Rt Hon David
Stern, Michael
Stott, Roger
Stradling Thomas, J.
Strang, Gavin
Straw, Jack
Tapsell, Peter
Taylor, John *(Strangford)*
Thomas, Dafydd *(Merioneth)*
Thomas, Rt Hon Peter
Thomas, Dr R. *(Carmarthen)*
Thompson, J. *(Wansbeck)*
Thompson, Patrick *(N'ich N)*
Thorne, Stan *(Preston)*
Tinn, James
Townsend, Cyril D. *(B'heath)*
Varley, Rt Hon Eric G.
Wainwright, R.
Waldegrave, Hon William
Walden, George
Walker, Rt Hon P. *(W'cester)*
Wallace, James
Walters, Dennis
Wardell, Gareth *(Gower)*
Wareing, Robert
Weetch, Ken
Wells, Bowen *(Hertford)*
Welsh, Michael
Wheeler, John
White, James
Wigley, Dafydd
Williams, Rt Hon A.
Wilson, Gordon
Winnick, David
Woodall, Alec
Wrigglesworth, Ian
Yeo, Tim
Young, David *(Bolton SE)*
Young, Sir George *(Acton)*

Tellers for the Noes:
Mr. Ian Mikardo and
Mr. Peter Bottomley.

Question accordingly negatived.

[Continued in column 997]

SPECIAL NOTE

ITEM SCANNED AS SUPPLIED
PAGINATION IS AS SEEN

1

Foreign and Commonwealth Office

London SW1A 2AH

12 July 1983

Please type reply.

A.S.C. 14/7

Prime Minister:
Agree to response as proposed?
12/7.

Dear Tim

Thank you for your letter of 11 July, in which you asked for advice on Mr Dankert's telex of 11 July to the Prime Minister about the restoration of capital punishment. I submit a draft reply from the Private Secretary.

The question of capital punishment does not fall within the competence of the European Parliament. However, the Parliament frequently expresses views on matters which are outside the scope of the Community Treaties. It would, of course, be open to us to ignore Mr Dankert's message. On balance, though, we think that this would not be desirable. The European Parliament will have a role to play over the Community budget during the next crucial months; this was the main justification for Mr Dankert's visit to Britain in late June. There is nothing to be gained by failing to observe the courtesies in this case. We suggest, however, that the reply should be limited to a simple acknowledgement; we would not wish to imply that we recognise the Parliament's competence by commenting on the substance of this message.

The Home Office agree with this proposal.

I am sending a copy of this letter with its enclosure to Hugh Taylor (Home Office).

Yours ever

(R B Bone)
Private Secretary

T Flesher Esq
10 Downing St

DSR 11 (Revised)

DRAFT: ~~minute/letter/telelotter/despatch/note~~ Telex

TYPE: Draft/Final 1+

FROM:
Private Secretary
10 Downing St

DEPARTMENT:

TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

PRIVACY MARKING

.....In Confidence

CAVEAT.....

TO:
Mr Pieter Dankert
President of the European Parliament
Centre European
Plateau du Kirchberg
Luxembourg

(Telex 3494 and 2894 EUPARL LU)

Your Reference

Copies to:

SUBJECT:

Thank you for your telex of 11 July about capital punishment. The Prime Minister has noted your views.

Enclosures—flag(s).....

CONFIDENTIAL

From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

A W Rawsthorne Esq
Home Office
50 Queen Anne's Gate

12th July 1983

N.S.P.R.
A.S.C. 12/7
h.a.

Dear Tony,

CAPITAL PUNISHMENT

I attach the text of a message the Secretary of State has received from the Minister for Foreign Affairs of the Republic of Ireland.

You are already aware of the Secretary of State's views about the restoration of capital punishment in Northern Ireland for terrorist murder, both as it might affect the Province and the climate of co-operation between ourselves and the Irish on which the effective implementation of our security policies in part depends. During a radio interview over the weekend Dr FitzGerald made a number of the points on this message, and the Press touched briefly on the possibility that a message had been sent. We propose, if asked, to confirm that we have received a message and to say, if asked to do so, that it was in the same sense as Dr FitzGerald's remarks. The Home Secretary may wish to be guided by the same approach if questions are put to him during the course of Wednesday's debate.

I am sending copies of this letter to John Coles (No 10), John Holmes (FCO), David Staff (Lord Chancellor's Department) and Henry Steel (Law Officers' Department).

Yours ever,

John

J M LYON

KL

CONFIDENTIAL

AMBASÁID NA hÉIREANN, LONDAIN

IRISH EMBASSY, LONDON

7 Grosvenor Place

SW1X 7HR

8th July 1983

My dear Secretary of State,

I have been asked by our Foreign Minister, Mr Peter Barry TD, to send you the following message today:

The Rt Hon James Prior MP
Secretary of State for Northern Ireland

Dear Jim

I know that you are aware of the view of the Irish Government on the Irish implications of the possible reintroduction of capital punishment soon to be debated in your House of Commons. I felt nevertheless that I should state our view very briefly in writing so as to ensure that you and all your Government colleagues would be in a position to state, if asked, that you have been made aware of our concern.

The execution of Irish people under British law for politically inspired offences would almost certainly create a situation worse than anything our two Governments have experienced during the past thirteen years and would adversely affect the climate of our relations. The IRA, the INLA and other terrorist organisations would take full advantage of their opportunity.

I feel that with your direct experience of the situation in Northern Ireland you are fully aware of the seriousness of the position and that you can see that our fears are not in any way exaggerated.

/...

In suggesting that you might consider mentioning to your Government colleagues the grave anxiety we feel in Dublin, I should stress that the Irish Government will scrupulously respect the fact that the vote on this motion is a matter of conscience to be decided upon by the individual Members of the House of Commons. You will have noted therefore that, despite our anxiety on this matter, we have carefully refrained from taking any action which might give the appearance of lobbying at Westminster.

I am sending a copy of this letter to Sir Geoffrey Howe MP.

Yours sincerely

Peter Barry
Minister for Foreign Affairs

A letter signed by Mr Barry and containing this text is on its way and will be delivered to you on arrival.

I have also been asked to send a copy of the message to The Rt Hon Sir Geoffrey Howe MP, Secretary of State for Foreign and Commonwealth Affairs.

Yours very sincerely

Eamon Kennedy

Eamon Kennedy
Ambassador

The Rt Hon James Prior MP
Secretary of State for Northern Ireland
Northern Ireland Office
Government Offices
Great George Street
London SW1P 3AJ

Dankert.

M
916318 PARLI G
3494 EUPARL LU 83.07.11 15.42

ZCZC 401537
PP AA TX051916318
+++

TELEX TO :

THE RT. HON. MARGARET THATCHER, MP
PRIME MINISTER
10 DOWNING STREET

GB - LONDON SW1

DEAR MRS THATCHER,

IT IS WITH GREAT REGRET THAT I LEARN THAT THE QUESTION OF THE RESTORATION OF CAPITAL PUNISHMENT IS, ONCE AGAIN, TO BE DEBATED IN THE HOUSE OF COMMONS. WHILE IN NO WAY DO I WISH TO CALL INTO QUESTION THE RIGHT OF THE HOUSE OF COMMONS TO DEBATE ANYTHING IT CHOOSES, I DO STRONGLY FEEL THAT WERE SUCH A VOTE TO RECORD A MAJORITY RESPONSE TO THE QUESTION, IT WOULD BE AN EXTRAORDINARY AND TERRIBLE DECISION. BRITAIN WOULD BE TAKING A GREAT STEP BACKWARDS FROM ITS POSITION OF MORAL AUTHORITY BOTH IN THE COMMUNITY AND IN THE COMMONWEALTH. SUCH A RETROGRADE STOP COULD NOT FAIL TO HAVE NEGATIVE CONSEQUENCES FOR YOUR COUNTRY'S LAUDABLE STANCE ON HUMAN RIGHTS IN THE WORLD.

IT WOULD CONTRADICT THE TERMS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE UNITED NATIONS CHARTER ON HUMAN RIGHTS AND THE RESOLUTION ADOPTED BY THE EUROPEAN PARLIAMENT IN JUNE 1981 AGAINST THE DEATH PENALTY.

I FULLY RECOGNISE THAT THERE WILL BE A FREE VOTE ON THE ISSUE AND THAT THEREFORE EVERY MEMBER OF PARLIAMENT WILL BE SEARCHING HIS OWN SOUL, AND NOT THAT OF HIS PARTY, FOR THE DECISION HE WILL TAKE. I WOULD NEVERTHELESS RESPECTFULLY ASK YOU TO OPPOSE THE RESTORATION OF THE DEATH PENALTY IN GREAT BRITAIN.

YOURS SINCERELY,

PIETER DANKERT

LUXEMBOURG, 11.7.1983
NNNN

Dankert.

M
916318 PARLI G
3494 EUPARL LU 83.07.11 15.42

ZCZC 401537
PP AA TX051916318
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TELEX TO :

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PRIME MINISTER
10 DOWNING STREET

GB - LONDON SW1

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YOURS SINCERELY,

PIETER DANKERT

LUXEMBOURG, 11.7.1983
NNNN

916318 PARLI A

From: THE PRIVATE SECRETARY

(1)

Prime Minister

Agree that the Home Secretary raise this in Cabinet tomorrow? Content with the line at X? And the draft passage?

MLS 22/6

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

22 June 1983

DEAR TIM,

..... I attach a draft of a brief passage on the question of capital punishment which the Home Secretary would like to use in the course of his opening speech in the debate on home affairs tomorrow, since this is a matter on which he feels the Government are likely to be pressed.

As you know, he has been giving very preliminary consideration to how this issue might be handled in the new Parliament with the Lord Privy Seal and the Chief Whip. They all agree that the appropriate forum for a debate on capital punishment is a Private Member's Motion in Government time in a form which enables the House to express a view on the restoration of the death penalty generally and for separate categories of offence. Their advice is that this should be possible from the procedural point of view. The Home Secretary would not wish to give any commitment on the question of timing tomorrow.

X

If the Prime Minister is content with this approach the Home Secretary will raise the matter in Cabinet tomorrow.

I am sending copies of this letter and enclosure to David Hayhoe (Lord Privy Seal's Office) and Murdo Maclean (Chief Whip's Office).

YOURS EVER,

HHTaylor

H. H. TAYLOR

Tim Flesher, Esq.

CAPITAL PUNISHMENT

[We are as a Government very conscious of the concern - both in this House and in the country - that there should be a fresh opportunity to debate the question of capital punishment. Traditionally the Government does not take up a stance on this issue but it is left for the House to decide on a free vote. That tradition will be maintained. I can say, however, that the Government will make time available for a full debate of this important issue at a suitable opportunity, and in a form which will enable hon. Members to express a view on the restoration of the death penalty both generally and for different categories of offence].

Original in C/K

C/F note

cc Home Affairs

10 DOWNING STREET

THE PRIME MINISTER

10 March 1980

Dear Mr. Hoyes.

Thank you for your letter of 15 February asking that the Government should exert pressure on the United Nations to strengthen the proposed resolution on capital punishment to be debated at the forthcoming Congress in Caracas.

The Government wholeheartedly supports the view that the United Nations should do all it can to emphasise the dignity and rights of all human beings. Nevertheless, we see some difficulty in going so far as to try to achieve international obligations for the abolition of the death penalty.

Successive Governments in this country have taken the view that the issue of the death penalty is one which should be left to the decision of individual Members of Parliament voting according to their consciences. As the issue is thus held to be a matter for Parliament, opportunities have been given from time to time since abolition for Parliament to express its will. The most recent occasion was on 19 July last year when a motion that the death penalty should be made available to the courts again was defeated by a sizeable majority. But although a majority of Members of Parliament is opposed to the reintroduction of capital punishment, there are many who hold the view (largely because they see the death penalty as a deterrent) that such punishment is essential to the achievement

/of the

of the basic human right of innocent people to live their lives free of the fear of terrorism and murder. If, therefore, the Government attempted to impose its own views on the death penalty, because there was an international obligation to do so, there would be very deep resentment and a feeling that the Government was no longer leaving the matter to Parliament, as successive Governments have done.

I do not consider, therefore, that it would be proper for the Government to adopt a stance in relation to the proposed United Nations' resolution which would be inconsistent with its position at home.

Yours sincerely,

Norman Hogg, Esq., M.P.

C/F
Enclosure.
Top Copy in G.R.

file Home Affairs
cc HO.

10 DOWNING STREET

THE PRIME MINISTER

18 July, 1979.

Dear Professor Gunn

Thank you for your letter of 17 July, setting out your view on how the restoration of the death penalty might affect an important area of medical and crime prevention work.

As you know, there will be a free vote on the question of the death penalty following the debate in the House of Commons tomorrow. It is important that all informed views should be aired before decisions are reached, although the vote of each Member must finally be a matter of personal conscience.

I have sent a copy of your letter to the Home Secretary, who will have a special interest in the particular points that you raise.

I shall vote to restore the death penalty.

Yours sincerely,

Margaret Thatcher

Professor John Gunn

LPO

COVERING CONFIDENTIAL

From: THE PRIVATE SECRETARY

Home Affairs

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SWIP 3AJ

Mr. Pattison
Mr. Sanders.
ms Blatch 11/7
Nothing yet.

John Chilcot Esq
Private Secretary to the
Home Secretary
Home Office
Queen Anne's Gate
London SW1

11 July 1979

Dear John,

As you know, Mr Atkins is to have a short word with the Home Secretary about capital punishment at 4.30pm today. It might be helpful for the Home Secretary to have beforehand the attached summary of the main points which arise in relation to capital punishment in terrorist cases, particularly in Northern Ireland.

I am sending copies of this letter to the Private Secretaries to the Prime Minister, the Defence Secretary, the Scottish Secretary and the Attorney General.

Yours ever,
Joe

J G PILLING

COVERING CONFIDENTIAL

RE

FR.

CAPITAL PUNISHMENT IN NORTHERN IRELAND

This paper sets out significant factors bearing on the re-introduction of the death penalty in terrorist murder cases. Not all factors point indisputably in one direction. They are not therefore treated as advantages and disadvantages.

The Courts

Judges, sitting alone, already decide all terrorist cases, without the help of a jury. The requirement to impose the death penalty in certain cases would place a further heavy burden upon them. There is some doubt that the system could stand this. Convictions might, at the least, become much harder to secure.

A high proportion of prosecutions depend upon confessions; execution on the basis of such confessions would attract widespread condemnation at home and abroad. The confessions themselves would tend to dry up, if the gallows were seen at the end of the process (as opposed to the amnesty which terrorists persist in believing in).

Presumably, the death penalty would not apply to persons under 18 at the time of the crime, or perhaps to women. The deterrent effect would not be complete, and terrorist organisations might take advantage of this by giving their under-age members the most risky tasks.

Effect on terrorist organisations

Dedicated terrorists would probably not be affected. The less dedicated might be encouraged to find a way out of the organisation, if they safely could. Some young people might be deterred from joining in the first place; certainly their parents would be influenced.

The execution of terrorists would however on every occasion give a strong fillip to the cause. Not only would this greatly encourage terrorist morale, it would

swing public opinion from the community concerned behind the terrorists and against the State. This would apply not just to the Republicans, but amongst the Loyalist community as well, if any of their terrorists should be executed.

Law and order factors

The Government would be seen to be acting effectively, to remove the gunmen permanently from the scene.

The threat to the security forces, to judges, court officials, etc would be somewhat increased. Prison officers, and police officers concerned with obtaining particular confessions, would be at special risk.

The terrorists might resort to hostage-taking, either amongst the classes just mentioned or more randomly. Whatever the outcome, the terrorists would add to their prestige from the process of negotiation with the Government.

In the heightened tension prior to an execution, demonstrations and rioting (such as have largely disappeared from the Northern Ireland scene in the last few years) would be likely. These would divert security force resources from positive tasks, and set back the trend towards normality.

Public opinion

The Unionist parties appear generally to back re-introduction of the death penalty, with particular force at the extreme end of the spectrum. Minority political leaders could not afford to back a punishment which they would expect to fall on members of their community, given their withholding of support for the security forces in the first place. The major churches are all in opposition - though individual members fall out of line from time to time.

More generally, re-introduction would tend to calm Protestant demands for more vigorous action, and thus the risks of independent Protestant retaliation against the Catholics. That attitude would not however survive many Protestant executions.

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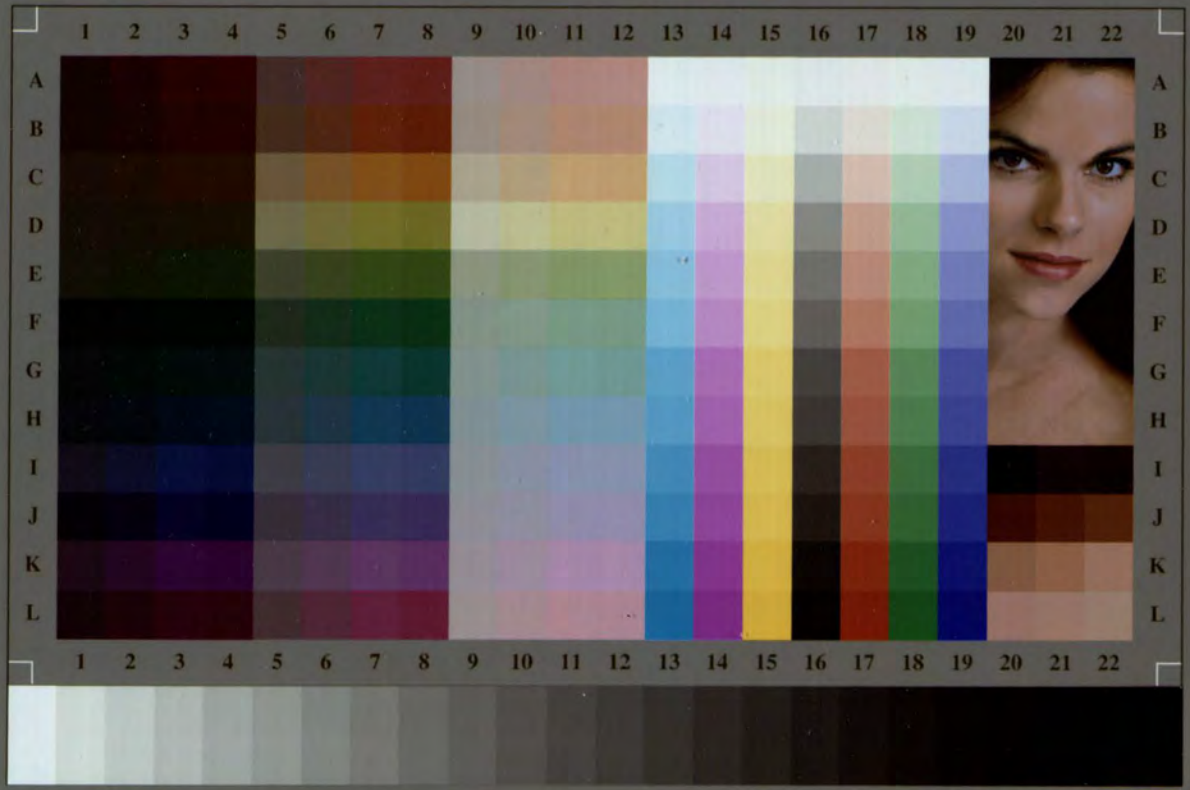

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