PREM 19/2716

M7

PART 3

CONFIDENTIAL FILING

CAPITAL PUNISHMENT

SENTENCING POLICY

CRIMINAL JUSTICE BILL

HOME AFFAIRS

PART 1: JULY 1979

PART 3: MARCH 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~17.3.87~~		~~27.6.88~~					
~~18.3.87~~		~~28.6.88~~					
~~31.3.87~~		~~30.6.88~~					
~~27.4.87~~		~~4.7.88~~					
~~4.5.87~~		~~14.7.88~~					
~~18.5.87~~		~~15.7.88~~					
~~18.6.87~~		~~24.11.88~~					
~~25.6.87~~		~~5.10.89~~					
~~21.9.87~~		6.10.89					
~~24.9.87~~		Part ends					
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15.6.88							
~~20.6.88~~							

PREM 19/2716

PART 3 ends:-

LPC to Home Sec 6.10.89

PART 4 begins:-

CAS to PM 19.1.90

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.

1. House of Commons Hansard, 31 March 1987, columns 912-1008 "Criminal Justice Bill"

2. The Parole System in England and Wales: report of the Review Committee (Chairman Lord Carlisle) HMSO, 25 November 1988

Signed C Wayland Date 1 October 2016

PREM Records Team

cc PJW

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

6 October 1989

NBPM

CRS 9/10

Dear Douglas

CRIMINAL JUSTICE WHITE PAPER — top secret

Thank you for your letter of 5 October enclosing draft extracts of your conference speech reflecting proposals which you intend to include in your forthcoming White Paper on Criminal Justice.

While I entirely understand your wish to take the initiative at next week's conference, colleagues have not of course had an opportunity to consider the substance or implications of your proposals, or the timing of any legislation to implement them. As at present drafted, your speech may even give the impression that there will be a Criminal Justice Bill in the 1989-90 programme.

Set out in manuscript on the attached draft of your speech are some amendments to the text which I hope will avoid this difficulty. I am very anxious that you should be able to retain the initiative at Blackpool, but in a way which does not prejudice colleagues' proper consideration of your proposals.

I am copying this letter and its enclosure to the Prime Minister, the Lord Chancellor, the Attorney General, other members of H Committee and Sir Robin Butler.

GEOFFREY HOWE

The Rt Hon Douglas Hurd CBE MP

JUSTICE

The sentences for serious offences have been going up sharply. But too often, people think that the sentence passed by a court is not proportionate to the crime committed and the sentence actually served is too different from the sentence passed.

Parole, remission, life sentences. It sounds a jumble, because it is a jumble. Our sentencing system is muddled, and many of our fellow citizens lack the confidence which they should have in the decisions of our criminal courts.

It's not the fault of the courts. They administer the system which Parliament has given them. A system added to and amended piecemeal over the years.

We need to make sense of sentencing. I will be publishing ~~Detailed proposals will be laid before Parliament~~ for reform soon, but the guiding principle is plain. Every convicted criminal should receive his just deserts. Just deserts in the severity and length of his sentence. Just deserts in the strictness of the terms under which he may be released. Let me list some key elements of this package.

First, crimes of violence are more serious, more repugnant than crimes against property. Sentencing policy should reflect that fact. The law ~~will~~ must guide the courts accordingly. People who commit serious and violent crimes should be punished by long stays in prison.

Second, parole for serious offenders ~~will~~ should be restricted. If a serious criminal is considered for parole, ~~the law will oblige~~ those who take the decision must ~~to~~ make the protection of the public their first and over-riding concern.

Third, we are now discussing with the judges and the probation service the idea that every prisoner should be put under supervision after his release.

Supervision can never be an absolute guarantee against re-offending, but it should offer not only support to the offender in trying to go straight, but reassurance and protection to the public at large.

What about the less serious, the non-violent criminal? He should get his just deserts too. Of course, he should be punished. But prison should not be the only rigorous punishment.

I would rather see the teenage thief:

* scrubbing the graffiti off the walls;

* cleaning up the litter in his neighbourhood;

* keeping his job, but with deductions so that he pays compensation to his victim.

All this, rather than have him lounging in a cell, at huge expense to the taxpayer, learning new tricks from the old lags. ~~So, we shall give~~ The courts must have a wider and tougher range of community-based punishments. Compensation, supervision, demanding community work, curfew orders ~~will~~ should all be available.

PARENTAL RESPONSIBILITY

Extra police, stronger penalties - both will help. But neither is enough. We all know now that there is no single, or easy answer to crime. Most of last year's rise in violent crime was due to more domestic violence getting onto the books, more drunken brawling by young men. We are talking here, not just about enforcement, but about attitudes.

Parents, teachers, the media - these are the main influences on a child's development.

Our education reforms have strengthened parental influence in schools and buttressed standards.

With the media, the Broadcasting Standards Council is already hard at work. Our new Broadcasting Bill will finally end the exemption which the broadcasters still enjoy from the Obscene Publications Act.

So far so good. But above all it is families who are the key.

There are limits to how far the State should try to intervene in family life. Bringing up children is a difficult job - we all know that.

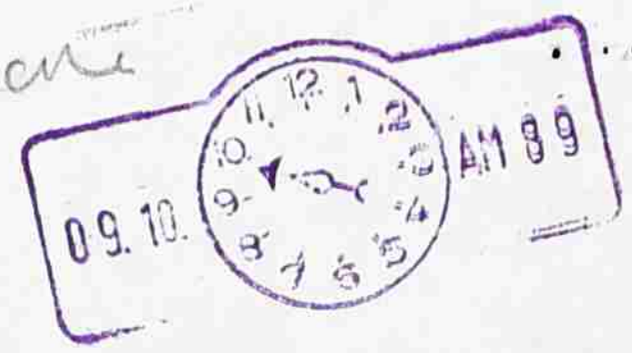
But the law should reinforce the principle that parents have a responsibility for the actions of their children. ~~We shall strengthen the law to~~ Our proposals will achieve that end.

Parents should be there, in court, when their child is tried. Attending court reminds parents of their duty, both to their children and to the wider community. We shall require the courts to order parents to attend with their children.

Then there is compensation. Some children from rich families can laugh at the sentence of the court, because they know that Daddy or Mummy will pick up the bill. We shall put a stop to that. The courts will be asked, when they fine a child or fix a compensation order, to take into account the parents' means as well as those of the children.

The family is our first defence against crime. Yet as a country we have pushed parental responsibility into the sidelines. Our reforms will bring parents back centre stage.

HOME AFFAIRS: Sentencing
Policy
Pt 3



HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

Prime Minister

Content with the extracts from the Home Secretary's conference speech?

CB 5/10

5 October 1989

Dear Geoffrey,

CRIMINAL JUSTICE WHITE PAPER

For some months I have been working, in association with James Mackay and Patrick Mayhew, on preparing a Criminal Justice White Paper. This work has been progressing well and I was encouraged by the general welcome which our ideas were given by a group of judges, magistrates, Chief Constables and others at a recent Ditchley Park week-end.

Some detailed work remains outstanding, but I hope to bring forward a full draft of the White Paper within a few weeks. In the meantime, I am keen to take advantage of the opportunity which the Party Conference gives us to take the initiative and set the terms of future debate on our proposals. I therefore intend, in my Conference speech, to outline the thinking behind the proposed White Paper and mention briefly some of its key elements.

.... I enclose copies of the relevant extracts from my draft Conference speech. Please could you confirm that you are content with this course of action.

Copies of this letter and its enclosure go to the Prime Minister, the Lord Chancellor, the Attorney General and members of H Committee.

Yours ever,

Douglas.

The Rt Hon Sir Geoffrey Howe, QC., MP.
Lord President of the Council
Privy Council Office
WHITEHALL, S.W.1.

JUSTICE

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We need to make sense of sentencing. Detailed proposals will be laid before Parliament soon, but the guiding principle is plain. Every convicted criminal should receive his just deserts. Just deserts in the severity and length of his sentence. Just deserts in the strictness of the terms under which he may be released. Let me list some key elements of this package.

First, crimes of violence are more serious, more repugnant than crimes against property. Sentencing policy should reflect that fact. The law will guide the courts accordingly. People who commit serious and violent crimes should be punished by long stays in prison.

Second, parole for serious offenders will be restricted. If a serious criminal is considered for parole, the law will oblige those who take the decision to make the protection of the public their first and over-riding concern.

Third, we are now discussing with the judges and the probation service the idea that every prisoner should be put under supervision after his release.

Supervision can never be an absolute guarantee against re-offending, but it should offer not only support to the offender in trying to go straight, but reassurance and protection to the public at large.

What about the less serious, the non-violent criminal? He should get his just deserts too. Of course, he should be pur[redacted]hed. But prison should not be the only rigorous punishment.

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All this, rather than have him lounging in a cell, at huge expense to the taxpayer, learning new tricks from the old lags.
So, we shall give the courts a wider and tougher range of community-based punishments. Compensation, supervision, demanding community work, curfew orders will all be available.

PARENTAL RESPONSIBILITY

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Then there is compensation. Some children from rich families can laugh at the sentence of the court, because they know that Daddy or Mummy will pick up the bill. We shall put a stop to that. The courts will be asked, when they fine a child or fix a compensation order, to take into account the parents' means as well as those of the children.

The family is our first defence against crime. Yet as a country we have pushed parental responsibility into the sidelines. Our reforms will bring parents back centre stage.

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Douglas Hurd CBE MP
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

2 December 1988

Dear Douglas,

REPORT OF THE CARLISLE COMMITTEE ON PAROLE

Your letter of 22 November to John Wakeham indicates your initial proposals for responding to the Carlisle Report on Parole in England and Wales.

I would like to remind our colleagues that a separate committee, under the chairmanship of Lord Kincraig, is currently reviewing parole and related issues in Scotland. The 1967 Criminal Justice Act set up a parole system applicable throughout Great Britain; since then the English system has been significantly modified but fundamental similarities remain. Although there is no reason in principle why our legal jurisdictions should not have entirely different release systems (Northern Ireland has already gone its own way), the timescale for consideration of Carlisle might reasonably take into account the outcome of the Kincraig Review. The indications I have are that the report is likely to be in my hands during January, and might be published at about the end of February. This is not to argue for any change in the timescale you propose: indeed it supports your proposal for a three-month consultation period.

I am copying this letter to the Prime Minister, other members of H Committee, Sir Robin Butler, the Lord Chancellor, the Attorney General and the Lord Advocate.

Yours ever,

MALCOLM RIFKIND

HMP336F5.010

Home Affairs:
Sentencing Policy
RS

CONFIDENTIAL

RLe PM

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

24 November 1988

Dear Philip

REPORT OF THE CARLISLE COMMITTEE ON PAROLE

The Prime Minister has seen the Home Secretary's letter of 22 November to the Lord President. She is content with the Home Secretary's proposed statement on the Carlisle Report and agrees with him that it merits a considered Government response.

The Prime Minister would be grateful if the Home Secretary would keep colleagues closely in touch with his proposals on both the form and content of the Government's response.

I am copying this letter to the Private Secretaries to members of H Committee, Paul Stockton (Lord Chancellor's Department), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours ever,
Dominic

Dominic Morris

Philip Mawer, Esq.,
Home Office.

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

01-936 6201

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

24 November 1988

Dear Douglas:

REPORT OF THE CARLISLE COMMITTEE ON PAROLE

Thank you for copying to me your letter of 22nd November 1988 to John Wakeham.

As you know, I agree with the line that your propose to take. I would, however, like to make two points in relation to your draft statement.

First, the proposal summarised at (b) should read "for prisoners serving sentences of more than four years.....".

Secondly, I suggest that the penultimate paragraph should read as follows:

> "These and other recommendations would require legislation, pending which the present statutory scheme and the present criteria would remain in force".

I am copying this letter to the Prime Minister, all other members of H Committee and Sir Robin Butler.

Yours,

Prime Minister 2.

This and Home Secretary's letter cover the main conclusions. You do not need to read the report itself.

DN

PRIME MINISTER

23 NOVEMBER 1988

REPORT OF THE CARLISLE COMMITTEE ON PAROLE

The report of the Carlisle Committee, on parole, which fulfils a commitment in the 1987 Manifesto, is to be published on Friday 25 November. Douglas Hurd has written to John Wakeham enclosing the statement he proposes to make when the report appears (its conclusions have already been widely and accurately leaked). (Flag A)

The Report

The report is long, but interesting. It cannot be described in simplistic terms as either liberal, or illiberal. Parole is discussed in relation to sentencing policy generally; and this leads on to questions such as the purpose of imprisonment. The report covers this and other issues in some detail, and deserves a considered response.

In political terms its most important recommendations are:

(a) to abolish parole for those serving sentences of four years or less, replacing it by automatic release after half the sentence has been served, except where misbehaviour occurs;

(b) to make prisoners serving sentences of four years or more serve half their sentence before becoming eligible for parole (instead of only one third as at present);

(c) to abolish the distinction between violent and other offenders introduced by Leon Brittan in 1983.

Comment

(a) and (b) will make a good deal more sense than the present confusing arrangements whereby

(i) all sentences between 5 days and 1 year are automatically reduced by half except in cases of bad behaviour; and sentences over 1 year are automatically reduced by a third;

(ii) prisoners become eligible for parole after serving one third of their sentences, or 6 months, whichever is the longer.

The interaction between (i) - remission - and (ii) - parole - has produced some sentences which make a mockery of the Courts' decisions. The system has been strongly criticised by judges as a result.

The proposals at (a) and (b) would, if adopted, replace several measures introduced during the 1980s to help keep the numbers in prison down. This would not be particularly embarrassing. But abolition of the distinction between violent and other long stay offenders - point (c) above - is contentious.

Douglas Hurd believes it would be difficult to discontinue Leon Brittan's distinction. He proposes to signal this in rather opaque terms in his statement on Friday, while otherwise standing back from the report's recommendations to await reactions.

Recommendation

- Agree that Douglas Hurd should make a brief statement on Friday on the lines he proposes.

- Agree that the report deserves a considered Government response.

- Invite Douglas Hurd to put proposals to colleagues on both the form and content of the response (the Home Office should not be allowed to keep this too close to their chest).

CAROLYN SINCLAIR

CONFIDENTIAL

cc PM
(letter only)

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

22 November 1988

Dear John.

REPORT OF THE CARLISLE COMMITTEE ON PAROLE

I am publishing on Friday 25 November the report of the Committee under the Chairmanship of Mark Carlisle which has been reviewing the parole scheme in England and Wales. You and other recipients of this letter may like to see the advance copies ... which I enclose of the Committee's report and of the statement which I will make on its publication.

Parole is now available when one-third of a sentence has been served or six months after sentence is passed, whichever is the longer. Whether or not eligible for parole, all sentences over five days attract automatic remission for good behaviour of 50% in sentences of 12 months or less, and one-third for longer sentences.

The Carlisle Committee's recommendations are summarised in Chapter 12 of their report. Their main proposals include the following:

(a) for prisoners serving sentences of four years or less, parole should be replaced by automatic release after half the sentence has been served, unless release is delayed on account of misbehaviour;

(b) for prisoners serving sentences of four years or over, there should continue to be a selective system of parole, but they would become eligible only after serving half their sentences, instead of one-third as under the present law;

(c) automatic release as well as parole should involve a period of supervision by the probation service after release;

(d)

The Rt Hon John Wakeham, MP
Lord President of the Council

CONFIDENTIAL

(d) whether benefiting from automatic release, or selected for parole, or released without parole after serving two-thirds of a sentence of over four years, all prisoners should, if convicted of a further offence before the full term of their sentence has expired, be liable (in addition to any new sentence imposed) to return to prison for so much of their original sentence as has not already been served in custody;

(e) partly suspended sentences should be abolished.

This package of proposals is consistent and well argued. It would remove the features of the existing parole system, as extended to short sentence prisoners, which have been most resented and criticised by the judges. But it would also mean the end of the distinction between violent and other offenders introduced by Leon Brittan in 1983, when he announced that prisoners serving sentences of over five years imposed for crimes of violence or drug trafficking would not normally be granted parole, except perhaps for very short periods. It would certainly be difficult to discontinue that policy in view of the emphasis which we are placing on the need to concentrate effort against that type of offence.

I intend to stand back from the Carlisle recommendations, indicating the difficulty and waiting to see how they are received, especially by Parliamentary and judicial opinion. James MacKay and Paddy Mayhew, with whom I have discussed the report, agree that this is the right line to take. I am allowing three months for views to be expressed, and I will in due course consider with colleagues whether the best means of indicating the Government's intentions thereafter might be a White Paper.

I am sending copies of this letter and the enclosures to the Prime Minister, other members of H Committee, and Sir Robin Butler and, without the Carlisle Report, to the Lord Chancellor and the Attorney General.

Yours,

Douglas.

A

REPORT OF THE CARLISLE COMMITTEE ON PAROLE

The report of the Committee on the Parole System in England and Wales under the chairmanship of Lord Carlisle of Bucklow is published today. I am most grateful to Lord Carlisle and his colleagues for completing this wide-ranging review in less than 18 months, and for producing so clear and thought-provoking a report.

The Committee propose that:

(a) for prisoners serving sentences of four years or less, parole should be replaced by automatic release after half the sentence has been served, unless release is delayed on account of misbehaviour;

(b) for prisoners serving sentences of four years or over, there should continue to be a selective system of parole, but they would become eligible only after serving half their sentences, instead of one-third as under the present law;

(c) automatic release as well as parole should involve a period of supervision by the probation service after release;

(d) whether benefiting from automatic release, or selected for parole, or released without parole after serving two-thirds of a sentence of over four years, all prisoners should, if convicted of a further offence before the full term of their sentence has expired, be liable (in addition to any new sentence imposed) to return to prison for so much of their original sentence as has not already been served in custody;

/(e)

(e) partly suspended sentences should be abolished.

These and other recommendations require legislation, pending which the present statutory scheme and the present criteria will remain in force.

The report deals with issues of great importance. Some of the Committee's recommendations raise difficult questions in the context of the Government's policies for ensuring that the public is adequately protected and that offenders who commit serious crimes are adequately punished. I shall be considering how best these questions might be resolved, and I shall welcome the widest expression of Parliamentary, public and professional opinion on the issues raised by the report. It would be helpful if comments on it could reach the Home Office by 10 March 1989.

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

The Rt Hon Douglas Hurd CBE MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

15th July 1988

Dear Secretary of State.

DRAFT GREEN PAPER : PUNISHMENT, CUSTODY AND THE COMMUNITY

Thank you for sending me a copy of the revised Draft Green Paper, which succeeded the original draft that you sent out with your letter of 13th June, and the comments of colleagues.

I welcome your imaginative yet practical response to the difficulties caused by the pressures on prison accommodation. I particularly favour a policy which strengthens the prosecution's ability to influence the mode of trial, but our officials will need to examine closely the suggestion that the Crown Prosecution Service should be given power to determine whether criminal proceedings against defendants between 16 and 20 be heard by a juvenile or by an adult court, according to an assessment of the maturity or vulnerability of the defendants.

I am copying this letter to the Prime Minister, other members of H Committee and to Sir Robin Butler.

Yours sincerely.

Approved by the Attorney General
and signed on his behalf.

HOME AFFAIRS: Sentencing Pol
Pt 3

NBPM

CCPU

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

15 July 1988

Dear Douglas

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

Thank you for your letter of ~~13~~ May June seeking H Committee's agreement to the publication of the draft Green Paper 'Punishment, Custody and the Community'.

The Prime Minister, Tom King, Malcolm Rifkind, James Mackay, Nicholas Ridley, John Moore and John Major all indicated that they were content for your proposals to be canvassed in this way.

The Prime Minister (through her Private Secretary) asked that the drafting might be looked at again in the interests of ensuring that the case for the proposed changes was presented as effectively as possible; and I understand that she is content with the revised draft circulated under cover of your Private Secretary's letter of 6 July. Other colleagues drew attention to various points which, while not bearing directly on the drafting of the Green Paper, you will no doubt wish to bear in mind when working up your proposals. As John Major and other colleagues pointed out, the resource implications of your proposals will naturally need to be addressed in due course.

No other colleague has commented, and you may take it therefore that H Committee are content for the Green Paper to be published before the Recess.

I am copying this letter to the Prime Minister, colleagues on H Committee, Patrick Mayhew and Sir Robin Butler.

Yours ever

JOHN WAKEHAM

The Rt Hon Douglas Hurd CBE MP
Home Secretary

HOME AFFAIRS : Sentencing Policy

PT 3

PA w APS.

Spoke NS & CPO hui no need to write

DM

PRIME MINISTER

You sent back the previous draft of the Home Office Green Paper on punishment, custody and the community to be reworked because it was so turgid and repetitive. As you will see from Miss Sinclair's attached note (Flag A) the revised draft (Flag B) is better though still not sparkling. Section 1 has been much shortened so at least the rationale is much clearer than it was. One other organisational point is clearer in the redraft: the Green Paper (paragraph 4.4) floats the possibility of a new organisation instead of the Probation Service to be responsible for arrangements for punishment in the community. We understand from Mr Hurd's office that it is less a real possibility than a threat to get the Probation Service to sharpen up its performance. You and colleagues would of course be consulted further if the response to the Green Paper led the Home Office seriously to consider a new organisation.

The Home Secretary's firm view is that the length is about right. Content that this redrafted version should be published?

DM.

Yes md

Dominic Morris

11 July 1988

MJ2CNA

APPOINTMENTS IN CONFIDENCE

File KK

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 July 1988

MURDER AND LIFE IMPRISONMENT

This is to confirm, as I told you by telephone today, that the Prime Minister is content with the suggestion that Lord Nathan be approached to chair the Select Committee.

(DOMINIC MORRIS)

Rhodri Walters, Esq.,
Government Whip's Office,
House of Lords.

APPOINTMENTS IN CONFIDENCE

A

PRIME MINISTER 8 July 1988

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

1. The Home Secretary has circulated a revised draft of this Green Paper. You asked that the earlier version be sharpened up, so that the case for making more use of non-custodial sentences was presented more effectively.

2. I discussed the redraft with Home Office officials in some detail. Although better, it is still weak in parts. In particular:

(i) the Green Paper still does not cite the lack of evidence that locking people up is more effective than other forms of punishment for lesser crimes and younger criminals;

(ii) it is just as long as the original version, although the organisation is distinctly better.

3. The first chapter has been shortened and sharpened broadly on lines we suggested. It is an improvement. But it still goes in for assertion e.g.

> "Punishment in the community would encourage offenders to grow out of crime and to develop into responsible and law abiding citizens".

> "Imprisonment is not the most cost effective punishment for most crime".

4. Arguments are adduced for these statements. But they are not linked in a way that would persuade a sceptical reader (e.g. a judge) that punishment in the community would be no less effective than custody in some cases.

5. The length of the document continues to blunt the message, albeit less so. Most of the loose phrases in the earlier draft have now been removed. But there are still one or two sentences which you may feel strike the wrong note viz:

> "The Probation Officers' skills are used to help the offender face the problems and difficulties which may have led up to the offence, and to prevent further offending" - paragraph 2.9.
>
> "[Young offenders] need encouragement and help to become law abiding" - paragraph 2.15.

Conclusion

6. It is important to refer in the first chapter of the Green Paper to the lack of hard evidence that locking up young offenders is effective in deterring recidivism. Putting it another way, there is no evidence for thinking that punishment in the community will be less effective than custody in certain cases. It should certainly be cheaper.

7. On presentation, and in particular length, publication of the Green Paper in its present form would not be a disaster. But it would benefit from being boiled down considerably. (Do we, for example, need the quasi philosophical discussion at the beginning of part III on who should be sent to prison?). The draft could be re-written by a competent pair of hands in a matter of a day or so.

While the timing would be tight, this would allow Mr Hurd to go ahead with publication before the recess (though possibly not on 18 July, as he proposes).

8. But I am told that the Home Secretary feels that the present length is right. A radical shortening would therefore require a personal note from you.

Carolyn Sinclair

CAROLYN SINCLAIR

PRIME MINISTER

The Chief Whip is now asking for your agreement that Lord Nathan should be invited to chair the Lords Select Committee Review on murder and imprisonment. Lord Roskill's name, the Home Secretary's favourite with whom you were content, has run into difficulties with Lord Windlesham who has doubts about having a serving judge as Chairman.

Lord Nathan is put forward as a competent compromise choice acceptable to all.

Content that he be approached?

Yes

(D. C. B. MORRIS)
7 July 1988

From: THE PRIVATE SECRETARY

cc Carolyn Sinclair
grateful any comments
by lunchtime Fri?

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

6 July 1988

Dear Dominic

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

with DM?

Thank you for your letter of 27 June, asking us to look again at the drafting of the Green Paper which the Home Secretary circulated on 13 June. Home Office officials had a helpful meeting with Carolyn Sinclair on 1 July.

... I enclose a revised draft of the Green Paper. Part I has been rewritten and made much shorter in order to bring out the arguments more clearly. Parts II and III have been revised and a few changes have been made to Part IV.

The Home Secretary plans to publish this Green Paper on Monday 18 July, in advance of the Green Paper on the private sector involvement in the remand system. Because publication is to be on a Monday, we will need to receive "confidential final revise" texts from HMSO more than the usual 48 hours in advance. I would be grateful if you would authorise us to do this.

I am copying this letter and the revised draft to the Private Secretaries to the Lord President, the Lord Chancellor, the Attorney General and Sir Robin Butler.

Yours ever
Nick

N C SANDERSON

D C B Morris, Esq

PART 1 INTRODUCTION

1.1 Last year, 69,000 offenders were sentenced to custody for indictable offences in England and Wales. For many of them, this was the right punishment, because their offences were very serious. The courts have responded to public anxiety about violence by lengthening the sentences for violent crimes and the Court of Appeal will soon be able to increase over-lenient sentences. But for other, less serious offenders, a spell in custody is not the most effective punishment. Imprisonment restricts offenders' liberty, but it reduces their responsibility; they are not required to face up to what they have done and to the effect on their victim or to make any recompense to the victim or the public. If offenders are not imprisoned, they are more likely to be able to pay compensation to their victims and to make some reparation to the community through useful unpaid work. Their liberty can be restricted without putting them behind prison walls. Moreover, if they are removed in prison from the responsibilities, problems and temptations of everyday life, they are less likely to acquire the self discipline and self reliance which will prevent re-offending in future. Punishment in the community would encourage offenders to grow out of crime and to develop into responsible and law abiding citizens.

1.2 A major objective of the criminal justice system is to reduce crime as well as to punish offenders. Ninety-five per cent of all crime is against property. The Government's policies on crime have placed increasing emphasis on crime prevention; this will continue. Such a policy involves individuals and organisations taking steps to safeguard, so far as possible, their families, employees, customers and property. It also requires people to take responsibility as individuals for their actions. People have a choice whether or not to commit a criminal offence. If offenders can be helped to make the right choices then the risk of further offending is reduced. This means increasing the offender's sense of responsibility and understanding of the need to avoid crime in future. It requires self-discipline and motivation.

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1.3 It is better that people should exercise self control than have controls imposed upon them. To do this, they need to understand the consequences of their actions. Making young people face up to their offending and its consequences has been one of the successful features of the Intermediate Treatment schemes for juvenile offenders. Many probation services have similar schemes; offenders are confronted with their offending behaviour, and have to recognise the effects of their behaviour on the victims. If they can develop the skills necessary for life and work, this should encourage greater self reliance and respect for others; there should be less incentive to offend again.

1.4 Another feature of the Government's policies has been the rapidly developing emphasis given to the position of the victims. Requiring offenders to make some recompense for the injury, loss or damage they have caused to individuals or the community is one way to bring home to them the harm they have done and the serious view which most of us take of their actions. Such reparation is already a feature of compensation orders and community service orders. The Government considers that compensation to individuals and reparation to the public should be an important element of punishing offenders in the community.

1.5 When an offence is so serious that a financial penalty alone is inadequate, the Government considers that the penalty should, where possible, involve these three principles.

- restrictions on the offender's freedom of action - as a punishment;

- action to reduce the risk of further offending; and

- reparation to the community and, where possible, compensation to the victim.

1.6 These three objectives can often best be met by supervising and punishing the offender in the community. Imprisonment reduces offending only by restricting the opportunities for a limited period. Imprisonment is likely to add to the difficulty which offenders find in living a normal and law abiding life. Overcrowded local prisons are emphatically not schools of citizenship. Prisoners do not have to provide for everyday needs, such as food and clothing, to find or keep jobs, or to look after their homes and their families.

1.7 If offenders remain in the community, they should be able to maintain their relationships with their family; their opportunities for work, training and education will be better; and they should be able to make some reparation for the harm they have done. Punishment in the community should be more economical in public resources. On average, holding someone in prison for a month costs twice as much as the average community service order.

1.8 Imprisonment is not the most effective punishment for most crime. Custody should be reserved as punishment for ~~very~~ serious offences, especially when the offender is violent and a continuing risk to the public. But not every sentencer or member of the public has full confidence in the present orders which leave offenders in the community.

1.9 The rest of this Paper sets out the Government's proposals, which aim to increase the courts' and the public's confidence in keeping offenders in the community.

1.10 Part II describes work already being done:

- improvements to community service and other orders which are already in hand;

- changes being made in the Criminal Justice Bill, for example, on compensation orders;

- changes in dealing with young adult offenders.

Parts III and IV develop these policies further and set out the Government's ideas for punishment in the community:

- who should be sent to prison

- the components of punishment in the community

- a new sentence

- how it would be organised.

These changes would need further legislation and the Government would welcome comments on them.

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Part II: What can be done now

Improving the arrangements for existing orders

2.1 Courts in England and Wales have a very wide range of penalties available to them. In addition to custody, they include wholly or partially suspended sentences of imprisonment, community service orders, which were introduced as a direct alternative to custody, atten- dance centre orders for young offenders under 21, compensation orders, fines, and fixed penalties. All of these are punishments, not treatments. There are also supervision orders and care orders for juveniles under 17 and probation orders, which are made instead of a sentence. There are conditional or absolute discharges. The use of fines has dropped in the last few years, but nearly half those sentenced by magistrates' courts for indictable offences are still fined. Community service orders, probation and supervision orders account for a fifth of all the sentences given by the Crown Court and the magistrates' courts for indictable offences. 74,000 offenders received one of these orders in 1987.

2.2 Apart from financial penalties, most court disposals place restrictions on offenders' freedom of action. Community service orders and attendance centre orders require them to present themselves at a specified place, at specified times, to carry out activities which other people have decided they should do. Requirements in probation or supervision orders can make similar demands, for example, to attend a day centre or groups which help those abusing drugs or alcohol, or to take part in programmes of Intermediate Treatment. Even without requirements, a probation or supervision order will result in some intervention by a probation officer or the social worker in the life of the offender, with the aim of improving the offender's behaviour. Unlike probation, a conditional discharge does not involve continuing supervision of the offender, but its purpose is to discourage further offending

by making the offender liable to punishment for the offence if he is convicted of a further offence within a specified period. Thus, although many offenders remain in the community, their liberty is restricted to a varied extent.

Community Service Orders

2.3 The Government is already taking steps to introduce national standards for **community service orders**. The community service order was introduced in 1973 and designed for offenders who would otherwise be at risk of custody. It may only be imposed for imprisonable offences. An order must specify the total number of hours work to be performed between the minimum of 40 hours and a maximum of 240 hours (120 hours for 16 year olds) to be completed within 12 months. The aim is primarily punitive, but community service should ensure the offender gives back something to the community. Because it involves compulsory work, an order is made with the offender's consent. The European Convention on Human Rights forbids 'forced labour and degrading punishment'. At present, about 31,000 offenders are sentenced to community service each year, compared to 69,000 sentenced to immediate custody.

2.4 Offenders doing community service carry out a wide variety of tasks for public and voluntary organisations through arrangements made by the Probation Service. Examples are clearance or conservation work, gardening and decorating, helping disabled people to go shopping and running luncheon clubs for pensioners. All the work is unpaid and of a kind normally undertaken by voluntary effort. For many offenders, giving to others, rather than taking or receiving, is an unfamiliar but salutary experience.

2.5 Community service should be rigorous and demanding, otherwise the sentencers and the general public will not accept it as punishment. The need for frequent and punctual reporting is part of the discipline imposed by the order. The work to be done should be useful and of benefit to the community; there is no reparation if the work itself is pointless. Ideally, the public should be able to see the results of the work and, in the process,

the offender's self discipline and motivation should be improved. Community service is an obvious option for those with family or other responsibilities, including women with young children, and those in work or in training. Community service should be organised in such a way that they can continue to meet those responsibilities.

2.6 The Government intends to make Rules introducing national standards for the operation of community service under the Powers of Criminal Courts Act 1973. The standards will lay down the type of work to be done by offenders, the way hours worked should be reckoned, standards of performance and behaviour and the action to be taken if an offender fails to comply with the requirements of the order. Offenders will be expected to begin work promptly after the order is made and to attend for work regularly and punctually. There will be a strict, predictable and consistent policy for dealing with offenders who fail to comply. The number of hours to be worked should take account of the seriousness of the offence and, for some offenders, it may be possible to make the reparation suitable for the offence. For example, vandals might be required to do work which improves the appearance of the neighbourhood.

Compensation Orders

2.7 The most direct way for offenders to recompense their victims is through **compensation orders**. Section 35 of the Powers of the Criminal Courts Act 1973 empowers courts to require an offender to pay compensation to the victim for any injury, loss or damage resulting from the offence of which he was convicted and any other offences taken into consideration. Section 67 of the Criminal Justice Act 1982 strengthened this power by enabling courts to order the payment of compensation either instead of, or in addition to, dealing with the offender in any other way; a compensation order could therefore be a disposal in its own right. If an offender is unable fully to recompense the victim, the court has the power to ensure that he pays what he can. It may also order payment of compensation through instalments over a period of time. However, the Court of Appeal has indicated that

courts should not order an offender to pay compensation in instalments when they also sentence the offender to a period of imprisonment. Thus it may benefit the victim if the offender remains in the community.

2.8 The provisions of the Criminal Justice Bill, now before Parliament, would improve the likelihood of compensation being paid to victims by requiring courts to consider in every relevant case whether a compensation order should be made. When it does not order compensation, the court will be required to give reasons for not doing so. These provisions will encourage courts to use compensation orders more readily. By doing so, they would place the responsibility where it belongs by requiring offenders to pay for the injury, loss or damage they have caused.

Probation Orders

2.9 When a **probation order** is made, the offender is left at liberty but is subject to certain requirements about his way of life, including an obligation to co-operate with the supervising probation officer. The probation officer's skills are used to help the offender to face the problems and difficulties which may have led up to the offence, and to prevent further offending. The minimum period of a probation order is six months and the maximum three years. Since 1982, the courts' powers to attach conditions to probation orders have been strengthened. An order may require the offender to attend a particular place at particular times and to take part in activities set out in the order. Most probation services have day centres which offenders can be required to attend for up to 60 days. The aim of these centres is to involve people on probation in practical and positive tasks under the supervision of probation staff and so divert them from a pattern of reoffending.

2.10 Much excellent work has been done by the probation service with offenders on probation. It is the particular responsibility of the probation service to persuade offenders to face up to what

they have done, to understand its consequences for others as well as themselves, to get them to see that they could have avoided offending and they can avoid it in future. This should be a significant part of the supervision of any offender on probation.

2.11 The probation service can also help offenders to acquire self- discipline, respect for others and social skills, such as how to manage money, how to cook for themselves, and how to apply for a job. Some offenders may need closer supervision, especially in the early stages of an order. If an offender is made to discuss regularly with the supervisor how to plan the day's activities, this may encourage greater self discipline. So may training for work, literacy and numeracy classes and access to other activities which would improve their employment prospects and make more constructive use of their leisure.

2.12 In practice, probation needs the co-operation of the offender. The court can impose enforceable requirements as part of a probation order. But, to work effectively, the probation service supervisor will need to work out with each offender a programme of activities, which would include the court's requirements. The offender will then know what would be expected of him and it might be helpful to set out the agreed programme in a written statement. This statement could include targets for him to achieve. Each programme would be tailor-made for the individual offender. The Court should see the programme before making the order.

2.13 All of this can be done within the terms of existing legislation. Some of it is already being done. The Government would like to see these proposals taken forward in a comprehensive, structured and determined way thoughout all 56 probation areas. It is particularly important that those on probation should be made to face up to their offending behaviour and that the aims of the probation order should be made clear to them at the outset. It is also important that the probation service should target its work on those most at risk of custody and should demonstrate to

magistrates and judges the work which the service is doing with serious offenders. The Home Office will be asking the probation service to review its activities and to develop a programme of action in each area aimed at ensuring that the supervision of serious offenders in the community commands the confidence of the public and the courts.

Young Adult Offenders

2.14 The Government is particularly concerned about **young adult offenders**, those aged between 17 and 20. In 1987, 99,700 young men and 12,300 young women were sentenced by the courts. Over 20,000 young men and 600 young women aged 17 to 20 were sentenced to custody. (This compares with 41,000 men aged over 21 and 2,500 adult women.) In 1987, one in every 100 young men in this age group was given a custodial sentence. The Crown Court sends a higher proportion of young men aged 17 to 20 to custody than of men aged 21 and over. Young men in this age group account for about a fifth of all the sentenced males in custody. Most of them are serving sentences of less than 18 months. Those in custody include some who are well launched into a criminal career, but many offenders of this age are immature, misguided and easily led by others, particularly others of the same age, into competitive risk-taking in offending.

2.15 Most young offenders grow out of crime as they become more mature and responsible. They need encouragement and help to become law abiding. Even a short period of custody is quite likely to confirm them as criminals, particularly if they acquire new criminal skills from more sophisticated offenders. They see themselves labelled as criminals and behave accordingly.

2.16 As a first step, more could be done to work out co-ordinated local policies for young adult offenders. Local circumstances will vary and the first objective should be to reduce offending by diverting young people from crime. The scope for cautioning more

young adults needs to be reviewed by police forces and the probation service should consider whether more use could be made of community service, and whether special arrangements are needed for young adult offenders in day centres, particularly to ensure that they face up to their offending behaviour and understand the effect on their victims.

2.17 There is a particularly sharp contrast in the way the courts deal with 16 and 17 year old boys. Very similar numbers of 16 and 17 year olds are cautioned or sentenced each year, but nearly twice as many 17 year olds as 16 year olds receive custodial sentences and 16 year olds are four times more likely to be cautioned. This difference is not fully explained by differences either in the seriousness of the offences or the offenders criminal history. Moreover, the same statutory restrictions apply to the use of custody for all offenders under 21.

2.18 In the last five years, there has been a marked change in the way offenders under 17 are dealt with. So far as possible, juvenile offenders are cautioned rather than brought before the courts and, if they do have to appear before a court, they are kept out of custody. Local services with an interest in dealing with juvenile offenders have been encouraged to get together to work out how best to deal with individuals. Before deciding whether to caution, the police take account of the views of other services, who may know more about the offender and his family. But cautioning should not become an alternative system of justice, without the safeguards provided by the courts. The Home Office is aware of criticisms which have been made and is looking again at the guidance given to the police on cautioning. The courts' powers to require juvenile offenders to take part in programmes of activities as a condition of a supervision order have been strengthened and the arrangements for carrying out supervision orders have been improved. This has been helped by grants of more than £15 million by the DHSS for the development of intensive Intermediate Treatment arrangements for more serious juvenile offenders. As a result, proportionately fewer juveniles are

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brought before the courts and the proportionate use of custody is declining. The policies for juvenile offenders will not be entirely suitable for the older age group, but some features can be the same.

2.19 A number of probation areas and voluntary organisations have become interested in developing arrangements for dealing with young adult offenders. The Home Office is providing funds for work to bring together information about good practice in local co-ordination and in community penalties for this age group. Probation Committees have been told that priority will be given to approving those new day centre projects which target young adults and offer strict and structured regimes aimed at reducing reoffending. The Home Office is funding some development work on these regimes. Voluntary organisations can promote similar work and encourage activities to help offenders to become law-abiding members of the local community.

2.20 Since 1980, the Home Office has opened 24 new senior attendance centres for this age group and there are now 26 senior centres in large towns and cities. They are open on Saturdays and the aim is to encourage young people in a disciplined environment to make more constructive use of their leisure time. Offenders can be required to attend these centres, usually on Saturday afternoons, for up to three hours on one day and a maximum of 36 hours. A loss of leisure is a punishment which is generally understood by young people. Unlike day centres, attendance centres are not suitable for offenders who need sustained supervision. In places which have senior attendance centres, liaison between the officer-in-charge and the probation service should ensure that attendance centres and probation day centres cater for different types of offender and the courts know what is available locally.

2.21 The number of juvenile offenders sentenced to custody for indictable offences fell from 7,700 in 1981 to 4,000 in 1987, a reduction of about a half in six years. This was achieved through

the shared commitment and determination of the social services, the probation service, voluntary organisations and the juvenile courts. Information to the courts both about individual offenders through social enquiry reports and the local arrangements for community disposals is essential if the courts are to have confidence in these disposals and to reduce the use of custody for young adults. The Government thinks it reasonable to look to a significant drop in the number of young adults sentenced to custody. But this will happen only if the courts and the public have confidence that keeping young adult offenders in the community will be effective in preventing re-offending.

The Way Ahead

2.22 The present plans are:

- to strengthen existing orders

- to implement them effectively

- to target young adult offenders.

The Government is preparing an action plan to discuss with the courts and the probation service.

Part III: Proposals for Punishment in the Community

Who should be sent to prison?

3.1 Liberty under the law is highly valued by all of us. The deprivation of liberty is the most severe penalty available to the courts. The Court of Appeal has made it clear that a sentence of imprisonment should be imposed only when it is necessary and that, if it is necessary, the sentence should be as short as is consistent with the need for punishment.

3.2 There are over 50,000 people in custody in England and Wales, about one in every 1,000 of the total population. Do they all need to be there? In 1978, the prison population was 41,800 and in 1968 it was 32,400. If past trends continue, the prison population can be expected to rise to well over 60,000 and possibly to 70,000 by the year 2000. The Government is committed to a substantial programme of building new prisons costing almost £1 billion and the recruitment of more prison officers. But we should consider whether better methods can be found to deal with many of the offenders who now go to prison. The question is important and should be widely discussed.

3.3 Custodial sentences are imposed to show how seriously the public views criminal behaviour, to ensure that the offender does not commit offences against members of the public for a specified period, to deter the offender from committing further offences after release and to deter other potential offenders. The effect of custodial sentences is to restrict offenders' freedom of action by removing them from their homes, by determining where they will live during the sentence, by limiting their social relationships and by deciding how and where they will spend the 24 hours in each day.

3.4 The restraints placed on offenders by walls, fences, secure buildings and staff supervision are not an end in themselves, but a means of ensuring that offenders comply with these restrictions.

How much reliance is placed on security measures will vary according to the likelihood that a particular offender will escape or break the institutional rules in other ways, and the risk to the public which would follow. If an offender accepts the conditions of detention and personal responsibility for keeping the institution's rules and avoiding offending, then less security is necessary. Those serving long sentences for very serious offences and who are a continuing risk to the public are likely to need maximum security. On the other hand, offenders who are thought unlikely to escape or commit offences if in conditions of minimum security can be held in an open prison.

3.5 Custody is, therefore, a continuum from close restriction to relative freedom. The more severe the restrictions, the more they produce conditions which are different from life outside. They limit the offender's personal responsibility for taking decisions on everyday matters. Imprisonment of any kind restricts individual initiative and freedom of choice. Imprisonment is likely to diminish the offenders' sense of responsibility and self-reliance.

3.6 Who should be sent to prison? Life imprisonment is the mandatory sentence for murder. Most people would agree that offenders convicted of rape, robbery, aggravated burglary and other very serious violent offences should be sent to prison for a long time; some of these offenders will be a continuing risk to the public. Sentences for rape and robbery have become significantly longer. Similarly, most people would agree that those convicted of trafficking in large quantities of controlled drugs, and of arson and criminal damage endangering life, would be candidates for custody. Other offenders will be suffering from mental disorders which require them to be detained for hospital treatment.

3.7 Most of those now in prison have not been convicted of violent offences. Nearly half the sentenced population have been convicted of burglary and theft and about two thirds of them have six or more previous convictions. Most people think of burglary

as a well planned and forced entry into someone's home. But many burglaries are opportunist thefts from houses with open doors or windows, with no damage to the house or threats to the people living there. Nearly half the burglaries reported are of offices, shops and other buildings, not houses. Similarly, violent offences can vary from a premeditated and unprovoked assault with a knife, a drunken quarrel which deteriorates into a fight in which someone is injured, throwing a stone or giving someone an unnecessary and hefty push. Within most categories of offence there are varying degrees of culpability, and of injury or damage caused.

Are we sending too many people to prison? Is imprisonment the best, or only, way to deal with recidivist burglars and thieves? Can the public be protected effectively by other means? Should a distinction be made between burglary of people's homes and burglaries of other premises?

Components of punishment in the community

3.8 The Government believes there is scope for reducing the use of imprisonment by introducing a form of punishment which leaves the offender in the community but has components which embody the three elements identified in Part I, punishment by some deprivation of liberty, action to reduce the risk of offending and recompense to the victim and the public.

3.9 Punishment in the community would place a range of requirements on the offender, which include making some recompense for the crime. The arrangements could include many features of the present disposals, compensation, community service, going to a day centre or an attendance centre. The restrictive elements might include close supervision of the offender's whereabouts, residence at a particular place, or confining the offender to his home during specified hours. Other restrictions might be forbidding particular activities, or staying away from particular places. Legislation might be introduced which would enable any or all of these elements to be combined in a single supervisory order.

Compensation

3.10 The Criminal Justice Bill makes changes in the arrangements for compensation orders. The Government hopes that these changes will increase the use of these orders. It has been suggested that the courts should be able to pay the total sum awarded to the victim immediately and then recover the money from the offender. The victim would benefit by having the compensation more quickly but the direct link between the offender's payments and the victim would be lost. Meanwhile the court and the Exchequer would, in effect, be lending the outstanding money.

Should the courts be empowered to pay the whole sum to the victim immediately from fine income and then to recover the money from the offender?

Reparation

3.11 Consideration has also been given to the possibility of making direct reparation by the offender to the victim an element in the new arrangements. Between 1985 and 1987, the Home Office funded four experimental reparation schemes, enabling a victim and offender to meet, on an entirely voluntary basis, to discuss the offences and, if possible, to arrange reparation. One of the schemes linked reparation to police cautioning as an alternative to prosecution. Two others assessed it as a possible adjunct to other court disposals for offenders in magistrates' courts. The fourth examined the potential for diverting offenders in the Crown Court from custody. A report on the assessment of these schemes will be published later in the year. In some schemes, there seemed to be confusion about whether reparation was for the benefit of the victim or a means of rehabilitating the offender.

3.12 Victims should not be placed under pressure to co-operate in arrangements for reparation and no victim should feel under any

obligation to take part in such arrangements. Nor should a victim's decision on reparation affect the court's decision in sentencing the offender. It would be unjust if the severity of a sentence depended on the victim's willingness to take part in reparation and it would place undue pressure on some victims. On the other hand, mediation between the offender and the victim could be useful when they are known to each other and are likely to remain in contact, for example, as neighbours or colleagues at work.

Would it be desirable for the probation service to arrange such mediation informally, when it would be helpful? Should direct reparation by the offender to the victim be restricted to monetary payments by compensation orders paid through the courts?

Community Service

3.13 General reparation to the public can be made through community service. Legislation might enable community service to be imposed either as a separate disposal or as part of a wider supervisory order. The present maximum is 240 hours (120 for 16 year olds) and the minimum is 40 hours. The Court of Appeal has equated 190 hours of community service with 9 to 12 months imprisonment. A lower minimum could result in the order being used for less serious offenders.

3.14 A longer community service order is useful in requiring the offender to accept the sustained discipline of regular attendance. But experience has shown that community service orders of more than 200 hours are more likely to be breached. An order of more than 200 hours requires the offender to attend at least 30 work sessions over a period of several months. The location may well be inconvenient but he will be expected to report punctually. The demands which a long period of community service make are therefore considerable, especially for offenders whose way of life is disorganised.

Should the minimum of 40 hours for community service (the equivalent of a working week) be altered? Could it be higher or lower? Should the present maxima be changed?

Day Centres

3.11 Under existing law, the period of attendance at day centres cannot exceed 60 days. The 60 day period may extend over six months with the offender usually attending two or three days a week. Because the period is defined in days rather than hours, the offender's time can be occupied more fully by requiring him to attend for 12 hours each day. However, stress on long hours for their own sake may not be the best way of using day centres. In practice, the impact which day centre attendance can make on an offender may reach its peak after less than 60 days. However, for some offenders a longer period of attendance may be beneficial.

3.12 The programmes in day centres should be geared to the types of offending prevalent in the area. Programmes designed to bring home the consequences of what an offender has done and to change his or her outlook is essential in every centre's programme.

Should the maximum period for attending a day centre be increased from 60 to 90 days? Are there new elements which should be essential in the provision made by day centres?

Restrictions on Liberty

3.17 There are a number of ways in which offenders' liberty could be restricted and the public protected by deterring re-offending. "Tracking" is a term used broadly to cover various schemes which use ancillary probation staff to maintain regular and frequent contact with offenders under supervision in the community. Experimental schemes set up in West Yorkshire, including some schemes working with adults and young adults, involve the tracker contacting the offender, either face to face or by telephone. At

first, this is done daily. The tracker discusses with the offender how he or she will spend his or her time and maintains contact with schools, clubs and other places where the offender intends to go. These contacts usually become less frequent over time. Tracking schemes are at present limited to 60 days for adults. There has been no central evaluation of the success of these schemes in diverting offenders from custody or in preventing offending during or after the period of supervision.

Should tracking be used more to reinforce supervision and some control over offenders?. Should it be available for longer, possibly up to three months?

3.18 More restrictions could be introduced by legislation which would allow the courts to make an order confining an offender to his home during specified hours. This is done in some jurisdictions in the United States. Such requirements punish by severely restricting an offender's liberty. They may also reduce the opportunities for re-offending, but they cannot prevent it if the offender is determined to re-offend. An offender confined to his home could still receive stolen goods, and engage in drug trafficking or drug abuse. Before imposing an order, the court would need to take account of the offender's circumstances. Those living in poor or isolated accommodation might have to be provided with a hostel place if the condition is to be enforceable. The court would also have to consider the effects of the requirement on the offender's family, other people sharing the same accommodation, and neighbours. There are also the interests of landlords.

Should the courts be given powers to require offenders to stay at home at specified times? If so, should there be guidelines on the length of the curfew and a maximum period for which it could be imposed, possibly three months?

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3.19 The main constraint on such an order is the likely difficulty of enforcing it. Curfews for juveniles are meant to be enforced with the co-operation of parents, though in practice this is not always forthcoming. Young adults are much less likely to be living at home with their parents although it is an objective of the Government's social security policies to encourage them to do so until they are in a position to support themselves financially. Many adults will be living fully independent lives. Personal visits to the offender's home by a supervisor, especially in unsocial hours, would be expensive. Observance of a curfew might be checked by telephone calls, but only if the offender had a telephone. As a consequence, the offender would be tempted to violate the order because of the low risk of detection.

3.20 Electronic monitoring might help to enforce an order which required offenders to stay at home. It is used for this purpose in North America. Less restrictively, it could help in tracking an offender's whereabouts. By itself, electronic monitoring could not prevent re-offending, though it might limit opportunities to commit offences to a degree which a court would consider justified diversion from custody. There are two main types of monitoring equipment in use in North America. In some systems, the offender wears a miniature transmitter which emits a continuous signal. This is re-transmitted from his home, eg by telephone, to a central monitoring point and the offender cannot move very far away from the telephone without alerting the central monitoring system. In other systems, the supervisor uses the signal from the monitoring tag to verify that the offender is in a specified place, either in response to random telephone calls from the central monitor or in calls at a pre-arranged place. North American experience may not be directly relevant to England and Wales; for example, monitoring is used in the United States to divert from custody some offenders who would not be at risk of a custodial sentence in England and Wales.

3.21 It would not seem necessary, or desirable, to use electronic monitoring as an additional restraint on offenders who are dealt

with in the community at present. The main justification for its use in England and Wales would be to enforce tracking or an order requiring the offender to stay at home for a limited period, thereby making it possible to keep out of custody offenders who would otherwise be in prison. The Home Office is evaluating various forms of equipment.

It would be helpful to have views on the usefulness of electronic monitoring in keeping more offenders out of custody.

3.22 Consideration has been given during the last 10 years to the possibility of introducing some form of intermittent or weekend imprisonment. In a consultation document on "Intermittent Custody" (Cmnd 9281) the Government asked for views on the possibility of a semi-custodial sentence, which would involve detention for only part of the day or part of the week. This would be an alternative to full custody; a partial deprivation of liberty might be preferable to full imprisonment for many of the less serious offenders who were receiving custodial sentences. However, for intermittent custody to work effectively, the offenders would have to be sufficiently reliable to report each week to serve their sentence. It would therefore be unsuitable for rootless and unstable offenders. Employed offenders would not be suitable for day prison, but could be considered for prison at weekends.

3.23 Many of those who responded to the consultation document considered that intermittent or weekend custody was more likely to replace non-custodial measures than full custody. There was no agreement on the kind of offenders for whom it would be suitable or the form it might take. Given the considerable likely cost of providing the necessary facilities and of tracing offenders who did not turn up and bringing them back to court, the Government concluded that the possible advantages were outweighed by the probable disadvantages. The Government has considered the arguments again and reached the same conclusion.

3.24 However, there are other ways of restricting an offender's liberty at weekends. For example, the courts could require offenders to refrain from taking part in particular activities, such as attendance at football matches or other sporting events or to stay away from specified places connected with the offence, for example, specified streets, pubs or clubs, shops.

Would such restrictions be useful and enforceable?

Drugs and alcohol misuse

3.25 The programme for the offender could also include regular attendance at work, education or training and treatment for misuse of alcohol misuse or drugs. There is often a link between drug misuse and offences against other people, such as robbery, burglary or theft. But, although more co-ordinated and intensified effort is being put into the care of drug misusers who go to prison, the chances of dealing effectively with a drug problem are much greater if the offender can remain in the community and undertakes to co-operate in a sensibly planned programme to help him or her come off drugs. Such a programme would aim, in the first instance, to secure a transition from illegal consumption to a medically supervised regime designed to reduce the harm caused to the individual by drug taking and would be based on a realistic plan for tackling the addiction in the context of his or her other problems. The process might well take time, but the programme could be varied as progress was made. Monitoring by urine tests by the agency providing the treatment could be part of the regime.

Is this the right approach?

Parole

3.26 A Committee under the chairmanship of Lord Carlisle QC is reviewing the arrangements for parole. The Committee is expected to report later in the year. Some of the proposals for supervising

offenders as part of punishment in the community might be helpful in supervising offenders on parole or given earlier release from custody to serve part of their sentence in the community.

A New Sentence

3.27 These proposals might be brought together in a new supervision and restriction order, enabling the courts to make requirements which might include:

compensation to the victim;

community service;

residence at a hostel or other approved place;

prescribed activities at a day centre or elsewhere;

curfew or house arrest;

tracking an offender's whereabouts;

other conditions, such as staying away from particular places.

In the formal requirements of the order there would inevitably be an emphasis on restrictions and on compulsory activity, but there would be room for positive and voluntary elements as well. The programme for the individual offender might include encouraging regular attendance at work, education or training and treatment for substance abuse.

3.28 The aim of the order would be to make a sharp initial impact on offenders but perhaps to allow them to progress to less rigorous forms of supervision, subject to good behaviour, and under judicial supervision. Examples of programmes for offenders of different types are given in the appendix.

R.

3.29 There should be simple and straightforward procedures for varying requirements which were no longer necessary or practical or if an offender's circumstances change. Otherwise, they would be oppressive. Moreover, the possibility that the requirements could be relaxed should give the offender an incentive to co-operate. The courts' confidence in the orders will be greater if variations in the order are not made entirely at the discretion of the offender's immediate supervisor. There should be some judicial oversight. One possibility is a supervising magistrate, who would have oversight of the order until it is completed.The magistrate would be able to vary the order, either relaxing the requirements if good progress is made or, if necessary, re-imposing requirements if the offender's response deteriorates, without actually breaching the order. This arrangement would have the advantage of keeping the magistrates in touch with an offender's subsequent behaviour.

Would judicial supervision be helpful in making the new sentence effective, and how might it be exercised?

3.30 Because a supervision and restriction order would be intensive in its initial stages, the minimum length might be three months, compared with six months for probation. The maximum might be 18 months or 2 years, since it is doubtful whether intensive supervision could be sustained for longer periods. This suggests that where an order is imposed for longer than 12 months, the requirements should be reviewed no later than 12 months after the beginning of the order. It would be possible to set different maximum limits for the Crown Court and the magistrates' courts. There would need to be a procedure for ending an order early if the offender received a custodial sentence for a further offence. It might also be sensible to allow the order to be ended by the court on the initiative of the supervisor, if the offender was responding well and no longer required intensive supervision.

3.31 Sanctions for failing to meet the requirements of an order might, depending on the seriousness of the offence, be a fine, imposing more demanding requirements, eg a curfew, or revoking the

order and resentencing the offender for the original offence to a term of imprisonment. If the requirements are made too demanding, it is more likely that the offender will fail to complete it satisfactorily and this could result in his imprisonment. This would defeat the purpose of the order. It is therefore essential that offenders should be assessed very carefully at the sentencing stage and there should be realism in the use of requirements.

3.32 A new supervision and restriction order could be introduced in addition to the existing disposals or it could replace some of them. There seem to be three main possibilities:-

- an enhanced probation order, in addition to existing penalties;

- a new order, replacing probation orders, community service orders and possibly attendance centre orders; and

- a new order, in addition to the existing penalties.

3.33 Extending the requirements for probation orders would give the courts flexibility to tailor the disposal to individual offenders, but it would confuse the new controlling requirements with the welfare objective inherent in the present concept of the probation order, which is that it is imposed 'instead of sentencing' (section 2 of the Powers of the Criminal Courts Act 1973). A new order, which replaced existing orders, would also be flexible and the courts would still be able to give some offenders a disposal which amounted to a probation order without any punitive elements. On the other hand, it might encourage the courts to impose too severe a penalty and make them more reluctant to use supervision a second time for an offender who had failed to complete an earlier order satisfactorily. Adding a new order to the existing disposals would have the advantage that it would not disturb existing penalties, which are working well. Leaving the other disposals in place would make it clear that the new order was reserved for those for whom other disposals were not sufficient. This might encourage discriminating use of the order.

3.34 Both the sentencing structure of maximum penalties set out in legislation and the sentencing guidance within these maxima given in the decisions of the Court of Appeal are based on the principle of keeping proportionality between the offence and the sentence. The punishment should fit the seriousness of the crime; it should not be excessive or lenient. Since the new order, with its component elements, would be more severe than any of the present disposals, except custody, it follows that it should be used for more serious offenders, who at present would be given a custodial sentence.

3.35 The objectives of these proposals would be frustrated if the order was used for those already given community service orders or placed on probation. Both the courts and the probation service will need to be clear about the purpose of the new order, and the probation service will have a particular responsibility to put clear proposals for each offender before the court. The courts will need to know why the probation service consider that the new order would be suitable for an offender and the programme which the offender will be expected to pursue. The

kind of activities to be made available could usefully be discussed locally and judges and magistrates will need to see for themselves the work which is being done, if they are to understand its objectives and to have confidence in it. Even so, there is a risk that the order will be used for offenders who would receive community disposals now and it may be desirable for the legislation to define the circumstances in which the new order should be used.

3.36 Because the new order would be flexible, it could be used repeatedly for persistent offenders. Indeed, community service could already be used repeatedly for recidivists, since it involves both restrictions on liberty and reparation to the community. There is no reason for the courts to give a custodial sentence, unless the offence itself is serious enough to justify it.

3.37 It costs about £1,000 to keep an offender in prison for four weeks. The cost of punishment in the community should not exceed the cost of imprisonment, which is a more severe sentence. If the courts are to have a wide discretion with powers to place a range of requirements on offenders, they should take account of the costs to the taxpayers of carrying out the requirements. The courts will therefore need regular and up-to-date information about the cost of imprisonment and of the individual components of the new order, eg the cost of a day's attendance at a day centre (now about £30), the cost of 10 hours community service (about £35), the cost of tracking an offender (about £15 a day). While the suitability of a penalty cannot be measured solely in terms of cost, the total cost of the requirements for an individual offender could be a useful check on whether the penalty is proportionate to the offence.

3.38 It would be helpful to have comments on the proposals for a new order set out in paragraphs 3.27 to 3.37.

R.

Young Offenders

3.39 Punishment in the community would be particularly suitable for young men and women, who are likely to grow out of crime. Although some may have several convictions, their crimes may be linked to drug abuse or drinking too much, or pressure from a particular group of friends. Others have difficulty in coping with adult life. Punishment in the community, with compensation, community service and help to sort out the underlying problems, could well be suitable for these offenders. There is a difference between a persistent offender of this kind and the older professional criminal.

3.40 At present, young people aged over 10 and under 17, who are charged with a criminal offence, normally appear before the juvenile court. Although juvenile courts were not established until 1908, special arrangements which enabled magistrates to hear cases against juveniles have existed since the mid-nineteenth century. The upper age limit was fixed at 16 in 1850 and increased to 17 in 1933. No change has been made in this upper age limit to bring it into line with the age of majority when it was reduced from 21 to 18.

3.41 There is little difference in the pattern of offending between 16 and 17 year olds, though 17 year olds are marginally more likely to be charged with offences of violence. Many 17 year olds are hardly more mature than most 16 year olds. But some 16 year olds may be more mature than a number of 18 year olds. The Government considers that there would be advantage in increasing the age limit for the juvenile court to those under the age of 18, so that the transition to the adult court would coincide with the age of majority at 18.

3.42 Moreover, there could be advantages in some flexibility in dealing with those aged between 16 and 21 so that their cases could be heard either in the juvenile or adult courts. This would enable immature or otherwise vulnerable defendants to come before

the juvenile court and the very mature 16 or 17 year old to appear in an adult court. Some flexibility is possible in other countries, such as West Germany and France.

The Government would welcome views on the proposal to increase the age limit for the juvenile court to those under 18 and on the idea of giving magistrates or the Crown Prosecution Service power to determine that criminal proceedings against some defendants aged 18 to 20 could be heard in the juvenile court or others aged 16 or 17 in the adult courts, even if they are not charged with adult co-defendants.

Proposals for the future

3.43 The Governments' proposals include

- ~~the~~ less use of custody, particularly for thieves and burglars;

- a new order, giving the courts' powers to place a wide range of requirements on offenders, who would now be given custodial sentences;

- judicial supervision of the new order;

- increasing the age limit for the juvenile court to 18 and flexible jurisdiction for offenders aged 16 to 20.

E R.

Part IV: Organising Punishment in the Community

4.1 At present, the supervision of offenders in the community is the responsibility of the probation service. Probation officers supervise offenders on probation and they make arrangements for community service, though the work is normally supervised by ancillary or other staff. The probation service has extensive links with other local services, voluntary organisations and the community generally, which would be helpful in developing the arrangements for a new order. Moreover, if a new order were to be used effectively, the courts would need information about both individual offenders and the programmes which an offender would follow. This would build on the kind of information already provided by the probation service to the courts in social inquiry reports. On the other hand, the new order would contain additional elements of control which some members of the probation service might perceive as inimical to their approach to working with offenders.

4.2 There are great opportunities for the probation service. In the short term, no other existing service or organisation is better placed to take responsibility for supervising punishment in the community. The police have no role in the punishment or supervision of offenders, with the limited exception of running attendance centres, which is done by some police officers in their spare time; this is much appreciated by the Government. The prison service is used to exercising control over offenders, but it is not organised or well placed to supervise offenders in their homes. Prison officers generally lack the right training and experience for supervising offenders in the community. Private sector security organisations may be able to play a part in some aspects of the new arrangement, eg by monitoring curfews, but it would be difficult for them yet to take on the wide-ranging responsibilities involved in supervising offenders throughout the country, for example, by ensuring that offenders act in accordance with the requirements of their order and in initiating breach

proceedings if they do not. Nor could many voluntary organisations working with offenders be expected to take this on.

4.3 One possibility would be for the probation service to contract with other services, and private and voluntary organisations, to obtain some of the components of punishment in the community. The probation service would supervise the order, but would not itself be responsible for providing all the elements.

4.4 Another possibility would be to set up a new organisation to organise punishment in the community. It would not itself supervise offenders or provide facilities directly, but would contract with other services and organisations to do so. The organisation could be part of the Home Office. Alternatively, it might be a separate non-departmental public body with a Director, a small permanent staff and possibly a governing Board drawn from those with relevant experience. The new organisation could contract for services from the probation service, the private or voluntary sector and perhaps for some purposes from the police or the prison service. The Prison Department already contracts in this way for services of probation officers in prisons, and the Central After-Care Association operated similarly until the probation service assumed direct responsibility for prison after-care in the 1960s. A new organisation would be able to set national standards and to enforce them, because they would be written into contracts.

The Government would welcome views on the possibility of setting up a new organisation to take responsibility for the arrangements for punishment in the community, and providing services through contracts with other organisations.

4.5 If a new organisation were to be set up to take responsibility for supervising punishment in the community, rather than the probation service, the costs of punishment in the community could be increased since there would be additional costs for the new organisation. On the other hand, resources could be targetted on those areas and groups of offenders where the need is greatest.

4.6 At present, the Government meets 80% of the cost of the probation service through specific grant and the remaining costs are met locally with assistance from block grant. Area Probation Committees are responsible for allocating probation finance and this enables local magistrates to influence the provision made locally for dealing with offenders in the community. This local input would be lost if a national organisation was responsible. On the other hand, a national organisation would be funded from the Exchequer, thus shifting from the local community to the taxpayer some of the costs of dealing with some local offenders, but applying nationally consistent standards and management.

4.7 The costs of the new order would vary considerably according to the length and severity of the requirements. Supervision by a probation officer for 12 months would cost about £800. Each day's attendance at a day centre would cost about £30, 200 hours community service about £700. If the average cost of an order were kept below £2,500, it would cost less than a six month's prison sentence with half remission.

4.8 However, the costs of dealing with offenders would increase if the new order were used instead of community service in its present form, or probation; the average costs of probation and community service orders completed in 1985-86 were £1,040 and £450.

4.9 The proposals in Parts III and IV are designed to make major changes in the way we deal with offenders. They should be seen in the context of the Government's wider policies on crime, with greater emphasis on crime prevention and help to victims, as well as changes in the criminal law and in penalties. The proposals raise issues of penal policy, of the role and effectiveness of criminal justice services and costs. The Government believes these issues merit wide and careful public consideration and

debate. The Government would therefore welcome comments on the proposals set out in Parts III and IV. Comments should be sent by 31 January 1989 to:

Home Office
Criminal Policy Department
Room 326
50 Queen Anne's Gate
LONDON, SW1H 9AT

PROGRAMME OF SUPERVISION: EXAMPLES

The content and structure of supervisory programmes suitable for different types of offender would be determined in the light of the offence, the offender's circumstances, personality, and the characteristics of the offending behaviour. Relevant factors would include:

- whether the offender was employed
- whether he or she had family responsibilities
- whether he or she had a drink or drugs problem
- response to previous supervision

The first stage in the process of supervision, which would need to be carried out before sentencing, would be an assessment of the offender using information from the social inquiry report and other sources to draw up an "offender profile". Detailed proposals for a programme of supervision would then be put to the court. The following are examples of programmes which might be suitable for various types of offender.

A. Offender in full time employment education or training:

- daily curfew (ie. required to remain at home between the hours of 8pm and 7am so as to ensure that the Order punishes by restricting liberty and to reduce opportunities for offending

- community service or day centre attendance on Saturdays for 3 months, followed by

- 3 months of reduced Saturday activity but the offender might be tracked during time off

- compensation paid to victim from offender's earnings

- regular interviews with supervising probation officer throughout the currency of the order to discuss progress, to ensure that the offender faces up to what he has done, to help him tackle any family problems and to help him budget for the payment of compensation

B. Unemployed offender without accommodation:

- 6 days of activity each week for 3 months:
  - 2 days community service
  - 2 days at a day centre
  - 2 days of prescribed activity (eg. further education, voluntary work, sport)

- [care would need to be taken to ensure that the requirements did not affect the offender's availability for work]

- daily curfew (ie. required to comply with the rules of the probation hostel where he will be living: in from 10pm to 7am every night)

- during the first 3 months one of the objectives of the day centre programme would be to enable the offender to acquire basic skills (cooking, cleaning, budgetting) to enable him to live in independent accommodation and he would be required to make efforts to find such accommodation, with the support of probation staff

- during the next 3 months, depending on progress the attendance requirments might be relaxed with efforts being concentrated on acquiring job related skills and looking for a job.

C. Offender with drink or drugs problem:

- residential or out-patient treatment, the frequency or duration to be recommended after medical assessment

- attendance at eg. alcohol education group

- urine testing might be used to check whether the offender complied with requirements of treatment

- other elements of the programme might include basic literacy and numeracy training (if this was a problem), community service or voluntary work

- regular interviews with the supervising probation officer to monitor progress

NBPM

CC BG

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

6 July 1988

Dear John,

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

Douglas Hurd wrote to you on ~~13~~ June seeking the agreement of colleagues on H to the publication of a Green Paper on punishment, custody and the community a draft of which was circulated with his letter. FILE WITH OM

Douglas was kind enough to ensure that my officials received an early draft of the paper and we have, therefore, already had an opportunity to consider its relevance to the position in Scotland. While the ideas put forward in the paper are of considerable interest to us we concluded that the differences of approach and in the administrative and legal framework north and south of the Border were such that it would be inappropriate to seek to include Scotland in this paper. Douglas is already aware of this and is, I think, content that we should simply be kept informed of developments.

I am therefore quite content that Douglas should proceed with publication of the Green Paper at an early date.

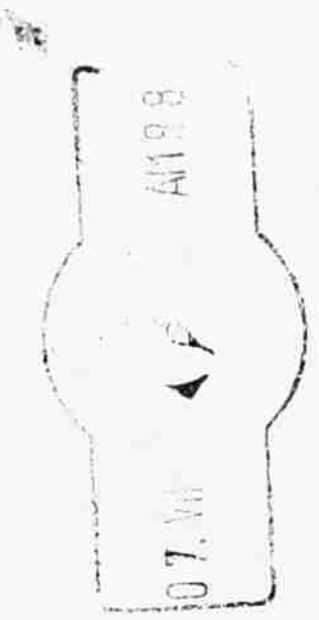
I am sending a copy of this letter to the Prime Minister, other members of H Committee, the Attorney General and to Sir Robin Butler.

Yours ever,
Malcolm

MALCOLM RIFKIND

HMP188F6

HOME AFFAIRS : Sentencing Policy PT3



CCBG.

FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

5 July 1988

Dear Domonic,

MURDER AND LIFE IMPRISONMENT

Following the Home Secretary's letter to the Lord Privy Seal of 27 June we are now actively setting up the Select Committee. The Lord Privy Seal and Chief Whip have discussed various names of prospective chairmen and would like to suggest that Lord Nathan should be invited to chair the Select Committee. He has a legal background but his activities in public life have taken him into very much wider spheres. Latterly he has been actively engaged in chairing various sub-committees of the European Communities Committee of this House and is highly regarded. He is a Crossbencher.

I should be grateful if you could let me know as soon as possible whether or not the Prime Minister would be happy for Lord Nathan to be approached.

Sincerely,

Robin Walters.

R H WALTERS

Domonic Morris Esq
Private Secretary to
the Prime Minister

Home Affairs: Sentencing.
Policy Pt 3.

022/4206

CCBG

NBR

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Douglas Hurd CBE MP
Home Secretary
50 Queen Anne's Gate
London
SW1H 9AT

4 July 1988

Dear Home Secretary

DRAFT GREEN PAPER: PUNISHMENT, AND THE COMMUNITY

I have seen a copy of your letter of 13 June to John Wakeham proposing the publication of a Green Paper on punishment, custody and the community. I have also seen the Prime Minister's and the Lord Chancellor's comments and those of John Moore and Nicholas Ridley.

I too welcome your initiative to reorganise and strengthen the range of non custodial sentences open to the courts for use instead of custodial sentences for non violent crimes. I also welcome your target of a reduction of 3,000 by 1992 in the number of custodial sentences for 17-20 year olds from measures already in hand. The ideas put forward in the paper will provide the courts with a flexible response that would meet, in a way that imprisonment never can, the right balance between punishment through the restriction of liberty and positive help and encouragement to reform. There is a large task to be undertaken in re-educating public and judicial opinion over the efficacy and rigour of non custodial sentences, and the measures which you propose could have a welcome impact in restraining the rapid growth of expenditure in the criminal justice system.

I note that you have put in a PES bid for resources for punishment in the community. This will of course have to be considered in our PES discussions in the autumn, along with the implications which the increased use of non custodial disposals will have for the prison programme itself.

HOME AFFAIRS: Sentencing
POLICE PT 3

I am sending copies of this letter to the Prime Minister, other members of H Committee, Patrick Mayhew and to Sir Robin Butler.

Yours sincerely,

Jim Rudd

pp **JOHN MAJOR**
(Approved by the Chief Secretary + signed in his absence).

SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

30 June 1988

Dear John.

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

I have seen Douglas Hurd's letter of 13 June seeking colleagues' agreement to the publication of this Green Paper in early July.

I would be content for Douglas to proceed as indicated and thereby generate what could prove to be a wide-ranging debate on alternatives to imprisonment in England and Wales. We in Northern Ireland will be taking a keen interest in developments in this area of criminal policy.

Copies of this letter go to the Prime Minister, Members of H, the Attorney General and to Sir Robin Butler.

Yours

TK

DMC/3255

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Douglas Hurd CBE MP
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

29 June 1988

Dear Home Secretary

MURDER AND LIFE IMPRISONMENT

Thank you for the copy of your letter of 2 June to the Lord Chancellor about the proposed review by a Select Committee of the House of Lords.

Although Select Committee's remit will not extend to Northern Ireland, for the reasons set out in my letter of 29 January, its conclusions on the definition of the law of murder, life imprisonment as the mandatory penalty for murder and on the present procedure relating to minimum recommendations will all be of interest to us. Also, although our procedures for the review of indeterminate sentences are different from those which apply in Great Britain, we shall wish to consider the Committee's conclusions on review and release and the obtaining of advice from the judiciary.

I note what you say about timing, as regards both the setting up of the Committee and the period which they are likely to take to complete their work, and am content. I have no comments to make

on the draft terms of reference, which do not encourage the Committee to look at the mandatory versus maximum question but at the same time do not prevent them from covering this aspect.

I am copying this letter to the Prime Minister, the Lord Chancellor, John Wakenham, John Belstead, Malcolm Rifkind, Patrick Mayhew, Kenny Cameron and Bertie Denham.

yours sincerely

Martin Donnelly

pp TK

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

HOME AFFAIRS:

Sentencing Policy

PT3

PRIME MINISTER

You were concerned that the earlier draft of the terms of reference for the "Lords Select Committee Review on Murder and Life Imprisonment" were too narrowly drafted in that they seemed to exclude consideration of the penalty for murder. Neither did you think that the Home Secretary's suggestion of Lord Carr as Chairman of the Committee was advisable.

Content:

- with the Home Secretary's revised suggestions for the terms of reference (Annex A of the attached); and — not attached (Sorry - flagged A). It is better than it was.

- with Lord Roskill, as his choice for the Committee's Chairman, with Lord Hailsham or Lord Rawlinson as possibilities if Lord Roskill were not willing to take it on? Yes

DM.

DOMINIC MORRIS
28 June 1988

cf. PA -
Told Nick Sanderson
he agrees No need to write
DM

DS3AAF

IN CONFIDENCE

C(88)G

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

27 June 1988

Dear John,

MURDER AND LIFE IMPRISONMENT

You will have seen the replies from colleagues to my letter of 2 June about the proposed Select Committee, including the Prime Minister's comments as conveyed in her Private Secretary's letter of 8 June.

As you know, my intention in framing terms of reference which did not mention the penalty for murder in terms was to avoid raising the profile of the Committee, and I hoped that the form of words I suggested was sufficiently wide to allow the Committee to look at the penalty if it wished to do so. Nevertheless, I would not be opposed to making it clear that the penalty is not excluded. If we do this, I think it would be better to refer directly to the questions which exercised the Lords in the debates on the Criminal Justice Bill, namely whether imprisonment for life should be a maximum or a mandatory penalty and what should happen to the judge's power to make a minimum recommendation. I enclose a draft which approaches the matter in that way. I have sent a copy to David Windlesham suggesting that he get in touch with you to set in motion the procedural steps towards the establishment of the Committee.

As regards membership, you will have seen the names which emerged from the correspondence, and will know most of the possible candidates better than I. In view of the Prime Minister's misgivings about the appointment of a former Home Secretary, it might be better to think in terms of a legal chairman. If Lord Roskill were willing to take it on, he would be an ideal choice, but I would not myself object to any of the other names which have been mentioned.

I am copying this letter to the Prime Minister, James Mackay, John Wakeham, Malcolm Rifkind, Tom King, Patrick Mayhew, Kenny Cameron and Bertie Denham.

Yours ever,

Douglas

The Rt Hon The Lord Belstead

IN CONFIDENCE

Annex A

DRAFT TERMS OF REFERENCE FOR A SELECT COMMITTEE

To consider

- the scope and definition of the crime of murder in England and Wales and in Scotland;

- the question whether imprisonment for life should remain a mandatory rather than a maximum penalty for murder; and

- the working of the arrangements for reaching decisions on the release of those serving life sentences for murder;

this consideration to include such matters as the sentencing judge's power to recommend a minimum period of detention and the means by which the Home Secretary and the Secretary of State for Scotland take judicial advice on individual cases where a life sentence has been imposed.

HOME AFFAIRS: Capital Punishment PT3

R29

CCG

NBPM

HOUSE OF LORDS,
LONDON SW1A 0PW

DL/84/151/01

27 June 1988

Dear John,

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

I refer to the Home Secretary's letter of 13 June about the proposed Green Paper.

In general I welcome the proposals aimed at reducing the number of offenders, particular young offenders, who are given custodial sentences, and the proposal to enable the courts to impose a new sentence, a supervision and restriction order, with particular requirements according to each offender's circumstances. If this proposal were enacted, it would present a challenge to all concerned. In particular, if the precise terms of each order were to be imposed by the Magistrates or the Judge, they might well need considerable assistance before formulating the terms in particular cases.

When discussing the proposed orders, the draft Paper mentions the possibility of a magistrate supervising the order once it has been made. I can see the attraction of seeking to enhance a court's confidence in the orders by involving judicial oversight. However, the possibility needs to be approached with care. We would have to be clear whether that supervision would be limited to exercising a judicial function such as amending the terms of the order or would involve more active case supervision, as I understand occurs in some jurisdictions in the United States. I would also be wary if it were to be suggested that a Judge should supervise an order imposed at the Crown Court.

I notice the suggestion that the courts will need to take account of the costs of punishment in the community and in prison (para. 3.30). While it may be unobjectionable and even welcome for the courts to take account of these costs, it should of course only be one of the factors which they take into account. In addition, to give the courts such information would be a sensitive matter for the judiciary and would need careful handling. I do not

consider it objectionable for such information to be circulated to Judges and magistrates as general background to their work. However, it would be inappropriate, for example, for the prosecution to provide such information in court of their own volition in particular cases.

The Paper proposes increasing the maximum age limit for juvenile court proceedings from 17 to 18 and giving magistrates and the Crown Prosecution Service power to determine whether criminal proceedings against 18 to 20 year olds be heard in the juvenile court (paras 3.5 & 3.6). The latter point is of particular interest, in the light both of the difficulties which have been faced by the CPS since their establishment and of the possibility of transferring to the prosecution the magistrates' power to decide whether each either way case is to be tried in the magistrates court or the Crown Court: this transfer is currently envisaged in the work which is being done on committal proceedings - which is likely to be made public in a consultation paper in due course.

In his letter Douglas mentions the resource implications of his proposals. Although the public expenditure implications of the longer terms proposals are likely to bear upon others more heavily than upon me, those proposals are likely to have resource applications for me, particular with regard to legal aid and the workload of the Crown Court. Further information will be needed before this can be assessed.

I am sending copies of this letter to the Prime Minister and other members of H Committee, the Attorney General and to Sir Robin Butler.

Yours ever,

James.

The Rt. Hon. John Wakeham MP,
Lord President.

DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 01-210 3000

From the Secretary of State for Social Services

CCSG

MSPM

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the
Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

27 June 1988

Dear Douglas,

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

Thank you for the sight of your letter of 13 June to John Wakeham enclosing a draft Green Paper.

I fully support your aim of making effective use of community based disposals to enable a reduction in the use of custody in appropriate cases. Clearly there will need to be wide debate. Your Green Paper will give structure to this and I agree that it should be issued. I set out below some specific points that you will wish to consider.

I welcome in prinicple the proposal in paragraph 3.6 to increase the age limit for the juvenile court. However juvenile courts are currently "shared territory" between Local Authority Social Services and the probation service. The resource implications of any increase in the workload of Social Services will need to be examined.

In paragraph 3.19 the draft discussed offenders who misuse alcohol or drugs. I think that you will need to guard against any suggestion of <u>compulsory</u> treatment, which would be strongly opposed by the medical profession at least and be in contradiction to the Mental Health Act 1983. On the question of urine tests, there might be some small resource issue for the NHS, should it be involved, but I wonder whether such tests would be effective on sophisticated users in an "open" setting.

Finally I endorse your recognition in paragraph 3.26 that conditions of orders should not be overdemanding. A balance will need to be sought to enable orders to be testing enough to be effective on offenders' behaviour and to command the confidence of the courts and the public, but not to be so rigorous that offenders are in effect set up to fail.

I am sending copies of this letter to the Prime Minister, John Wakeham, other members of 'H' Committee, the Attorney General and to Sir Robin Butler.

JOHN MOORE

HOME AFFAIRS: Sentencing Policy 1973

RESTRICTED

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

27 June 1988

Dear Philip

DRAFT GREEN PAPER:
PUNISHMENT, CUSTODY AND THE COMMUNITY

The Prime Minister has seen a copy of the Home Secretary's letter of 13 June to the Lord President with which he enclosed a copy of the draft Green Paper.

The Prime Minister would be grateful if the drafting of the Green Paper could be looked at again with a view to sharpening it up and ensuring that the case for the changes is presented in a more effective way.

I am copying this letter to the Private Secretaries to the Lord President, the other members of H Committee, the Attorney General and to Sir Robin Butler.

Yours sincerely

Dominic Morris

(D. C. B. MORRIS)

Philip Mawer, Esq.,
Home Office.

RESTRICTED

It is very repetitive and apologetic and hotgrid.

PRIME MINISTER

Could they have a look at it again. If the idea is to be sold, the author must believe in it.

24 June 1988

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

The Home Secretary has produced a draft Green Paper designed to encourage the courts to make more use of non-custodial sentences for 17-20 year olds. As drafted, it is unlikely to do the trick.

Background

Three factors are putting increasing strain on prison accommodation. **First,** more cases are being tried in the Crown Courts instead of magistrates courts: Crown Courts pass longer sentences than magistrates. **Second,** the Crown Courts are giving longer sentences for serious crime. **Third,** less use is being made of parole.

Some states in the USA, faced with similar pressures, have also turned to non-custodial forms of punishment for certain categories of offence. It is too early to draw any firm conclusions from their experience.

The cost of keeping people in custody is driving the Home Office to look at alternative forms of punishment. But another factor influencing them in this direction is the research work on the effects of different forms of punishment on curbing crime. The results of such work, both here and in the USA, suggest that there is no factual basis for thinking that one form of punishment will be more or less effective than another in deterring crime, except insofar as imprisonment prevents re-offending for a while.

Although a considerable amount of research has been done in this area, it is fraught with problems. International comparisons are notoriously difficult because of the

different ways people classify crime. (The way people classify crime almost certainly lies behind the apparent 'fact' that rape is 20 times more common in Belgium than in the UK).

Even within the UK, it is difficult to compare the tendency to recidivism on the part of those who have been locked up compared with those who have been given community service orders. Arguably one is not comparing like with like, since custody is regarded as a stiffer sentence than a community service order. Even where this difficulty can be surmounted, it is really only recidivism which can be measured. The deterrent effects of different forms of punishment on would-be offenders are important, but probably not measurable.

Thus this is an area where the facts cannot clinch the argument. Other factors, such as a view of what is right, and a desire for retribution, are important.

Critique

A problem with the draft Green Paper is that it assumes that a combination of the cost argument and the research evidence will lead all reasonable readers to agree that non-custodial sentences would be more suitable than custody for many less serious crimes. This cannot simply be assumed. The cost of keeping large numbers of people in custody is rightly a matter of concern to the Home Office. But judges and magistrates do not accept that it is rightly a matter of concern to them. They are unlikely to change sentences for less serious crimes unless they are convinced that the alternatives will be no less effective than locking people up. The public are likely to take the same view.

Bringing about a change in sentencing is made more difficult by the fact that existing non-custodial options are not generally well regarded by the courts. Practice varies across the country: national standards have just been introduced for community service orders. It is hard for the public at large to get an impression of what is achieved via community service.

The Green Paper floats changes to the present arrangements for non-custodial sentences. These are designed to give the courts - and the public - greater confidence in options which do not involve locking people up. But at this point the paper is wordy and lacks focus. The changes are summarised in paragraph 3.21, but they do not leave a clear impression on the mind. They sound like tinkering to improve the present system.

One reason for the lack of impact is the paper's desire not to offend the Probation Service. If it was not pulling its punches, the paper would say that the reason courts and public opinion have taken a dim view of punishment in the community to date is because too many probation offices have operated a lax regime which scarcely amounts to punishment. Not enough emphasis has been put on control in community service orders.

Conclusion

There are strong practical and public expenditure reasons for looking for alternatives to custody. These are buttressed by the lack of evidence that locking people up discourages crime. These tangible factors are bound to weigh heavily with Government, although it is important that Government should not lose sight of intangible factors such as the desire for retribution.

The Green Paper points up the gulf between professional experts in criminology on the one hand; and the courts and public opinion on the other. It assumes too readily that all reasonable men will share the views of the former. It needs to be more tautly and persuasively argued if it is to change opinions.

In terms of the Government's overall strategy, it is important that the paper is not seen as advocating a "softer" approach to crime by young men. There is much pressure for longer custodial sentences, and the government has said that it is in favour of longer sentences for serious crimes. It is not necessarily inconsistent to argue for fewer custodial sentences for other kinds of crime by 17 to 20 year olds. But the non-custodial options must be credibly tough. Criminologists slip all too easily into dismissing most crime as petty and merely concerned with property. Crime is always serious to the victim.

The paper would be more effective if it made the following points clearly:

(a) There is no conclusive evidence that particular forms of punishment are more or less effective in deterring crime.

(b) Locking people up is expensive and does not produce a return to society, other than temporarily stopping people from committing further crimes.

(c) Alternatives to custody could produce a return to society through community service. These should be both visible and measurable i.e. so much graffiti cleaned up in a given area.

(d) Such alternatives need to be clearly distinguished from existing community service arrangements. The paper should say succinctly in what way its proposals are different from, and tougher than, present non-custodial arrangements.

CAROLYN SINCLAIR

CCBC.

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

APPOINTMENTS - IN CONFIDENCE

NBPM

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

27 June 1988

Dear Douglas,

MURDER AND LIFE IMPRISONMENT

In my letter of ~~14~~ flop June, I said that Kenny Cameron and I would discuss who might be included in the proposed Lords Select Committee as the Scottish Judicial Member; we have since seen copies of James Mackay's letter to you of 15 June.

After careful consideration of what is manifestly a limited field of choice, and given the desirability of appointing someone with recent judicial experience of criminal work, Kenny Cameron has suggested, and I agree, that the most appropriate Scottish candidate would be Lord Jauncey. I should be grateful if this suggestion might be taken into account in any further consideration of the proposal for a Select Committee.

I am sending copies of this letter to the Prime Minister, James Mackay, John Wakeham, John Belstead, Tom King, Patrick Mayhew and Bertie Denham, and to Kenny Cameron.

Yours ever,

MALCOLM RIFKIND

HJS175F2

HOME AFFAIRS : Capital Punishment PT3

PAMABS

(4)

PRIME MINISTER

The Home Secretary has circulated to 'H' the attached draft of a Green Paper on the scope for a more structured and demanding form of non-custodial sentencing for young offenders as an alternative to imprisonment. I also attach a note by Carolyn Sinclair of the Policy Unit commenting on it.

There are two issues which I think you might want to consider:

The first is presentation. The document as drafted is so anxious to appear to keep an open mind that it simply comes across as diffuse and indecisive; the main proposals, summarised at paragraph 3.21, leave no clear impression. The paper fails to bring out clearly the main point that any sentence should represent appropriate punishment for the offence at issue, and not expose the public to unacceptable risk. The admirably terse language in the Home Secretary's letter makes these points much better than the Green Paper itself. So should its publication be delayed so that Home Office can sharpen up (and make more decisive) the introduction, and section three in particular? It would need, of course, to stay fairly 'green' on controversial issues such as electronic tagging.

The second issue is timing. Re-casting would delay it a bit. If it cannot be issued before the recess, as the Home Secretary wishes, it might be worth holding it until a little way into the next Session to avoid a document, which could very easily be misconstrued, coming out too close to the Party Conference. Holding it over until late autumn would leave ample time for a subsequent White Paper and a Bill in the Fourth Session of the Parliament, but would leave only just sufficient time for a Bill next Session.

The best outcome would be a sharper paper issued towards the end of next month. Agree that the Home Office should be asked to proceed on that basis?

DM.

DOMINIC MORRIS

24 June 1988

cc BG

K01970

MR MORRIS C.F.

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

You asked if we would like to comment on the Home Secretary's proposals to H Committee – H(88)5 attached

2. The central point in this subject is the cost of the spiralling prison population, and the prison building programme that it requires. Imprisonment is by far the most expensive court sentence. It is also worth bearing in mind that the constant pressure of increasing prisoner numbers makes it more difficult to manage the prisons and to bring the Prison Officers Association under control.

3. The United Kingdom has a high prison population by European standards and I understand that all research indicates that no particular deterrent effects can be attributed to different types of court disposal (although imprisonment does, of course, take offenders out of circulation for a period). Given that a high proportion of prisoners are serving short sentences for lesser non-violent offences, there is thus a strong economic case for exploring the room for more structured and demanding forms of non-custodial disposal that the courts and public would see as genuine punishment in the community and which would fill the gap between imprisonment and the existing non-custodial disposals.

4. The proposal towards which the draft Green Paper is working is set out in paragraph 3.21. It would be a new closely supervised sentence, tailored for each offender, which could include various restrictions of free movement, community service and reparation. Paragraph 3.24 suggests that offenders'

compliance with the sentence might be overseen by magistrates and this could be important in winning the confidence of the courts.

5. Any proposals in this field are bound to be more expensive than the present non-custodial disposals because they will involve closer supervision. The risk is that the new sentence might mainly be given not to those who would otherwise be sent to prison but to lesser offenders who would be given non-custodial disposals in any event. If that happened, there would be no diversion from prisons and the overall costs of dealing with offenders would increase. This risk is, however, inherent in the situation, and will be well understood by the Chief Secretary who encouraged the Home Secretary to develop these proposals. If public discussion is to be stimulated in this field, then the Home Secretary's proposed new sentence includes a number of positive features and is probably as credible a package as can be assembled. We understand that the Home Secretary hopes that it may be possible to include these ideas in a second Criminal Justice Bill before the end of this Parliament.

6. The main political judgement that needs to be made on all this is, of course, whether the Government risks being accused of softness. My own view, for what it is worth, is that given the Government's consistent record of firm action on sentencing issues, it might well be possible to present these ideas successfully. The essential points to stress would, I think, be that it was a basic requirement that any sentence should represent <u>appropriate punishment for the offence at issue</u> and should <u>not expose the public to unacceptable risk</u>: within those basic propositions, the purpose of the present proposals would be to develop a type of court disposal that was more <u>cost effective</u> than imprisonment, and which would, in particular, enable offenders to <u>be required to do something for the community</u>, rather than be a deadweight cost to the taxpayer.

7. For this exercise to be successful, however, the presentation would need to be exceptionally good, and I am not sure that the

draft Green Paper meets that test. It strikes me that the document is so anxious to appear to keep an open mind that it simply comes across as diffuse and indecisive. If the points in the previous paragraph are to be made cleanly and trenchantly, then I think that the draft requires editorial sharpening throughout. (It would also be important to go through the draft with a toothcomb to see that there are no loose phrases that the media might exploit: for example the statement that "others are just thoughtless or drink too much" (paragraph 2.9) might be thought a particularly unfortunate reference to drunken young offenders at the present time.) You may wish to get Bernard Ingham's views on the presentation and how it might be improved.

8. The Prime Minister may wish to note the particular topic of electronic tagging. As the Home Secretary says, this is the issue on which the press are likely to seize initially, and the Home Secretary will need to be careful to avoid accusations of gimmickry and superficiality. I do not think, however, that it would be possible to publish a discussion document in this field without seeking views on electronic tagging, since it is a very topical subject that is squarely aimed at the Home Secretary's target area of effective supervision in the community. For what it is worth, my own view is that electronic tagging might have some purpose to play in, for example, enforcing a prohibition on attending football matches, but that using it as a device to incarcerate offenders in their own homes is a much more dubious proposition.

9. Finally, the Prime Minister may wish to bear in mind some considerations on timing. If she does not want this document coming out too close to the Conservative Party Conference, that means that it must either be issued before the recess, as the Home Secretary wishes, or that it should be held over until a little way into the next session. Holding it over until December would leave ample time for a subsequent White Paper and a Bill in the fourth session of the Parliament, if that was what the Prime Minister wished, but it would leave only just sufficient time for a Bill in the 1989-90 session.

AJL

A J LANGDON

22 June 1988

cc BG

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

NBPM

~~01-936-6201~~

B/f 30/6

01 936 6602

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

5th June 1988

Dear Douglas.

MURDER AND LIFE IMPRISONMENT

I have seen a copy of your letter of ✓ 2nd June 1988 to the Lord Chancellor.

I am quite content with all aspects of your proposals.

I have had copies of my note sent to all those to whom copies of your own letter were sent.

Yours ever,
Mackay

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

15 June 1988

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

Dear Secretary of State,

MURDER AND LIFE IMPRISONMENT

Thank you for your letter of 2 June about the proposed Select Committee of the House of Lords.

I agree that the appointment of a House of Lords Select Committee would be an appropriate way of taking this matter forward. I am content with the draft terms of reference attached to your letter and with your suggestions about the timetable both for the announcement of the Select Committee and for its work.

I am sure that it would be onerous and time consuming to serve on the Select Committee, whether as chairman or a member. I am therefore a little anxious about your suggestion of appointing a serving judge to the Committee. However Lord Roskill would certainly be a possible chairman if Lord Carr was not available, or a possible member: I do not know if he would be available. I suppose that Quintin Hailsham himself might be another possible chairman. Another possibility, from the senior Bar, would be Peter Rawlinson.

I am copying this letter to the Prime Minister, John Wakeham, John Belstead, Tom King, Malcolm Rifkind, Patrick Mayhew, Kenny Cameron and Bertie Denham.

Yours sincerely,

(Approved by the Lord Chancellor
and signed in his absence)

HOME AFFAIRS : Capital Punishment pt3.

ST. ANDREW'S HOUSE
EDINBURGH EH1 3DG

NBPM

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

14 June 1988

Dear Douglas

MURDER AND LIFE IMPRISONMENT

I refer to your letter to James Mackay dated 2 June about the proposed Lords Select Committee.

What you propose in relation to remit, chairmanship and timing matches closely the line agreed in earlier exchanges and I am content with what you suggest.

In particular I am grateful that you have taken my point that the remit should extend to Scotland and that the membership should include a Scottish judicial member. As you indicate, once the other membership is clearer Kenny Cameron and I will discuss who might be suggested in the discussions through the usual channels.

I am sending copies of this letter to the Prime Minister, John Wakeham, John Belstead, Tom King, Patrick Mayhew, Kenny Cameron and Bertie Denham.

Yours ever,
Malcolm

MALCOLM RIFKIND

HJS161F6

HOME AFFAIRS: Capital punishment pt 3.

010

GCBG

QUEEN ANNE'S GATE LONDON SWIH 9AT

13 June 1988

Dear John,

DRAFT GREEN PAPER: PUNISHMENT, CUSTODY AND THE COMMUNITY

We have been giving a lot of thought to developing different ways of dealing with offenders. We think more emphasis should be given by making offenders pay compensation to their victims and make some reparation to the public in general. This can be achieved only if offenders remain in the community and are not given custodial sentences. Last year, 69,000 offenders were sentenced to custody for indictable offences. For most of them, this was the right answer because of the seriousness of the offence. Sentences for violent crimes are increasing, rightly. But for others, a custodial sentence is a bad bargain for the community. If we can reduce that number, we shall ease the pressure on the prisons in the future. If we can make offenders face what they have done, understand the impact on their victims and accept responsibility for their actions, we may be able to reduce the amount of crime that is committed. These are long term policies, which will call for significant changes in attitudes and in the way the courts and probation service operate. They will not work unless they are accepted by the public. If these changes are to be made, we shall need to engage the public in a considered debate about the nature of crime and the kind of people who commit crimes. We shall need to show that more of them can be punished effectively without being imprisoned.

This calls for a Green Paper, and I attach a draft. Part I sets these issues in the context of developing penal policies and the existing penalties. It points out, for example, that 95% of all crimes are property offences. The basic principles of our proposals are given in paragraph 1.10; when financial penalties alone are inadequate, the penalty should include restrictions on the offender's freedom of action as a punishment, action to reduce the risk of further offending, reparation to the community and, where possible, compensation to the victim.

Part II describes the work which we are already doing to make existing penalties more demanding. These changes can be made without legislation or are included in the present Criminal Justice Bill. It refers, for example, to the introduction of national standards for community service and increasing the use of compensation orders. It also suggests that we should target

The Rt Hon John Wakeham, MP.

/over..

young adult offenders aged 17 to 20 and reduce the use of custody for 17 to 20 year olds. Last year, over 20,000 young men were sentenced to custody, one in every 100 young men in this age group. They account for about a fifth of all the sentenced males in custody and most of them are serving sentences of less than 18 months, mainly for property offences. I am sure that more of them could be punished effectively in the community and our proposals build on the work which has been done by DHSS to improve the arrangements for supervising juvenile offenders, so reducing the use of custody for those under 17. I have not set a target in the Green Paper for reducing the use of custody for 17 to 20 year olds but I aim to work towards a reduction of 3,000 a year by 1992. All of this work is in hand but we think it would be useful to describe what is being done, so that people can see that it is the first step of longer term policies.

The longer term proposals, on which we are seeking comments, are set out in Parts III and IV. Nearly half the offenders in custody have been convicted of burglary and theft offences and may have a history of previous convictions. If the prison population is to be reduced, more of these offenders must be punished in the community. We envisage a new order which would enable the courts to impose a wide range of requirements on offenders, tailoring the requirements to individuals. An offender might be required to pay compensation, to do community service work and to tackle his offending behaviour by attending a day centre. This is not possible now. Examples of programmes of supervision are given in the Appendix to the Green Paper. Other restrictions could be placed on people's liberty, such as requirements that they should stay away from specified places, or curfews, and such restrictions might be enforced by electionic monitoring. The press may focus on this but it is only a means to an end and not itself a punishment. A new penalty of this kind could be used repeatedly for some recidivist offenders so imprisonment would be reserved for those who had committed very serious offences, particularly offences of violence, and for professional rather than opportunist criminals.

The proposals for strengthening existing supervision arrangements (Part II of the Green Paper) give rise to resource implications which are being put to the Treasury in the context of the current PES round. The possible public expenditure implications of the longer term proposals (Parts III and IV) are at this stage more uncertain: we shall look into them more closely once we have a clearer idea of where we are going, in the light of the responses to the Green Paper.

These proposals, which build on existing policies but develop them in ways which would lead to major changes in the way we deal with offenders, have to be seen in the wider context of our policies on crime, with the changes we have made to the criminal law and to maximum penalties, and the new emphasis we have given to crime prevention and to helping victims. John Patten and I have been preparing the ground, both with our backbenchers and in discussions with the probation service and

other organisations interested in these issues. We think they will get a fair measure of support, though there will be criticism from some backbenchers and some members of the probation service. But I would hope the criticism will be of specific aspects of the proposals rather than the general direction of the policies.

I hope, therefore, my colleagues will agree that we should open up this debate and publish the Green Paper in early July, and I would be grateful to know if they are content by 28 June.

I am sending copies of this letter, and the draft Green Paper, to the Prime Minister, other members of H Committee, the Attorney General and to Sir Robin Butler.

Yours,

Douglas.

7/JUNE 1988

E.R

PUNISHMENT, CUSTODY AND THE COMMUNITY - DRAFT GREEN PAPER

Part I: Introduction

1.1 The Government is deeply concerned believes there is nothing inevitable about the rise in crime. It wishes to see severe penalties available for those who continue to commit serious and violent crimes; some people must stay in prison for a long time. But is also wishes to develop new forms of punishment in the community for those who commit less serious crimes. Two hundred years ago, criminals convicted of serious offences were likely to be transported to the colonies or hanged; then some 200 crimes were punishable by death. Imprisonment for convicted offenders was often only a temporary halt on the way to the colonies or the gallows. One hundred years later, the death penalty was available for only a few offences, mainly murder and treason; and penal servitude had replaced transportation as the main punishment for serious offences. The new Prison Commissioners enforced a rigid system of separate confinement of prisoners and hard labour. Although penal labour was abolished in 1898, imprisonment retained and should continue to retain its central place as a punishment for very serious offenders, particularly those who have committed violent crimes. Sentences for rape and robbery have become longer as the judiciary rightly reflect public concern about violence. But 95% of all crimes are property offences. Since probation was first introduced in 1907, a wide range of other sentences has been made available to the courts, some designed as alternatives to custody.

1.2 The time has come for a new approach to punishing criminals. Imprisonment restricts offenders' liberty, but it also reduces their responsibility; they are not required to face up to what they have done and to the effect on their victim or to make any recompense to the victim or the public. Some offenders can be

punished by restricting their liberty without putting them behind prison walls. If they are not imprisoned, they are more likely to be able to pay compensation to their victims and to make some reparation to the community through useful unpaid work. Moreover, if they are removed in prison from the responsibilities, problems and temptations of everyday life, they are less likely to acquire the self discipline and self reliance which will prevent re-offending in future. Punishment in the community would encourage offenders to grow out of crime and to develop into responsible and law abiding citizens.

1.3 Liberty under the law is highly valued by all of us. The deprivation of liberty is the most severe penalty available to the courts. The Court of Appeal has made it clear that a sentence of imprisonment should be imposed only when it is necessary and that, if it is necessary, the sentence should be as short as is consistent with the need for punishment; the Court of Appeal has equated 190 hours community service with 9-12 months imprisonment. Even so, 69,000 offenders were given a sentence of immediate custody for indictable offences in 1987.

1.4 Custodial sentences are imposed to show how seriously the public views criminal behaviour, to ensure that the offender does not commit offences against members of the public for a specified period, to deter the offender from committing further offences after release and to deter other potential offenders. The effect of custodial sentences is to restrict offenders' freedom of action by removing them from their homes, by determining where they will live during the sentence, by limiting their social relationships and by deciding how and where they will spend the 24 hours in each day. The restraints placed on offenders by walls, fences, secure buildings and staff supervision are not an end in themselves, but a means of ensuring that offenders comply with these restrictions. How much reliance is placed on security measures will vary according to the likelihood that a particular offender will escape or break the institutional rules in other ways, and the risk to the public which would follow. If an offender accepts the

conditions of detention and personal responsibility for keeping the institution's rules and avoiding offending, then less security is necessary. Those serving long sentences for very serious offences and who are a continuing risk to the public are likely to need maximum security. On the other hand, offenders who are thought unlikely to escape or commit offences if in conditions of minimum security can be held in an open prison.

1.5 Custody is, therefore, a continuum from close restriction to relative freedom. The more severe the restrictions, the more they produce conditions which are different from life outside. They limit the offender's personal responsibility for taking decisions on everyday matters. Imprisonment of any kind restricts individual initiative and freedom of choice. Prisoners do not have to provide for everyday needs such as food and clothing, to find or keep jobs, to look after their homes and their families. Imprisonment is likely to add to the difficulty which offenders find in living a normal and law-abiding life. Overcrowded local prisons are emphatically not schools of citizenship.

1.6 Courts in England and Wales have a very wide range of other penalties available to them. These include wholly or partially suspended sentences of imprisonment, community service orders, which were introduced as a direct alternative to custody, attendance centre orders for young offenders under 21, compensation orders, fines, and fixed penalties. All of these are punishments, not treatments. There are also supervision orders and care orders for juveniles under 17 and probation orders, which are made instead of a sentence. There are conditional or absolute discharges. The use of fines has dropped in the last few years, but nearly half those sentenced by magistrates' courts for indictable offences are still fined. Community service orders, probation and supervision orders account for a fifth of all the sentences given by the Crown Court and the magistrates' courts for indictable offences. 74,000 offenders received one of these orders in 1987.

1.7 Apart from financial penalties, most court disposals place restrictions on offenders' freedom of action. Community service orders and attendance centre orders require them to present themselves at a specified place, at specified times, to carry out activities which other people have decided they should do. Requirements in probation or supervision orders can make similar demands, for example, to attend a day centre or groups which help those abusing drugs or alcohol, or to take part in programmes of Intermediate Treatment. Even without requirements, a probation or supervision order will result in some intervention by a probation officer or the social worker in the life of the offender, with the aim of improving the offender's behaviour. Unlike probation, a conditional discharge does not involve continuing supervision of the offender, but its purpose is to discourage further offending by making the offender liable to punishment for the offence if he is convicted of a further offence within a specified period. Thus, although many offenders remain in the community, their liberty is restricted to a varied extent.

1.8 A major objective of the criminal justice system is to reduce crime. The Government's policies on crime have placed increasing emphasis on crime prevention; this will continue. Such a policy involves individuals and organisations taking steps to safeguard, so far as possible, their families, employees, customers and property. It also requires people to take responsibility as individuals for their actions. People have a choice whether or not to commit a criminal offence. If offenders can be helped to make the right choices then the risk of further offending is reduced. This means increasing the offender's sense of responsibility and understanding of the need to avoid crime in future. It requires self-discipline and motivation. It is better that people should exercise self control than have controls imposed upon them. To do this, they need to understand the consequences of their actions. Making young people face up to their offending and its consequences has been one of the

successful features of the Intermediate Treatment schemes for juvenile offenders. Many probation services have similar schemes; offenders are confronted with their offending behaviour, and have to ask themselves questions about the effects of their behaviour on the victims and to tackle problems, such as alcohol abuse, in a practical way. Some offenders lack the skills to cope with everyday problems and personal relationships. If they can be helped to develop the skills necessary for life and work, this should encourage greater self reliance and self esteem; there should be less incentive to offend again.

1.9 Another feature of the Government's policies has been the increased emphasis given to the position of victims. Requiring offenders to make some recompense for the injury, loss or damage they have caused to individuals or the community is one way to bring home to them the harm they have done and the serious view which most of us take of their actions. Such reparation is already a feature of compensation orders and community service orders and the Government considers that compensation to individuals and reparation to the public should be an important element of punishing offenders in the community.

1.10 When an offence is so serious that a financial penalty alone is inadequate, the Government considers that the penalty should, where possible, involve these three cardinal principles.

(i) restrictions on the offender's freedom of action - as a punishment;

(ii) action to reduce the risk of further offending; and

(iii) reparation to the community and, where possible, compensation to the victim.

1.11 These three objectives can often best be met by supervising and punishing the offender in the community. Imprisonment does not allow the offender to make any form of recompense and it reduces offending only by restricting the opportunities for a limited period. Imprisonment is likely to diminish the offender's sense of responsibility and self reliance. If offenders are permitted by the courts to remain in the community, they should be able to maintain their relationships with their family, their opportunities for education, training and work will be better, and they should be able to make some reparation for the harm they have done.

1.12 The Government therefore believes that more offenders should be dealt with in the community, rather than by a custodial sentence. We need to move away from the view that imprisonment is the only effective punishment for most crime. But not every sentencer or member of the public has full confidence in the present community disposals. Supervision and punishment in the community are likely to be more effective in meeting the objectives set out in paragraph 1.10 and should be more economical in public resources. On average, holding someone in prison for a month costs twice as much as a community service order of average length (140 hours).

1.13 The rest of this Paper sets out the Government's proposals, which aim to give the courts and the public greater confidence in disposals in the community. Custody should be reserved as punishment for serious offences, especially when the offender is violent and a continuing risk to the public.

1.14 Part II describes work already being done

proposals which can be put into effect without legislative change

changes being made in the Criminal Justice Bill, for example, on compensation orders.

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Parts III and IV develop these policies further and set out the Government's ideas for punishment in the community. These would need further legislation and the Government would welcome comments on them.

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Part II: What can be done now

Improving the arrangements for existing orders

2.1 The Government has this summer taken steps to introduce national standards for community service orders. The community service order was introduced in 1973 and designed for offenders who would otherwise be at risk of custody. It may only be imposed for imprisonable offences. An order must specify the total number of hours work to be performed between the minimum of 40 hours and a maximum of 240 hours (120 hours for 16 year olds) to be completed within 12 months. The aim is primarily punitive, but community service should ensure the offender gives back something to the community. Because it involves work, an order can be made only with the offender's consent. The European Convention on Human Rights forbids 'forced labour and degrading punishment'. At present, about 31,000 offenders are sentenced to community service each year, compared to 69,000 sentenced to immediate custody.

2.2 Offenders doing community service carry out a wide variety of tasks for public and voluntary organisations through arrangements made by the Probation Service. Examples are clearance or conservation work, gardening and decorating, helping disabled people to go shopping and running luncheon clubs for pensioners. All the work is unpaid and of a kind normally undertaken by voluntary effort. For many offenders, giving to others, rather than taking or receiving, is an unfamiliar but salutary experience.

2.3 Community service should be rigorous and demanding, otherwise the sentencers and the general public will not accept it as punishment. The need for frequent and punctual reporting is part of the discipline imposed by the order. The work to be done should be useful and of benefit to the community; there is no reparation if the work itself is pointless. Ideally, the public should be able to see the results of the work and, in the process,

the offender's self discipline and motivation should be improved. Community service is an obvious option for those with family or other responsibilities, including women with young children, and those in work or in training. Community service should be organised in such a way that they can continue to meet those responsibilities.

2.4 National standards for community service orders are being introduced, and the Government intends to make Rules for the operation of community service under the Powers of Criminal Courts Act 1973. The standards will lay down the type of work to be done by offenders, the way hours worked should be reckoned, standards of performance and behaviour and the action to be taken if an offender fails to comply with the requirements of the order. Offenders will be expected to begin work promptly after the order is made and to attend for work regularly and punctually. There will be a strict, predictable and consistent policy for dealing with offenders who fail to comply. The number of hours to be worked should take account of the seriousness of the offence and, for some offenders, it may be possible to make the reparation suitable for the offence. For example, vandals might be required to do work which improves the appearance of the neighbourhood.

2.5 The most direct way for offenders to recompense their victims is through compensation orders. Section 35 of the Powers of the Criminal Courts Act 1973 empowers courts to require an offender to pay compensation to the victim for any injury, loss or damage resulting from the offence of which he was convicted and any other offences taken into consideration. Section 67 of the Criminal Justice Act 1982 strengthened this power by enabling courts to order the payment of compensation either instead of, or in addition to, dealing with the offender in any other way; a compensation order could therefore be a disposal in its own right. If an offender is unable fully to recompense the victim, the court has the power to ensure that he pays what he can. It may also order payment of compensation through instalments over a period of time. However, the Court of Appeal has indicated that

courts should not order an offender to pay compensation in instalments when they also sentence the offender to a period of imprisonment. Thus it may benefit the victim if the offender remains in the community. The provisions of the Criminal Justice Bill, now before Parliament, would improve the likelihood of compensation being paid to victims by requiring courts to consider in every relevant case whether a compensation order should be made. When it does not order compensation, the court will be required to give reasons for not doing so. Under these provisions, courts can be expected to use compensation orders more readily. By doing so, they would place the responsibility where it belongs by requiring offenders to pay for the injury, loss or damage they have caused.

2.6 When a probation order is made, the offender is left at liberty but is subject to certain requirements about his way of life, including an obligation to co-operate with the supervising probation officer. The probation officer's skills are used to help the offender to face the problems and difficulties which may have led up to the offence, and to prevent further offending. The minimum period of a probation order is six months and the maximum three years. Since 1982, the courts' powers to attach conditions to probation orders have been strengthened. An order may require the offender to attend a particular place at particular times and to take part in activities set out in the order. Most probation services have day centres which offenders can be required to attend for up to 60 days. The aim of these centres is to involve people on probation in practical and positive tasks under the supervision of probation staff and so divert them from a pattern of reoffending. A probation order can be made only with an offender's consent; this is necessary if the order is to be used constructively to alter his behaviour.

2.7 Much excellent work has been done by the probation service with offenders on probation. Many offenders are ill equipped to cope with life and need help in sorting out their problems. It is the particular responsibility of the probation service to persuade

offenders to face up to what they have done, to understand its consequences for others as well as themselves, to get them to see that they could have avoided offending and they can avoid it in future. This should be a significant part of the supervision of any offender on probation. The probation service can also give them help with handling personal problems and to acquire social skills, such as relationships with other people, how to manage money, how to cook for themselves and to keep house, and how to apply for a job. The probation service can help offenders, when necessary, to get access to literacy and numeracy classes, to training for work and to other activities which will help them make more constructive use of their leisure and improve their employment prospects. Some offenders may need closer supervision, especially in the early stages of an order. If an offender is made to discuss regularly with the supervisor how to plan the day's activities, this may encourage greater self discipline.

2.8 All of this can be done within the terms of existing legislation. Some of it is already being done. The Government would like to see these proposals taken forward in a comprehensive, structured and determined way thoughout all 56 probation areas. It is particularly important that those on probation should be made to face up to their offending behaviour and that the aims of the probation order should be made clear to them at the outset. It is also important that the probation service should target its work on those most at risk of custody and should demonstrate to magistrates and judges the work which the service is doing with serious offenders. The Home Office will be asking the probation service to review its activities and to develop a programme of action in each area aimed at ensuring that the supervision of serious offenders in the community commands the confidence of the public and the courts.

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Young Adult Offenders

2.9 The Government is particularly concerned about young adult offenders, those aged between 17 and 20. In 1987, 99,700 young men and 12,300 young women were sentenced by the courts. Over 20,000 young men and 600 young women aged 17 to 20 were sentenced to custody. (This compares with 41,000 men aged over 21 and 2,500 adult women.) In 1987, one in every 100 young men in this age group was given a custodial sentence. The Crown Court sends a higher proportion of young men aged 17 to 20 to custody than of men aged 21 and over. Young men in this age group account for about a fifth of all the sentenced males in custody. Most of them are serving sentences of less than 18 months. Those in custody include some who are well launched into a criminal career, but many offenders of this age are immature, misguided and easily led by others, particularly others of the same age, into competitive risk-taking in offending. Others are just thoughtless or drink too much.

2.10 There is a particularly sharp contrast in the way the courts deal with 16 and 17 year old boys. Very similar numbers of 16 and 17 year olds are cautioned or sentenced each year, but nearly twice as many 17 year olds as 16 year olds receive custodial sentences and 16 year olds are four times more likely to be cautioned. This difference is not fully explained by differences either in the seriousness of the offences or the offenders criminal history. Moreover, the same statutory restrictions apply to the use of custody for all offenders under 21.

2.11 In the last five years, there has been a marked change in the way offenders under 17 are dealt with. So far as possible, juvenile offenders are cautioned rather than brought before the courts and, if they do have to appear before a court, they are kept out of custody. Local services with an interest in dealing with juvenile offenders have been encouraged to get together to work out how best to deal with individuals. Before deciding whether to caution, the police take account of the views of other

services, who may know more about the offender and his family. But cautioning should not become an alternative system of justice, without the safeguards provided by the courts. The Home Office is aware of criticisms which have been made and is looking again at the guidance given to the police on cautioning. The courts' powers to require juvenile offenders to take part in programmes of activities as a condition of a supervision order have been strengthened and the arrangements for carrying out supervision orders have been improved. This has been helped by grants of more than £15 million by the DHSS for the development of intensive Intermediate Treatment arrangements for more serious juvenile offenders. As a result, proportionately fewer juveniles are brought before the courts and the proportionate use of custody is declining.

2.12 A new approach is need for young adults. Most young offenders grow out of crime as they become more mature and responsible. They need encouragement and help to become law abiding. Even a short period of custody is quite likely to confirm them as criminals. It can help them to acquire new criminal skills from more sophisticated offenders. They see themselves labelled as criminals and behave accordingly. The policies for juvenile offenders will not be entirely suitable for the older age group, but some features in the new approach would be the same. As a first step, more could be done to work out co-ordinated local policies for young adult offenders. Local circumstances will vary and the first objective should be to reduce offending by diverting young people from crime. The scope for cautioning more young adults needs to be reviewed by police forces and the probation service should consider whether more use could be made of community service, and whether special arrangements are needed for young adult offenders in day centres especially to ensure that they face up to their offending behaviour.

2.13 A number of probation areas and voluntary organisations have become interested in developing arrangements for dealing with young adult offenders. The Home Office is providing funds for work to bring together information about good practice in local co-ordination and in community penalties for this age group. Probation Committees have been told that priority will be given to approving those new day centre projects which target young adults and offer strict and structured regimes aimed at reducing reoffending. The Home Office is funding some development work on these regimes. Voluntary organisations can promote similar work and encourage activities to help offenders to become law-abiding members of the local community.

2.14 Since 1980, the Home Office has opened 24 new senior attendance centres for this age group and there are now 26 senior centres in large towns and cities. They are open on Saturdays and the aim is to encourage young people in a disciplined environment to make more constructive use of their leisure time. Offenders can be required to attend these centres, usually on Saturday afternoons, for up to three hours on one day and a maximum of 36 hours. This is a loss of leisure over a considerable period, a punishment which is generally understood by young people. Unlike day centres, attendance centres are not suitable for offenders who need sustained supervision. In places which have senior attendance centres, liaison between the officer-in-charge and the probation service should ensure that attendance centres and probation day centres cater for different types of offender and the courts know what is available locally.

2.15 The number of juvenile offenders sentenced to custody fell from 7,900 in 1981 to 4,000 in 1987, a reduction of about a half in six years. This was achieved through the shared commitment and determination of the social services, the probation service, voluntary organisations and the juvenile courts. Information to the courts both about individual offenders through social enquiry reports and the local arrangements for community disposals is essential if the courts are to have confidence in these disposals

and to reduce the use of custody for young adults. The Government thinks it reasonable to look to a significant drop in the number of young adults sentenced to custody. This presents a challenge both to sentencers to review their use of custody and to the probation service to review the sufficiency of its community based disposals to meet both the needs of young adult offenders and the requirements of punishment demanded by the courts and public.

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Part III: Proposals for Punishment in the Community

3.1 Punishment in the community is desirable in its own right, but it is essential that the public and the courts should have confidence that it is effective. Imprisonment is only one of a number of possible punishments. There are over 50,000 people in custody in England and Wales, nearly one in every 1,000 of the total population. Do they all need to be there? In 1978, the prison population was 41,800 and in 1968 it was 32,400. If past trends continue, the prison population can be expected to rise to well over 60,000 and possibly to 70,000 by the year 2000. The Government is committed to a substantial programme of building new prisons costing almost £1 billion and the recruitment of more prison officers. But we should consider whether better methods can be found to deal with many of the offenders who now go to prison. The question is important and should be widely discussed.

3.2 Who should be sent to prison? Life imprisonment is the mandatory sentence for murder. Most people would agree that offenders convicted of rape, robbery, aggravated burglary and other very serious violent offences should be sent to prison for a long time; some of these offenders will be a continuing risk to the public, and among them will be a number suffering from mental disorders which require them to be detained for hospital treatment. Similarly, most people would agree that those convicted of trafficking in large quantities of controlled drugs, and of arson and criminal damage endangering life, would be candidates for custody. But most of those now in prison have not been convicted of these offences. Nearly half the sentenced population have been convicted of burglary and theft offences and about two thirds of them have six or more previous convictions. Most people think of burglary as a well planned and forced entry into someone's home. But many burglaries are opportunist thefts from houses with open doors or windows, with no damage to the house or threats to the people living there. Nearly half the burglaries reported are of offices, shops and other buildings, not houses. Similarly, violent offences can vary from a premeditated

and unprovoked assault with a knife, a drunken quarrel which deteriorates into a fight in which someone is injured, throwing a stone or giving someone an unnecessary and hefty push. Within most categories of offence there are varying degrees of culpability, and of injury or damage caused. Are we sending too many people to prison? Is imprisonment the best, or only, way to deal with recidivist burglars and thieves? Can the public be protected effectively by other means? Should a distinction be made between burglary of people's homes and burglaries of other premises?

3.3 The Government believes there is scope for reducing the use of imprisonment by introducing a form of punishment which leaves the offender in the community but has components which embody the three elements identified in paragraph 1.10, punishment by some deprivation of liberty, action to reduce the risk of offending and recompense to the victim and the public.

Young Offenders

3.4 Punishment in the community would be particularly suitable for young men and women, who are likely to grow out of crime. Although some may have several convictions, their crimes may be linked to drug abuse or drinking too much, or pressure from a particular group of friends. Others have difficulty in coping with adult life. Punishment in the community, with compensation, community service and help to sort out the underlying problems, could well be suitable for these offenders. There is a difference between a persistent offender of this kind and the older professional criminal.

3.5 At present, young people aged between 10 and 16, who are charged with a criminal offence, normally appear before the juvenile court. Although juvenile courts were not established until 1908, special arrangements which enabled magistrates to hear cases against juveniles have existed since the mid-nineteenth century. The upper age limit was fixed at 16 in 1850 and

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increased to 17 in 1933. No change has been made in this upper age limit to bring it into line with the age of majority when it was reduced from 21 to 18.

3.6 There is little difference in the pattern of offending between 16 and 17 year olds, though 17 year olds are marginally more likely to be charged with offences of violence. Many 17 year olds are hardly more mature than most 16 year olds. But some 16 year olds may be more mature than a number of 18 year olds. The Government considers that there would be advantage in increasing the age limit for the juvenile court to those under the age of 18, so that the transition to the adult court would coincide with the age of majority at 18. Moreover, there could be advantages in some flexibility in dealing with those aged between 16 and 21 so that their cases could be heard either in the juvenile or adult courts. This would enable immature or otherwise vulnerable defendants to come before the juvenile court and the very mature 16 or 17 year old to appear in an adult court. Some flexibility is possible in other countries, such as West Germany and France. The Government would welcome views on the proposal to increase the age limit for the juvenile court to those under 18 and on the idea of giving magistrates or the Crown Prosecution Service power to determine that criminal proceedings against some defendants aged 18 to 20 could be heard in the juvenile court or others aged 16 or 17 in the adult courts, even if they are not charged with adult co-defendants.

Components of punishment in the community

3.7 Under the existing law, a structured programme for an offender can be achieved by making requirements attached to a probation order. The programme can be made to fit the offender, and the possibility of varying requirements during the currency of the order prevents supervision from becoming too mechanical. These features could continue, but the range of present requirements could be extended. The arrangements for punishment in the community could include many features of the present

disposals, compensation orders, attendance at a day centre or an attendance centre and community service. The restrictive elements might include close supervision of the offender's whereabouts, residence at a particular place, or confining the offender to his home during specified hours. Other restrictions might be forbidding particular activities, or staying away from particular places. Legislation might be introduced which would enable any or all of these elements to be combined in a single supervisory order.

3.8 The Criminal Justice Bill makes changes in the arrangements for compensation orders. The Government hopes that these changes will increase the use of these orders. It has been suggested that the courts should be able to pay the total sum awarded to the victim immediately and then recover the money from the offender. The victim would benefit by having the compensation more quickly but the direct link between the offender's payments and the victim would be lost. Meanwhile the court and the Exchequer would, in effect, be lending the outstanding money. **Should the courts be empowered to pay the whole sum to the victim immediately from fine income and then to recover the money from the offender?**

3.9 Consideration has also been given to the possibility of making direct reparation by the offender to the victim an element in the new arrangements. Between 1985 and 1987, the Home Office funded four experimental reparation schemes, enabling a victim and offender to meet, on an entirely voluntary basis, to discuss the offences and, if possible, to arrange reparation. One of the schemes linked reparation to police cautioning as an alternative to prosecution. Two others assessed it as a possible adjunct to other court disposals for offenders in magistrates' courts. The fourth examined the potential for diverting offenders in the Crown Court from custody. A report on the assessment of these schemes will be published later in the year. In some schemes, there seemed to be confusion about whether reparation was for the benefit of the victim or a means of rehabilitating the offender. Of course, victims should not be placed under pressure to co-operate in arrangements for reparation and no victim should

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feel under any obligation to take part in such arrangements. Nor should a victim's decision on reparation affect the court's decision in sentencing the offender. It would be unjust if the severity of a sentence depended on the victim's willingness to take part in reparation and it would place undue pressure on some victims. On the other hand, mediation between the offender and the victim could be useful when they are known to each other and are likely to remain in contact, for example, as neighbours or colleagues at work. **Would it be desirable for the probation service to arrange such mediation informally, when it would be helpful? Should direct reparation by the offender to the victim be restricted to monetary payments by compensation orders paid through the courts?**

3.10 General reparation to the public can be made through community service. Legislation might enable community service to be imposed either (as at present) as a separate disposal or as part of a wider supervisory order. The present maximum is 240 hours (120 for 16 year olds) and the minimum is 40 hours and the Court of Appeal has equated 190 hours of community service with 9 to 12 months imprisonment. **Should the minimum of 40 hours for community service (the equivalent of a working week) be altered? Could it be higher or lower?** A lower minimum could result in the order being used for less serious offenders. A longer community service order is useful in requiring the offender to accept the sustained discipline of regular attendance. But experience has shown that community service orders of more than 200 hours are more likely to be breached. An order of more than 200 hours requires the offender to attend at least 30 work sessions over a period of several months. The location may well be inconvenient but he will be expected to report punctually. The demands which a long period of community service make are therefore considerable, especially for offenders whose way of life is disorganised. **Should the present maxima be changed?**

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3.11 Under existing law, the period of attendance at day centres cannot exceed 60 days. The 60 day period may extend over six months with the offender usually attending two or three days a week. Because the period is defined in days rather than hours, the offender's time can be occupied more fully by requiring him to attend for 12 hours each day. However, stress on long hours for their own sake may not be the best way of using day centres. In practice, the impact which day centre attendance can make on an offender may reach its peak after less than 60 days. However, for some offenders a longer period of attendance may be beneficial. **Should the maximum period for attending a day centre be increased from 60 to 90 days?**

3.12 The programmes in day centres should be geared to the types of offending prevalent in the area. Programmes designed to bring home the consequences of what an offender has done and to change his or her outlook is essential in every centre's programme. **Are there other elements which should be essential in the provision made by day centres?**

3.13 There are a number of ways in which offenders' liberty could be restricted and the public protected by deterring re-offending. "Tracking" is a term used broadly to cover various schemes which use ancillary probation staff to maintain regular and frequent contact with offenders under supervision in the community. Experimental schemes set up in West Yorkshire, including some schemes working with adults and young adults, involve the tracker contacting the offender, either face to face or by telephone. At first, this is done daily. The tracker discusses with the offender how he or she will spend his or her time and maintains contact with schools, clubs and other places where the offender intends to go. These contacts usually become less frequent over time. Tracking schemes are at present limited to 60 days for adults. There has been no central evaluation of the success of these schemes in diverting offenders from custody or in preventing offending during or after the period of supervision. **Should tracking be used more to reinforce supervision and some control**

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over offenders?. Should it be available for longer, possibly up to three months?

3.14 More restrictions could be introduced by legislation which would allow the courts to make an order confining an offender to his home during specified hours. This is done in some jurisdictions in the United States. Such requirements punish by severely restricting an offender's liberty. They may also reduce the opportunities for re-offending, but they cannot prevent it if the offender is determined to re-offend. An offender confined to his home could still receive stolen goods, and engage in drug trafficking or drug abuse. Before imposing an order, the court would need to take account of the offender's circumstances. Those living in poor or isolated accommodation might have to be provided with a hostel place if the condition is to be enforceable. The court would also have to consider the effects of the requirement on the offender's family, other people sharing the same accommodation, and neighbours. There are also the interests of landlords. **Should the courts be given powers to require offenders to stay at home at specified times? If so, should there be guidelines on the length of the curfew and a maximum period for which it could be imposed, possibly three months?**

3.15 The main constraint on such an order is the likely difficulty of enforcing it. Curfews for juveniles are meant to be enforced with the co-operation of parents, though in practice this is not always forthcoming. Young adults are much less likely to be living at home with their parents although it is an objective of the Government's social security policies to encourage them to do so until they are in a position to support themselves financially. Many adults will be living fully independent lives. Personal visits to the offender's home by a supervisor, especially in unsocial hours, would be expensive. Observance of a curfew might be checked by telephone calls, but only if the offender had a telephone. As a consequence, the offender would be tempted to violate the order because of the low risk of detection.

3.16 Electronic monitoring might provide a means of enforcing an order which required offenders to stay at home. It is used for this purpose in North America. Less restrictively, it could help in tracking an offender's whereabouts. By itself, electronic monitoring could not prevent re-offending, though it might limit opportunities to commit offences to a degree which a court would consider justified diversion from custody. There are two main types of monitoring equipment in use in North America. In some systems, the offender wears a miniature transmitter which emits a continuous signal. This is re-transmitted from his home, eg by telephone, to a central monitoring point and the offender cannot move very far away from the telephone without alerting the central monitoring system. In other systems, the supervisor uses the signal from the monitoring tag to verify that the offender is in a specified place, either in response to random telephone calls from the central monitor or in calls at a pre-arranged place. North American experience may not be directly relevant to England and Wales; for example, monitoring is used in the United States to divert from custody some offenders who would not be at risk of a custodial sentence in England and Wales. It would not seem necessary, or desirable, to use electronic monitoring as an additional restraint on offenders who are dealt with in the community at present. The main justification for its use in England and Wales would be to enforce tracking or an order requiring the offender to stay at home for a limited period, thereby making it possible to keep out of custody offenders who would otherwise be in prison. The Home Office is evaluating various forms of equipment. **Meanwhile, it would be helpful to have views on the usefulness of electronic monitoring in keeping more offenders out of custody.**

3.17 Consideration has been given during the last 10 years to the possibility of introducing some form of intermittent or weekend imprisonment. In a consultation document on "Intermittent Custody" (Cmnd 9281) the Government asked for views on the possibility of a semi-custodial sentence, which would involve detention for only part of the day or part of the week. This

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would be an alternative to full custody; a partial deprivation of liberty might be preferable to full imprisonment for many of the less serious offenders who were receiving custodial sentences. However, for intermittent custody to work effectively, the offenders would have to be sufficiently reliable to report each week to serve their sentence. It would therefore be unsuitable for rootless and unstable offenders. Employed offenders would not be suitable for day prison, but could be considered for prison at weekends. Many of those who responded to the consultation document considered that intermittent or weekend custody was more likely to replace non-custodial measures than full custody. There was no agreement on the kind of offenders for whom it would be suitable or the form it might take. Given the considerable likely cost of providing the necessary facilities and of tracing offenders who did not turn up and bringing them back to court, the Government concluded that the possible advantages were outweighed by the probable disadvantages. The Government has considered the arguments again and reached the same conclusion.

3.18 However, there are other ways of restricting an offender's liberty at weekends. For example, the courts could require offenders to refrain from taking part in particular activities, such as attendance at football matches or other sporting events or to stay away from specified places connected with the offence, for example, specified streets, pubs or clubs, shops. **Would such restrictions be useful and enforceable?**

3.19 The programme for the offender could also include regular attendance at work, education or training and treatment for misuse of alcohol misuse or drugs. There is often a link between drug misuse and offences against other people, such as robbery, burglary or theft. But, although more co-ordinated and intensified effort is being put into the care of drug misusers who go to prison, the chances of dealing effectively with a drug problem are much greater if the offender can remain in the community and undertakes to co-operate in a sensibly planned programme to help him or her come off drugs. Such a programme

would aim, in the first instance, to secure a transition from illegal consumption to a medically supervised regime designed to reduce the harm caused to the individual by drug taking and would be based on a realistic plan for tackling the addiction in the context of his or her other problems. The process might well take time, but the requirements could be varied as progress was made. Monitoring by urine tests by the agency providing the treatment could be part of those requirements. **Is this the right approach?**

3.20 A Committee under the chairmanship of Lord Carlisle QC is reviewing the arrangements for parole. The Committee is expected to report later in the year. Some of the proposals for supervising offenders as part of punishment in the community might be helpful in supervising offenders on parole or given earlier release from custody to serve part of their sentence in the community.

A New Sentence

3.21 These proposals might be brought together in a new supervision and restriction order, enabling the courts to make requirements which might include:

residence at a hostel or other approved place; attendance at a day centre or attendance centre; compensation to the victim;

community service;

attendance at other prescribed activities; curfew or house arrest;

tracking an offender's whereabouts;

other conditions, such as staying away from particular places.

In the formal requirements of the order there would inevitably be an emphasis on restrictions and on compulsory activity, but there would be room for positive and voluntary elements as well. The programme for the individual offender might include encouraging regular attendance at work, education or training and treatment for substance abuse.

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3.22 In practice, punishment in the community needs the co-operation of the offender. The court can impose enforceable requirements as part of a probation order. But, to work effectively, the probation service supervisor would need to work out with each offender a programme of activities, which would include the court's requirements. The offender would then know what would be expected of him and it might be helpful to set out the agreed programme in a written statement. This statement could include targets for him to achieve and when the targets had been met, some of the restrictions on his liberty might be relaxed. In this way, it would be possible to mix positive and restrictive elements in an order, according to the seriousness of the offence and the circumstances of the individual offender. Each programme would be tailor-made for the individual offender. **Would individual programmes of this kind, incorporating the court's requirements, be helpful in making punishment in the community effective?**

3.23 The aim of the order would be to make a sharp initial impact on offenders but perhaps to allow them to progress to less rigorous forms of supervision, subject to good behaviour, and under judicial supervision. Examples of programmes for offenders of different types are given in the appendix.

3.24 There should be simple and straightforward procedures for varying requirements which were no longer necessary or practical or if an offender's circumstances change. Otherwise, they would be oppressive. Moreover, the possibility that the requirements could be relaxed should give the offender an incentive to co-operate. The courts' confidence in the orders will be greater if variations in the order are not made entirely at the discretion of the offender's immediate supervisor. There should be some judicial oversight. One possibility is a supervising magistrate, who would have oversight of the order until it is completed.The magistrate would be able to vary the order, either relaxing the requirements if good progress is made or, if necessary, re-imposing requirements if the offender's response deteriorates, without actually breaching the order. This arrangement would have the advantage of keeping the magistrates in touch with an offender's subsequent behaviour. **Would judicial supervision be helpful in making the new sentence effective, and how might it be exercised?**

3.25 Because a supervision and restriction order would be intensive in its initial stages, the minimum length might be three months, compared with six months for probation. The maximum might be 18 months or 2 years, since it is doubtful whether intensive supervision could be sustained for longer periods. This suggests that where an order is imposed for longer than 12 months, the requirements should be reviewed no later than 12 months after the beginning of the order. It would be possible to set different maximum limits for the Crown Court and the magistrates' courts. There would need to be a procedure for ending an order early if the offender received a custodial sentence for a further offence. It might also be sensible to allow the order to be ended by the court on the initiative of the supervisor, if the offender was responding well and no longer required intensive supervision.

3.26 Sanctions for failing to meet the requirements of an order might, depending on the seriousness of the offence, be a fine, imposing more demanding requirements, eg a curfew, or revoking the order and resentencing the offender for the original offence to a term of imprisonment. If the requirements are made too demanding, it is more likely that the offender will fail to complete it satisfactorily and this could result in his imprisonment. This would defeat the purpose of the order. It is therefore essential that offenders should be assessed very carefully at the sentencing stage and there should be realism in the use of requirements.

3.27 A new supervision and restriction order could be introduced in addition to the existing disposals or it could replace some of them. There seem to be three main possibilities:-

(i) an enhanced probation order, in addition to existing penalties;

(ii) a new order, replacing probation orders, community service orders and possibly attendance centre orders; and

(iii) a new order, in addition to the existing penalties.

R.

Extending the requirements for probation orders would give the courts flexibility to tailor the disposal to individual offenders, but it would confuse the new controlling requirements with the welfare objective inherent in the present concept of the probation order, which is that it is imposed 'instead of sentencing' (section 2 of the Powers of the Criminal Courts Act 1973). A new order, which replaced existing orders, would also be flexible and the courts would still be able to give some offenders a disposal which amounted to a probation order without any punitive elements. On the other hand, it might encourage the courts to impose too severe a penalty and make them more reluctant to use supervision a second time for an offender who had failed to complete an earlier order satisfactorily. Adding a new order to the existing disposals would have the advantage that it would not disturb existing penalties, which are working well. Leaving the other disposals in place would make it clear that the new order was reserved for those for whom other disposals were not sufficient. This might encourage discriminating use of the order.

3.28 Both the sentencing structure of maximum penalties set out in legislation and the sentencing guidance within these maxima given in the decisions of the Court of Appeal are based on the principle of keeping proportionality between the offence and the sentence. The punishment should fit the seriousness of the crime; it should not be excessive or lenient. Since the new order, with its component elements, would be more severe than any of the present disposals, except custody, it follows that it should be used for serious offenders, who at present would be given a custodial sentence. The objectives of these proposals would be frustrated if the order was used for those already given community service orders or placed on probation. Both the courts and the probation service will need to be clear about the purpose of the new order, and the probation service will have a particular responsibility to put clear proposals for each offender before the court. The courts will need to know why the probation service consider that the new order would be suitable for an offender and the programme which the offender will be expected to pursue. The

kind of activities to be made available could usefully be discussed locally and judges and magistrates will need to see for themselves the work which is being done, if they are to understand its objectives and to have confidence in it. Even so, there is a risk that the order will be used for offenders who would receive community disposals now and it may be desirable for the legislation to define the circumstances in which the new order should be used.

3.29 Because the new order would be flexible, it could be used repeatedly for persistent offenders. Indeed, community service could already be used repeatedly for recidivists, since it involves both restrictions on liberty and reparation to the community. There is no reason for the courts to give a custodial sentence, unless the offence itself is serious enough to justify it. We need to move away from the concept of a sentencing tariff as a ladder which the offender climbs as he is convicted for more offences, until he reaches custodial sentences, which become progressively longer. The courts need a spectrum of community disposals from which they can select the one most suitable for the offence and the offender. The offence would determine in which section of the spectrum the disposal would be found and the circumstances of the offender would determine the precise nature of the requirements.

3.30 If the courts are to have a wide discretion with powers to place a range of requirements on offenders, they will need to take account of the costs to the taxpayers of carrying out the requirements. It costs about £1,000 to keep an offender in prison for four weeks. The cost of punishment in the community should not exceed the cost of imprisonment, which is a more severe sentence. The courts will therefore need regular and up-to-date information about the cost of imprisonment and of the individual components of the new order, eg the cost of a day's attendance at a day centre (now about £30), the cost of 10 hours community service (about £35), the cost of tracking an offender (about £15 a day). While the suitability of a penalty cannot be measured

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solely in terms of cost, the total cost of the requirements for an individual offender could be a useful check on whether the penalty is proportionate to the offence.

3.31 It would be helpful to have comments on the proposals for a new order set out in paragraphs 3.21 to 3.30.

Part IV: Organising Punishment in the Community

4.1 At present, the supervision of offenders in the community is the responsibility of the probation service. Probation officers supervise offenders on probation and they make arrangements for community service, though the work is normally supervised by ancillary or other staff. The probation service has extensive links with other local services, voluntary organisations and the community generally, which would be helpful in developing the arrangements for a new order. Moreover, if a new order were to be used effectively, the courts would need information about both individual offenders and the programmes which an offender would follow. This would build on the kind of information already provided by the probation service to the courts in social inquiry reports. On the other hand, the new order would contain additional elements of control which some members of the probation service might perceive as inimical to their approach to working with offenders.

4.2 There are great opportunities for the probation service. There is no other existing service or organisation which could take responsibility for supervising punishment in the community in the first instance. The police have no role in the punishment or supervision of offenders, with the limited exception of running attendance centres, which is done by some police officers in their spare time; this is much appreciated by the Government. The prison service is used to exercising control over offenders, but it is not organised or well placed to supervise offenders in their homes. Prison officers generally lack the right training and experience for supervising offenders in the community. Private sector security organisations may be able to play a part in some aspects of the new arrangement, eg by monitoring curfews, but it would be difficult for them yet to take on the wide-ranging responsibilities involved in supervising offenders throughout the country, for example, by ensuring that offenders act in accordance with the requirements of their order and in initiating breach

proceedings if they do not. Nor could many voluntary organisations working with offenders be expected to take this on.

4.3 One possibility would be for the probation service to contract with other services, and private and voluntary organisations, to obtain some of the components of punishment in the community. The probation service would supervise the order, but would not itself be responsible for providing all the elements.

4.4 Another possibility would be to set up a new organisation to organise punishment in the community. It would not itself supervise offenders or provide facilities directly, but would contract with other services and organisations to do so. The organisation could be part of the Home Office. Alternatively, it might be a separate non-departmental public body with a Director, a small permanent staff and possibly a governing Board drawn from those with relevant experience. The new organisation could contract for services from the probation service, the private or voluntary sector and perhaps for some purposes from the police or the prison service. The Prison Department already contracts in this way for services of probation officers in prisons, and the Central After-Care Association operated similarly until the probation service assumed direct responsibility for prison after-care in the 1960s. A new organisation would be able to set national standards and to enforce them, because they would be written into contracts. **The Government would welcome views on the possibility of setting up a new organisation to take responsibility for the arrangements for punishment in the community, and providing services through contracts with other organisations.**

4.5 If a new organisation were to be set up to take responsibility for supervising punishment in the community, rather than the probation service, the costs of punishment in the community could be increased since there would be additional costs for the new organisation. On the other hand, some duplication might be removed and resources could be targetted on those areas and groups of offenders where the need is greatest.

R.

4.6 At present, the Government meets 80% of the cost of the probation service through specific grant and the remaining costs are met locally with assistance from block grant. Area Probation Committees are responsible for allocating probation finance and this enables local magistrates to influence the provision made locally for dealing with offenders in the community. This local input would be lost if a national organisation was responsible. On the other hand, a national organisation would be funded from the Exchequer, thus shifting from the local community to the taxpayer some of the costs of dealing with some local offenders, but applying nationally consistent standards and management.

4.7 The costs of the new order would vary considerably according to the length and severity of the requirements. Supervision by a probation officer for 12 months would cost about £800. Each day's attendance at a day centre would cost about £30, 200 hours community service about £700. If the new order were used instead of community service in its present form, or probation, the costs of dealing with offenders would increase; the average costs of probation and community service orders completed in 1985-86 were £1,040 and £450. On the other hand, if the average cost of an order were kept below £2,500, it would cost less than a six month's prison sentence with half remission.

4.8 The proposals in Parts III and IV are designed to make major changes in the way we deal with offenders. They should be seen in the context of the Government's wider policies on crime, with greater emphasis on crime prevention and help to victims, as well as changes in the criminal law and in penalties. The proposals raise issues of penal policy, of the role and effectiveness of criminal justice services and costs. The Government believes these issues merit wide and careful public consideration and

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debate. The Government would therefore welcome comments on the proposals set out in Parts III and IV. Comments should be sent by 31 December to:

Home Office
Criminal Policy Department
Room 326
50 Queen Anne's Gate
LONDON, SW1H 9AT

PROGRAMME OF SUPERVISION: EXAMPLES

The content and structure of supervisory programmes suitable for different types of offender would be determined in the light of the offence, the offender's circumstances, personality, and the characteristics of the offending behaviour. Relevant factors would include:

- whether the offender was employed
- whether he or she had family responsibilities
- whether he or she had a drink or drugs problem
- response to previous supervision

The first stage in the process of supervision, which would need to be carried out before sentencing, would be an assessment of the offender using information from the social inquiry report and other sources to draw up an "offender profile". Detailed proposals for a programme of supervision would then be put to the court. The following are examples of programmes which might be suitable for various types of offender.

A. Offender in full time employment education or training:

- daily curfew (ie. required to remain at home between the hours of 8pm and 7am so as to ensure that the Order punishes by restricting liberty and to reduce opportunities for offending

- community service or day centre attendance on Saturdays for 3 months, followed by

- 3 months of reduced Saturday activity but the offender might be tracked during time off

- compensation paid to victim from offender's earnings

- regular interviews with supervising probation officer throughout the currency of the order to discuss progress, to ensure that the offender faces up to what he has done, to help him tackle any family problems and to help him budget for the payment of compensation

B. Unemployed offender without accommodation:

- 6 days of activity each week for 3 months:
  - 2 days community service
  - 2 days at a day centre
  - 2 days of prescribed activity (eg. further education, voluntary work, sport)

- [care would need to be taken to ensure that the requirements did not affect the offender's availability for work]

- daily curfew (ie. required to comply with the rules of the probation hostel where he will be living: in from 10pm to 7am every night)

- during the first 3 months one of the objectives of the day centre programme would be to enable the offender to acquire basic skills (cooking, cleaning, budgetting) to enable him to live in independent accommodation and he would be required to make efforts to find such accommodation, with the support of probation staff

- during the next 3 months, depending on progress the attendance requirments might be relaxed with efforts being concentrated on acquiring job related skills and looking for a job.

C. Offender with drink or drugs problem:

- residential or out-patient treatment, the frequency or duration to be recommended after medical assessment

- attendance at eg. alcohol education group

- urine testing might be used to check whether the offender complied with requirements of treatment

- other elements of the programme might include basic literacy and numeracy training (if this was a problem), community service or voluntary work

- regular interviews with the supervising probation officer to monitor progress

RESTRICTED

MJ

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

8 June 1988

MURDER AND LIFE IMPRISONMENT

The Prime Minister has seen the Home Secretary's letter of 2 June to the Lord Chancellor. She has commented that the proposed terms of reference appear to be too narrowly drafted in that they seem actively to exclude consideration of the penalty. The Prime Minister also believes that it would not be right to have a former Home Secretary as Chairman of the Committee.

I am copying this letter to the Private Secretaries to the Lord President, Lord Privy Seal, Secretaries of State for Northern Ireland and Scotland, the Attorney General, the Lord Advocate and the Captain of the Gentlemen-an-Arms.

Dominic Morris

Philip Mawer, Esq.,
Home Office.

RESTRICTED

PRIME MINISTER

MURDER AND LIFE IMPRISONMENT

To be aware of the attached letter from the Home Secretary.

Are you content with:

(i) the terms of reference for the Lords Select Committee (at Annex A); and

(ii) the Home Secretary's proposals for membership of the Committee (page 3 of his letter)?

Dominic Morris

DOMINIC MORRIS
6 June 1988

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

2 June 1988

Dear Lord Chancellor,

MURDER AND LIFE IMPRISONMENT

I wrote to you and other colleagues on ~~13~~ January about the debates on murder and the arrangements for release of those serving the mandatory life sentence, which had taken place during the Lords Stages of the Criminal Justice Bill, and in particular about David Windlesham's suggestion of a review to be conducted by a Select Committee of the House of Lords. Colleagues agreed that we should adopt a benevolently neutral approach to that suggestion. Malcolm Rifkind asked that any such Committee's remit should extend to Scotland. Having had further discussions with John Belstead and having taken soundings of David Windlesham, I should now like to take colleagues' views on the Committee's terms of reference and chairmanship and the timing of an announcement, all of which we are in a position to influence, even though they are ultimately for the Lords.

Background

During the passage of the Criminal Justice Bill through the Lords there were debates at all three stages on the penalty for murder and the arrangements for release of those serving the mandatory life sentence. Although there was no consensus about how the law should be changed, the overwhelming weight of opinion on all sides of the House was in favour of some form of review. In replying to the debates you were able to deflect the specific proposals for changes, but the range and distinction of those who argued for review - including Quintin Hailsham and Lord Roskill as well as David Windlesham - and the obvious strength of feeling on the issue were impossible to ignore. It has to be said too that some aspects of the present arrangements are by no means easy to defend.

In considering how we should respond to the general expectation in the Lords that the subject would be addressed in some form, we agreed that any kind of Government review would be politically sensitive and difficult to present publicly, especially to the extent that it was perceived to be about the

/penalty for

The Rt Hon Lord Mackay of Clashfern

penalty for murder. The proposal for a House of Lords Select Committee seemed to us the best way of defusing the situation. It would enable the Government to distance itself from the review's conclusions; and we would leave ourselves more room for manoeuvre over the outcome than if we had taken the initiative by setting up a review ourselves. Following colleagues' agreement to that general line, I saw David Windlesham and told him that, while the idea of a Select Committee was ultimately a matter for the Lords, we would not wish to stand in his way and would be ready to help over terms of reference.

Terms of Reference

The subject matter of the Lords debates was wide-ranging. The main questions raised were:

(i) whether the definition of the offence of murder should be changed. Lord Ackner and Quintin Hailsham argued that the law was in an unsatisfactory state, and Quintin Hailsham developed the case for a single offence of unlawful killing;

(ii) whether life imprisonment should be the maximum rather than, as at present, the mandatory penalty for murder. There was a body of support for allowing the judge discretion to impose a determinate (and therefore appealable) sentence;

(iii) whether the trial judge's power publicly to recommend a minimum period of detention should be abolished;

(iv) whether, if minimum recommendations are retained, they should be subject to a right of appeal;

(v) whether the present system for review and release of life sentence prisoners, and in particular the degree to which it relies on private advice from the judiciary, is acceptable.

Of these, the second is clearly the most sensitive in Commons terms, and I would want to avoid the establishment of the Select Committee being presented as a study by the Lords of the penalty for murder. On the other hand, I doubt if it would be realistic to try to impose on the Select Committee a remit which was significantly narrower than the debates which gave rise to it. What I would therefore propose is a wide remit related to the offence of murder and the arrangements for determining the periods of custody to be served by those convicted of it. The penalty for murder would not be mentioned, but there would be

/nothing to prevent

nothing to prevent the Committee from looking at, for example, the mandatory versus maximum question in its study of the offence of murder.

I therefore have it in mind to offer David Windlesham draft terms of reference as in Annex A to this letter. When I spoke to him, David was understanding of the sensitivity about penalties, and I have every reason to think that he will be ready to accept them.

Membership

The choice of a suitable chairman will be important. John Belstead, David Windlesham and I feel that Robert Carr would be a good choice. We think he would be helped by the support of a serving judge - perhaps Lord Ackner or Lord Goff of Chieveley. If Robert were unwilling to take the chairmanship on, a retired Law Lord might be the best choice, since the task would be too time-consuming for a legal Peer who is still working as a judge. Lord Roskill would be an obvious possibility, if he were available. I gather that Kenny Cameron would be ready to suggest a Scottish judicial member, when it is known who are likely to be the English members.

That is the extent of our thinking thus far on membership. But if other colleagues have comments on the names I have mentioned, or other suggestions to make, I should be grateful if we could have them before John Belstead opens discussions through the normal channels.

Timing

The Select Committee will probably require a full session to complete their work. David Windlesham was keen that the Committee should be appointed before the recess even if they did not meet before the autumn. I would not myself object to this. I do however think it essential that any announcement about the establishment of the Select Committee should be deferred until after the capital punishment debate, which is to take place next week. I understand that the procedure would be for a motion to establish the Committee to be moved by the Leader, which inevitably gives the appearance of a Government initiative even though that is not the reality. I propose therefore that no formal public moves to establish the Committee should be made until the capital punishment debate is well behind us.

Conclusion

I invite colleagues to:

/(a) approve the

(a) approve the draft terms of reference at Annex A, which I propose to give to David Windlesham;

(b) let me have any comments or suggestions on the chairmanship and membership of the Select Committee, which John Belstead could have in mind in his discussions through the usual channels;

(c) agree that no formal steps should be taken to establish the Committee until after the capital punishment debate in the Commons.

I am copying this letter to the Prime Minister, John Wakeham, John Belstead, Tom King, Malcolm Rifkind, Patrick Mayhew, Kenny Cameron and Bertie Denham. I should be grateful for replies within the next two weeks.

Yours ever
Ian Sanderson
(approved by the Home Secretary and signed in his absence)

ANNEX A

DRAFT TERMS OF REFERENCE FOR A SELECT COMMITTEE

To consider the scope and definition of the crime of murder in England and Wales and in Scotland, and the means by which the period of custody to be served by those convicted of murder is determined.

WITH
THE COMPLIMENTS OF THE
PRIVATE SECRETARY

HOME OFFICE
50 QUEEN ANNE'S GATE
LONDON SW1H 9AT

NBPM

QUEEN ANNE'S GATE LONDON SWIH 9AT

9 March 1988

Dear John,

ADDRESSES OF WITNESSES IN CRIMINAL PROCEEDINGS

I am writing to seek colleagues' agreement to legislation to replace the present practice whereby a witness is automatically required to state his or her address in English criminal proceedings with a requirement that an address should be disclosed in proceedings only if the judge or magistrate is satisfied that this information is relevant to the case. If this is agreed it would be a suitable measure for inclusion on the list of Bills for handout to Private Members next Session and I would be grateful for your agreement that we could send instructions to Counsel.

Reasons for change

For some time the police have been concerned that members of the public are increasingly reluctant to come forward and give evidence. They consider that one of the main factors behind this reluctance is the present practice whereby the address of a witness is automatically disclosed to the defence. This may take place either before trial, when the statement of a witness is copied to the defence; or at trial, when common law requires the witness to state his address unless the judge in his discretion directs otherwise. This discretion is exercised only rarely - for example, a blackmail victim is normally excused giving his address since people would not otherwise report this crime.

At a meeting with officials from the Home Office, the Crown Prosecution Service and the Law Officer's Department, the police were asked to provide examples of cases where disclosure of addresses had caused problems. I enclose a copy of their response. This clearly shows the serious problems that can arise. In these examples, intimidation or distress actually resulted. But probably more prevalent is a fear by members of the public that they may be harassed or intimidated if they assist the police and criminal justice system. The police and, I understand, the Crown Prosecution Service consider that this is a growing problem. Letters I receive from the public and Members support this view.

Removing addresses from statements disclosed before trial could be achieved by a change in Magistrates' Courts Rules (ie without primary legislation). But this would leave an obvious

/loophole

The Rt Hon John Wakeham, MP

loophole in the protection and assurances offered to witnesses, who would still be required to reveal their address at the trial. If we are to tackle this problem fully, I think we have to legislate to prevent routine disclosure at proceedings, as well as making the necessary changes to the Magistrates' Courts Rules.

Arguments against

The arguments hitherto advanced in favour of current practice seem to be, first, that the principle of open justice requires a witness to be identified, and that this requires disclosure of his or her address; secondly, that because there is no property in a witness defence and prosecution must be on the same footing and so both possess the address; and thirdly, that otherwise there would be a risk that readers of a report of the trial would mis-identify the person before the court with someone of that name known to them.

I find none of the arguments compelling. Open justice requires the witness to give his or her name. However I am not convinced that an address adds anything of value or is generally necessary. An address will not assist the jury or the bench in assessing the credibility of a witness.

"No property in a witness" simply implies that the opposing party may interview a witness before the trial on the rare occasion that this is necessary. This does not require disclosure of an address as such an interview could always be arranged through the police or CPS. The Law Society's Guide to Professional Conduct of Solicitors already recommends that defence solicitors inform the prosecution solicitor if they wish to interview a prosecution witness and advises that such an interview should take place in the presence of the police.

As for the possibility of misidentity if the reputation of a witness is smeared at a trial, I am not convinced that it is right to make matters worse by giving the press power to publish his or her address on the basis that this might mitigate consequential injury to others.

Conclusion

I therefore propose that we should seek to change the law so that disclosure of a witness' address occurs only when necessary (as of course it may be - for example, if the witness says he saw the offence from his house) in the interests of justice. My officials have discussed this with the Lord Chancellor's Department, Law Officer's Department and Crown Prosecution Service. I understand that no major resource implications were foreseen. There might be a number of applications to a court for disclosure which might increase legal aid expenditure; but this would be minimal and in any event could be offset by the cessation of applications persently made for the concealment of addresses.

/Legislative

Legislative vehicle

I think such a proposal would be widely supported in Parliament and by the public at large. However, I think it inevitable that it will be controversial from the point of view of the media. Because of this I accept that it would be inadvisable for us to seek to include such a provision in the Criminal Justice Bill, which is already heavily laden. But since it would be non-controversial in party-political terms this would be an attractive measure on next Session's handout list and I propose that we proceed in that way.

Copies go to other members of H, the Attorney General, Sir Robin Butler and First Parliamentary Counsel.

Yours,

Doyle.

The National Archives

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dti

the department for Enterprise

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Douglas Hurd MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5147
Our ref
Your ref
Date 17 February 1988

NBPM
RLC6
19/2

Dear Douglas,

Thank you for your letter of 2 February to John Wakeham. I am content with your proposal to amend the Video Recordings Act 1984 in the Criminal Justice Bill to empower trading standards officers to enforce the Act.

Copies of this letter go to H committee colleagues, to Sir Robin Butler and to First Parliamentary Council.

Yours ever,

KENNETH CLARKE

FE5AAA

WITH
THE COMPLIMENTS OF THE
PRIVATE SECRETARY

HOME OFFICE
50 QUEEN ANNE'S GATE
LONDON SW1H 9AT

QUEEN ANNE'S GATE LONDON SW1H 9AT

2 February 1988

Dear John.

There is one further addition which I wish to make to the Criminal Justice Bill. It is a simple provision and I expect it to be uncontroversial. Given the desire we share to keep the Bill within manageable proportions, I would normally have been happy to let it await another vehicle but, as I shall explain, there are particular reasons why I wish to secure this provision in the present Session.

What I am proposing is an amendment to section 17 of the Video Recordings Act 1984 so as to extend the powers of entry, search and seizure which it provides to constables also to trading standards officers. This would allow trading standards officers to play a role in the enforcement of the Act. It is essentially regulatory legislation and the police, given their other burdens, have been able to afford it little priority. We know of only two prosecutions in England and Wales since the Act begun to come into force on 1 September 1985 (there have been other prosecutions under the Act but they have been aimed at copyright piracy rather than the real objectives of the legislation). My officials have consulted other interested Departments and I understand it has been agreed that the work trading standards officers would undertake under the Act is in line with their existing duties. Only one of the five local authority associations in England and Wales whom we have consulted questioned this view and its arguments were not persuasive.

I do not consider that the amendment would result in any significant increase in local authority expenditure. Some of the local authority associations questioned this assessment but we have satisfied ourselves, and I think them, that our estimates are reasonable. I see no need for an extensive enforcement effort but the police have done little and are unlikely to be able to do more, and trading standards officers are better placed to respond to the low level of complaints which have so far been received of contraventions of the Act. Our predecessors in 1984 never envisaged more than a small number of prosecutions under the Act each year. The problem is that we are getting almost none and the police seem to be playing no role in warning or advising traders. Without an adequate level of enforcement we risk losing the gains which the Act has achieved in regulating video works.

The Rt Hon John Wakeham, MP.

/over....

There are two reasons why I think this amendment should be made in the present Session. The first is that the last stage of the introduction of the Video Recordings Act is reached on 1 September, from when the Act will be fully in force. It would clearly be helpful for the full enforcement mechanism to be in place by that date if the Act is to sustain its early impact. A change at a later date will be neither so effective nor earn us the same credit. The second reason for early action is that, particularly in the wake of the Hungerford tragedy, there has been much press and public concern about violent videos. While the establishment of the proposed Broadcasting Standards Council will meet some of this concern, the centre-piece of our response has been the effectiveness of the Video Recordings Act. Our assertions on this point will become increasingly difficult to sustain if the present low level of enforcement is not increased and we could find it difficult to resist pressure for fresh legislation providing new forms of control. This would be wasteful. I consider that the Video Recordings Act provides the best means of regulation for video works. Our first priority must be to ensure that it works.

Because of this concern about violent videos, I believe that the amendment would be welcomed by Parliament, the press and the public as a sign of our determination that the 1984 Act should be effective and that there should be no slipping back to the situation which prevailed before it was passed. As I said earlier, the amendment should be simple and straight-forward. There is a risk that by opening up debate on the 1984 Act the amendment would provide an opportunity for an extended debate on videos. However, the Act itself has not been a source of detailed controversy and, whatever other concerns may be raised, I do not foresee any significant opposition to what I propose.

I entered into a self-denying ordinance about additions to this Bill, and have respected it in relation to important and controversial proposals on war criminals and the right to silence. I do not think this amendment will cause trouble in either House, and I hope that it might be made a tiny exception to the rule. It will reinforce our effort at a point where it now looks a bit shaky.

I am copying this letter to H Committee colleagues, to Sir Robin Butler and to First Parliamentary Counsel. The Video Recordings Act applies throughout the United Kingdom and I would welcome the views of Malcolm Rifkind and Tom King as to whether they would wish the powers of entry, search and seizure to extend also to trading standards officers in Scotland and Northern Ireland.

Yours,
Douglas.

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

26 January 1988

Dear Malcolm,

REVIEW OF PAROLE AND RELATED QUESTIONS IN SCOTLAND

You wrote to Willie Whitelaw on 9 December seeking H Committee's agreement to your announcing the establishment of a review of parole and related questions in Scotland. You said that, if Lord Kincraig accepted your invitation to serve as chairman of the review, you would announce his chairmanship at the same time.

No colleague has commented on your proposal, and this is simply to confirm that you may take it, therefore, that you have H Committee's agreement to it.

I am sending copies of this letter to the Prime Minister, members of H Committee, the Lord Advocate, the Attorney General and Sir Robin Butler.

Yours ever,

JOHN

JOHN WAKEHAM

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Scotland
Scottish Office
Whitehall
London
SW1A 2AU

Home Affairs – Sentencing Pd Prs.

WITH
THE COMPLIMENTS OF THE
PRIVATE SECRETARY

HOME OFFICE
50 QUEEN ANNE'S GATE
LONDON SW1H 9AT

CC BA

QUEEN ANNE'S GATE LONDON SWIH 9AT

13 January 1988

Dear James,

MURDER AND LIFE IMPRISONMENT

During the passage of the Criminal Justice Bill through the Lords there were, as you know, several debates on the penalty for murder and the arrangements for release of those serving the mandatory life sentence. We had a meeting with interested colleagues about how best to handle these on 17 November, between the Committee and Report Stages.

I was most grateful to you for taking on the burden of these debates. During them, you were able to deflect the specific proposals for change which were put before the House. One of them, on the abolition of the minimum recommendation, was rejected on a division. You did not in the event find it necessary to concede a right of appeal against minimum recommendations, as we had contemplated at the meeting on 17 November, and argued against the proposal on grounds which I find convincing.

This was a very satisfactory result, and helped to ease the passage of the Bill; but the debates also uncovered a degree of unanimity about the case for some kind of wider review of the present arrangements which I do not think we can ignore. At Third Reading, David Windlesham suggested that a sensible approach might be for a Select Committee of the House of Lords to conduct such a review. Its remit would, in his words:

> "embrace the law on homicide ..... especially the distinction between murder and manslaughter and the implications of a single offence of unlawful killing. It should consider the penalty for murder, especially the arguments for or against the mandatory life sentence. Then there are the recommendations or the advice given to the Home Secretary by the trial judge and the question of whether this advice should be in private or publicly on record. Finally, the administrative arrangements for determining the duration of the period to be spent in custody by life sentence prisoners also need to be reviewed."

Replying, you made the point that whether to establish such a Select Committee was a matter for the House, but undertook to draw David Windlesham's suggestion to my attention.

For the reasons we discussed at the meeting in November, I would be reluctant to mount any kind of Government review in this area, particularly when there is a capital punishment debate in the offing during the Bill's Commons stages. To do so would raise expectations which it might turn out to be difficult to fulfil. However we chose to present it ourselves, the establishment of a review would be likely to be linked publicly with some of the specific proposals which were run in the Lords, and in particular the proposal to make life imprisonment a maximum rather than a mandatory penalty. If this happened, it might be perceived as a weakening of our position on murder.

The whole area is such a minefield that, had the concern in the Lords been confined to the Opposition benches and the leading lights of the All-Party Penal Affairs Group (whose recent report was the source of the specific proposals which were tabled) I would have been inclined to discourage David Windlesham's idea of a Select Committee. But the calls for fundamental review came from a much wider range of peers, including Lord Roskill, Quintin Hailsham and of course David himself. I sense that it would in practice be difficult for us to resist the setting up of a Select Committee.

It is also fair to say, as I did in my letter to Willie Whitelaw of 16 November, that the present arrangements, with their curious mixture of selective public recommendations and universal private judicial advice, are difficult to defend. They have grown up piecemeal and are not what one would devise if starting from scratch. It might do no harm for them to be looked at by Parliament. We would retain more freedom of manoeuvre over the outcome than if we had taken the initiative by setting up a review ourselves.

Subject to colleagues' views, my initial reaction is therefore that we could adopt a benevolently neutral approach towards David Windlesham's proposal. Our line might be that, for the reasons given by you and Malcolm Caithness during the passage of the Bill, we are not much attracted by any of the specific proposals put before the Lords. But we accept that the debates raised important issues which deserve further study. Whether to establish a Select Committee as David Windlesham suggested was a matter for the House. But we would not wish to stand in the way of such a proposal if it found favour, and would be interested in the outcome. This is a line which could also be relied on should the matter be raised during the Commons stages of the Bill.

I should be grateful for colleagues' views on that approach. There is an obvious business management dimension on which I am not well placed to comment. Malcolm Rifkind may wish to consider whether he would want a Select Committee to look at the law in Scotland as well as England and Wales.

I am copying this letter to John Wakeham, John Belstead, Malcolm Rifkind, Tom King, Patrick Mayhew, Kenny Cameron and Bertie Denham.

Yours ever,

Douglas

APPOINTMENTS - IN CONFIDENCE

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon the Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

9 December 1987

Dear Willie,

REVIEW OF PAROLE AND RELATED QUESTIONS IN SCOTLAND

Colleagues agreed to the proposal in my letter of 14 May that I might set in hand a review of parole and related questions in Scotland broadly similar to that which Douglas Hurd had proposed for England and Wales in his letter of 7 May. Douglas subsequently announced, on 16 July, the remit for the review for England and Wales and that Mark Carlisle would serve as Chairman.

I have discussed with the Lord Justice-General my proposals for Scotland, and taken his advice on the Chairmanship. I attach for the information of colleagues the remit for the review and the draft text of the statement which I propose to make; the timing and the context in which it is made will depend on whether and when Lord Kincraig accepts my invitation to serve as Chairman. At present I have in mind to make the announcement in a written answer to an arranged PQ rather than in the course of a later, more general, statement on penal policy and related matters.

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

Yours ever

Malcolm

MALCOLM RIFKIND

ENC

HJS336A3

APPOINTMENTS - IN CONFIDENCE

SCOTTISH REVIEW OF PAROLE AND RELATED MATTERS

To consider the present arrangements in Scotland for modifying the effect of custodial sentences and in particular:-

(a) the objectives of the parole system, and whether it should be retained in its present or in a modified form, including any changes which should be made to:

(i) the current criteria for eligibility for parole;

(ii) the current criteria for remission;

(b) whether as an alternative or a supplement to the present arrangements, any different scheme might be introduced for the release of prisoners, for stated purposes, before the completion of the sentence ordained by the court;

(c) whether there should be any extension of the role of the judiciary in relation to the present parole or remission systems, or in relation to any alternative arrangements for the modification of the effects of custodial sentences;

(d) the role of the social work services in supervising convicted offenders released on licence;

(e) the current provisions for periods spent in custody on remand to be taken into account in the determination of sentences;

(f) whether or not powers should be conferred upon the courts to suspend sentences, or to ordain part-suspended sentences, in what circumstances and on what conditions;

(g) the conditions which should attach to parole, remission or any equivalent scheme;

(h) whether the conclusions reached in the context of determinate sentences have any relevance to current policy on life sentence prisoners;

(i) the overall resource implications and cost-effectiveness of the existing systems and of any modifications or alternatives which may be suggested;

and to make recommendations.

DRAFT

ANNEX TO LETTER

DRAFT REPLY TO ARRANGED WRITTEN PQ

MR MALCOLM RIFKIND:

I have previously expressed my intention to institute a thorough review of the workings of the parole system in Scotland. I have now decided that the best means of doing this would be to set up such a review in the wider context of arrangements for modifying the effects of custodial sentences. I am delighted that Lord Kincraig has accepted my invitation to act as Chairman of a review with the following terms of reference:-

"To consider the present arrangements in Scotland for modifying the effect of custodial sentences and in particular:-

(a) the objectives of the parole system, and whether it should be retained in its present or in a modified form, including any changes which should be made to:-

(i) the current criteria for eligibility for parole;

(ii) the current criteria for remission;

(b) whether as an alternative or a supplement to the present arrangements, any different scheme might be introduced for the release of prisoners, for stated purposes, before the completion of the sentence ordained by the court;

(c) whether there should be any extension of the role of the judiciary in relation to the present parole or remission systems, or in relation to any alternative arrangements for the modification of the effects of custodial sentences;

(d) the role of the social work services in supervising convicted offenders released on licence;

(e) the current provisions for periods spent in custody on remand to be taken into account in the determination of sentences;

(f) whether or not powers should be conferred upon the courts to suspend sentences, or to ordain part-suspended sentences, in what circumstances and on what conditions;

(g) the conditions which should attach to parole, remission or any equivalent scheme;

(h) whether the conclusions reached in the context of determinate sentences have any relevance to current policy on life sentence prisoners;

(i) the overall resource implications and cost-effectiveness of the existing systems and of any modifications or alternatives which may be suggested;

and to make recommendations."

The membership of the review, and arrangements for conveying evidence to it, will be announced later.

HOME AFFAIRS: Capital Punishment pt 3.

cc BG

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

16 November 1987

nbpm

Dear Tom

LENIENT SENTENCES

You wrote to me on 27 October seeking H Committee's agreement to the provisions on lenient sentences in the Criminal Justice Bill being directly extended to Northern Ireland.

Douglas Hurd wrote to say that he was content with your proposal, and saw no difficulty in adding the necessary provisions to the Bill. No other colleague has commented on your proposal and you may take it, therefore, that you have H Committee's agreement to proceed with it.

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

Yours

The Rt Hon Tom King MP

HOMG AFFAIRS : Sentencing Policy PT3

CONFIDENTIAL

CCBG

SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

16pm

Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

27 October 1987

Dear Lord President,

LENIENT SENTENCES

John Stanley wrote to you on 29 September, supporting Douglas Hurd's letter of 21 September on his proposals on lenient sentences. He also indicated that I was minded to seek the introduction of the same provisions for Northern Ireland by direct extension of the Criminal Justice Bill to the Province, but that I wished to ensure that Patrick Mayhew and Michael Havers were content.

I have now consulted them, and they do not object to my proposal. I hope therefore that you, Douglas Hurd, and other H Committee colleagues will accept that the Criminal Justice Bill in this respect should be directly extended to Northern Ireland.

Copies of this letter go to the Prime Minister, the other members of H Committee, the Attorney General, and Sir Robert Armstrong.

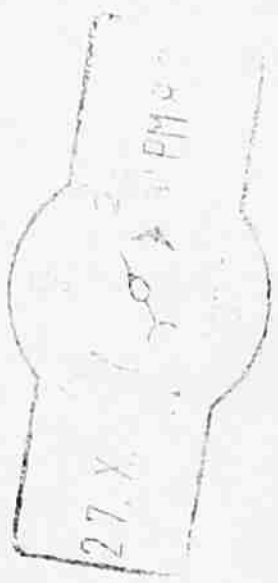
Yours sincerely,
Robin Butler

for TK
(Approved by the Secretary of State
and Signed in his Absence)

CONFIDENTIAL

MMcC 5045

HOME AFFAIRS: Capital Punishment PTS



HOME SECRETARY

QUEEN ANNE'S GATE
LONDON SWIH 9AT

PERSONAL AND CONFIDENTIAL 21 October 1987

Dear Norman,

PAROLE SYSTEM REVIEW

Many thanks for your letter of 16 October and for letting me know your personal views about the future of our parole arrangements. I am sure that you will not expect me to comment on your points at this stage, ahead of receiving Mark Carlisle's report. I can assure you, however, that I shall have your points very much in mind when considering with colleagues what response should be made to his recommendations.

I am copying this letter to the Prime Minister.

Yours,

Douglas

The Rt Hon Norman Tebbit, CH., MP.

Home Affairs: Capital Punishment PT3.

Conservative Central Office
32 Smith Square Westminster SW1P 3HH
Tel. 01-222 9000 Telex 8814563

From:
THE CHAIRMAN OF THE PARTY
Rt. Hon. Norman Tebbit CH MP.

NT/AM

16 OCTOBER 1987

PERSONAL & CONFIDENTIAL

PAROLE SYSTEM REVIEW

I HAVE COPIED TO YOU SEPARATELY MY REPLY TO A LETTER FROM MARK CARLISLE OF 25TH SEPTEMBER ASKING FOR MY - AND BY IMPLICATION THE PARTY'S - VIEWS ON THE ISSUES BEING CONSIDERED BY MARK IN HIS PAROLE SYSTEM REVIEW. ALTHOUGH I HAVE NOT SENT ANY SUCH VIEWS TO HIM, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO MAKE TWO POINTS TO YOU WHICH I HOPE YOU WILL TAKE INTO ACCOUNT WHEN CONSIDERING THE REPORT WHICH MARK WILL SUBMIT.

FIRST, AS THE NOTE ATTACHED TO MARK CARLISLE'S LETTER TO ME ITSELF SUGGESTED, THE NOTION OF PAROLE IS ESSENTIALLY OUTDATED. IT REMAINS BASED ON AN OPTIMISTIC VIEW OF THE POSSIBILITIES OF REHABILITATION WHICH HAS BY AND LARGE BEEN SHOWN TO BE UNJUSTIFIED BY EVENTS. IN PRINCIPLE, THEREFORE, PAROLE SHOULD BE ABOLISHED. THIS WOULD HAVE THE EFFECT OF MAKING THE SENTENCE BY THE COURTS CLOSER TO THE SENTENCE ACTUALLY SERVED. THAT IN TURN WOULD INCREASE PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM. THE CONTINUATION OF REMISSION OF UP TO A THIRD OF THE SENTENCE WOULD PROVIDE AN INCENTIVE FOR GOOD BEHAVIOUR AND SO AN INSTRUMENT FOR RETAINING CONTROL OF PRISONERS.

THE ONLY ARGUMENT, AS FAR AS I CAN SEE, AGAINST MAKING SUCH A CHANGE IS THE UNDOUBTEDLY POWERFUL ONE THAT IT WOULD, UNLESS BALANCED BY OTHER CHANGES, INCREASE THE PRISON POPULATION BY SOME 6,000. THAT HAS IMPLICATIONS FOR THE PRISON-BUILDING PROGRAMME WHICH I FULLY RECOGNISE. THESE LEAD ME TO MY NEXT POINT.

SECOND, IF IT IS CONSIDERED THAT FOR REASONS OF RESOURCES AND/OR PRISON OVERCROWDING, PAROLE COULD NOT BE ABOLISHED COMPLETELY, THE RESTRICTIONS INTRODUCED BY LEON BRITTAN ON THE AVAILIBILITY OF PAROLE FOR SERIOUS VIOLENT CRIMES AND DRUG TRAFFICKING COULD BE EXTENDED. AT THE MOMENT THOSE SENTENCED TO FIVE YEARS OR MORE IMPRISONMENT FOR SUCH OFFENCES EFFECTIVELY LOSE THE CHANCE OF PAROLE. IN ORDER TO EXPRESS THE GOVERNMENT'S AND SOCIETY'S ABHORRENCE OF VIOLENT CRIME I PROPOSE THAT THAT THRESHOLD ABOVE WHICH PAROLE WOULD NOT BE AVAILABLE SHOULD BE LOWERED TO, SAY, TWO OR THREE YEARS.

I AM SURE THAT THE PARTY IN THE COUNTRY WOULD FIND IT DIFFICULT TO UNDERSTAND ANY MOVES WHICH MADE PAROLE MORE WIDELY AVAILABLE AND SO REDUCED THE SENTENCES SERVED FOR VIOLENT CRIMES. IN

2/...

Conservative Central Office

32 Smith Square Westminster London SW1P 3HH
Tel. 01-222 9000 Telex 8814563 Fax. 01-222 1135

Prime Minister 2

PERSONAL & CONFIDENTIAL

THE PRIME MINISTER - FOR INFORMATION

With Compliments

The Rt. Hon. Norman Tebbit, MP.

PARTICULAR, ANY WIDENING OF THE AVAILABILITY OF PAROLE OR ANY OTHER KIND OF EARLY RELEASE FROM PRISON FOR THOSE AT THE BOTTOM END OF THE SCALE SHOULD BE MORE THAN MATCHED BY TOUGHER MEASURES TO SIGNAL THE IMPORTANCE WHICH WE ATTACH TO ADMINISTERING TOUGH PUNISHMENT TO THOSE WHO COMMIT VIOLENT CRIMES.

I AM COPYING THIS LETTER TO THE PRIME MINISTER.

The Rt. Hon. Norman Tebbit, MP.

THE RT. HON. DOUGLAS HURD, CBE, MP.

010

CCBC

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215)
GTN 215) 5147
(Switchboard) 01-215 7877

From the Chancellor of the Duchy of Lancaster
and Minister of Trade and Industry

THE RT HON KENNETH CLARKE QC MP

n bpm

Rt Hon Douglas Hurd CBE MP
Secretary of State
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

14 October 1987

Dear Douglas,

UNIFIED CUSTODIAL SENTENCE FOR YOUNG OFFENDERS

WILL REQUEST IF REQUIRED

Thank you for sending me a copy of your letter of 9 October to Willie Whitelaw proposing the merging of the detention centre order and youth custody sentence into a unified custodial sentence for young offenders. I agree that your proposed amendment to the Criminal Justice Bill reflecting this proposal should be tabled while the Bill is in the Lords.

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

Yours ever,

KENNETH CLARKE

OC2ACM

CCBG

nbpm

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215)
GTN 215) 5147
(Switchboard) 01-215 7877

From the Chancellor of the Duchy of Lancaster
and Minister of Trade and Industry

THE RT HON KENNETH CLARKE QC MP

Rt Hon Douglas Hurd MP
Secretary of State
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

5 October 1987

Dear Douglas,

CRIMINAL JUSTICE BILL: POSSESSION OF CHILD PORNOGRAPHY

with details if required.

Thank you for sending me a copy of your letter of 1 October to Willie Whitelaw.

I am content with your proposals.

I am sending copies of this letter to H Committee, and to Sir Robert Armstrong.

Yours ever,

KENNETH CLARKE

OC1AAZ

CONFIDENTIAL

CCRBG

nbpm

Minister of State

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1

29 September 1987

Dear Lord President

LENIENT SENTENCES

I have seen Douglas Hurd's letter to you of 21 September on the proposals on lenient sentences which he wishes to include in the Criminal Justice Bill. I am responding in Tom King's absence in America.

You may take it that you have our full agreement to Douglas's proposals for the proposed amendment to the Bill on lenient sentences. Indeed, Tom King is minded to seek the introduction of provisions for Northern Ireland in the Bill. This course is however opposed by the Lord Chief Justice for Northern Ireland, so that Tom King will be discussing the matter with Patrick Mayhew and Michael Havers on his return from America. Subject to their agreement and that of H Committee, he would wish to follow the England and Wales proposals in Northern Ireland, and to do so by direct extension of the amendment of the Criminal Justice Bill to the Province.

Copies of this letter go to the Prime Minister, the other members of H Committee, the Attorney General and Sir Robert Armstrong.

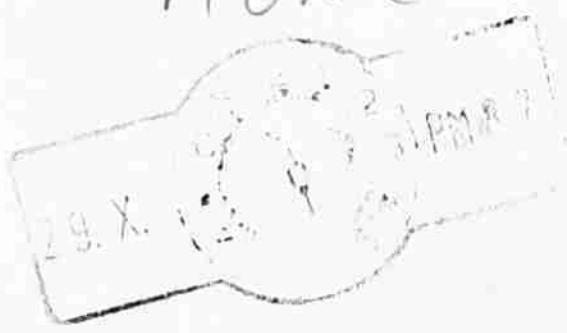
Yours Sincerely

Diane Sreenan

for JOHN STANLEY
(Approved by the Minister and signed in his absence)

CONFIDENTIAL

HOME AFFAIRS: Sentencing Policy: PE 3



cc BG.

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

16pm

QX4D5X764IXExnX

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

24 September 1987

Dear Douglas:

LENIENT SENTENCES

Thank you for copying to me your letter dated 21st September addressed to Willie Whitelaw.

I am entirely content with your proposal that we should seek to amend the Criminal Justice Bill during its Committee Stage in the Lords to include the strengthened proposal outlined in paragraph 2 of your letter.

I note you are soon to circulate a discussion paper on the role of the prosecution should the new proposal be enacted. I shall be happy in due course to issue guidance to prosecutors as you suggest. I hold the firm view that prosecuting counsel should only intervene at the request of the Court, but should in each case be prepared to meet such a request by referring the court to such statutory provisions or non-statutory guidelines as may be applicable.

Save to that extent, Counsel should never express an opinion as to which of the available categories of sentences it would be appropriate for the court to select, nor as to the "quantum" of a selected sentence. If this is made clear at an early stage I think it will help to secure acceptance for your proposal.

I am copying this to the Prime Minister, the Lord President, Members of H Committee and Sir Robert Armstrong.

Yours ever,

Patrick

HOME AFF: Sentencing policy

pt 3

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

21 September 1987

Prime Minister

Dear Willie.

LENIENT SENTENCES

My minute of 26 June to the Prime Minister outlined the scheme which I had been discussing with the Lord Chancellor, the Attorney General and John Patten, under which unduly lenient sentences could be referred to the Court of Appeal. As I said then, I have become convinced that we need to strengthen the provision on these lines which is already in the Criminal Justice Bill, so that it would be possible for the Court of Appeal to increase such sentences.

The strengthened proposal

The procedure we favour, for which I now seek H Committee approval, would have the following main features:

(i) the Attorney General would be able to refer to the Court of Appeal a sentence passed by the Crown Court where it appeared to him to be unduly lenient;

(ii) the leave of the Court of Appeal would be required before the sentence could be referred;

(iii) there would be a time limit of 28 days after the sentence had been imposed within which an application for leave could be made;

(iv) the Court of Appeal would have power to substitute whatever sentence it thought proper, within the maximum for the offence;

(v) the offender would be entitled to be represented at the hearing by the Court of Appeal and to receive legal aid;

(vi) the procedure would be confined, initially at least, to sentences imposed where the offence, or one of the offences, was purely indictable.

/Rather

The Rt Hon Viscount Whitelaw, CH, MC

Rather similar, though not identical, systems already exist in all the Australian states, in New Zealand and in Canada. Both the Lord Chief Justice (with whom I have talked the matter over) and Patrick Mayhew are sure that the power should be used only where a sentence is clearly out of line and not just arguably on the low side. Putting the power in the hands of the Attorney-General should, we believe, ensure that it is used sparingly and consistently.

A strict time limit should go some way towards defusing criticism of the proposal, much of which has so far concentrated on the unfairness to the offender of substituting a more severe sentence many months after the event. Patrick Mayhew thinks that it would be possible to live with a 28 day limit, but that anything less would be unmanageably tight.

Restricting the new procedure to purely indictable offences would confine the coverage to the 10,000 or so most serious cases each year (including serious violence, rape, robbery and aggravated burglary), and thereby limit the burden on the Crown Prosecution Service, on whose advice the Attorney General would have to rely in deciding which cases to refer. But I think we should leave open the possibility of extending the procedure to other Crown Court sentences imposed after conviction on indictment. The best way to do this might be for the statute to give power to specify categories of indictable offences to which the procedure would apply, and to make it clear that in the first place the power would be used only in relation to all purely indictable offences.

Wider questions about the role of the prosecution

Under the existing proposal in the Bill, the Attorney General would be moved to refer a sentence to the Court of Appeal where it raised a "question of public importance" and we envisaged that he would do so without taking advice formally from the Crown Prosecution Service. The strengthened provision, with the offender at risk of a more severe sentence, will however need to be operated systematically, and the Crown Prosecution Service and other prosecuting authorities will have a role in drawing to the Attorney General's attention cases which appear to be suitable candidates for reference.

This will involve the prosecution, for the first time, in taking a view on the adequacy of sentences, and raises important and far reaching questions about the proper limits of the prosecution role in sentencing. At the moment the prosecution plays virtually no part in the process after conviction and there is a strong professional culture that sentence is no business of the prosecutor. But attitudes may be changing and it is significant that the Lord Chief Justice recently suggested publicly that the prosecution should play a fuller role in assisting the judge over sentence, by identifying relevant statutory provisions and Court of Appeal guidance. The Australian

/experience

experience (of which I gather Patrick heard something from their Director of Public Prosecutions during the latter's visit to London earlier in the summer) seems to be that the existence of a prosecution right of appeal against sentence leads inexorably, over time, to a wider perception of the proper role of the prosecutor.

I have talked this over with Michael Havers and Patrick Mayhew. Both would be willing to contemplate moving in the direction suggested by the Lord Chief Justice, although they would prefer to confine prosecution involvement to cases where the judge explicitly invited the prosecutor's assistance. But the subject is a sensitive one for the legal profession and, as you will have seen from Patrick's letter of 28 July, at its most developed, with the prosecution making a contribution in all Crown Court cases, it could be an expensive business. John Major has understandably picked up this aspect of the matter in his letter to me of 18 August. I think we should proceed deliberately on this, and I have it in mind, as a first step, to issue a discussion paper to test opinion. As foreshadowed in my letter of 16 June to Patrick Mayhew (not widely copied), Malcolm Caithness announced our intention to do so during the Second Reading debate on the Bill. I hope that the paper will be ready before long and will show it to interested colleagues in draft. Subject to the reactions it provokes, it may be that the next step would be for Patrick to issue some guidance to prosecutors on the assistance which they can properly offer the court, which he would be ready to do, perhaps matched by a practice direction from the Lord Chief Justice. But if we decide on any major departure, especially in directions which would involve significant resource implications, I will consult colleagues, including John Major.

<u>Resource implications</u>

The strengthened proposal for the reference of lenient sentences would involve additional costs for the Crown Prosecution Service (which Patrick Mayhew will be discussing with John Major in the PES context) and, to a lesser extent, the Lord Chancellor's Department. It is difficult to be sure how many cases would be referred to the Court of Appeal, but our working assumption - which the Lord Chief Justice agreed seemed realistic when I saw him recently - is that there would be a relatively small number of references each year. The Crown Prosecution Service assume that a rather larger number of cases would be identified at local level as possible candidates and filtered out, in some cases after consultation with counsel. They would also need to budget for training and for processing the representations which would no doubt be made by the public and others that particular cases should be referred. On the assumption that 20 cases would be referred each year, the total annual cost would be about £120,000, to which should be added legal aid and court costs of £70,000, making £190,000 in all.

/<u>Conclusion</u>

Conclusion

I should be grateful for colleagues' agreement that we should seek to amend the Criminal Justice Bill during its Committee Stage in the Lords to include the strengthened proposal described in paragraph 2 above, and that on the wider question of prosecution role we should proceed as I have suggested, by stimulating debate within the legal profession and more widely. As I said in my minute to the Prime Minister, there is a strong political case for the strengthened provision on lenient sentences and I have it in mind to announce our conclusions at the Party Conference.

I understand that Tom King is considering whether it would be desirable to introduce a similar provision for Northern Ireland in the light of comments his officials have received from the Lord Chief Justice for Northern Ireland. I should be grateful if he could let me have his conclusions in due course. As Attorney General for the province, Patrick Mayhew may also have a view. As I understand it, the view taken in the past has been that there is no need for anything on these lines in Scotland, but if Malcolm Rifkind thinks otherwise no doubt he will let me know.

Copies of this letter go to the Prime Minister, members of H Committee, the Attorney General and Sir Robert Armstrong.

Yours,

Douglas H.

Home Affairs – Crime Prevention
for
PR2

OIO

CCBG

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

24 June 1987

PMS
25/6

Dear Mr Rennie

CRIMINAL JUSTICE BILL

As you know, this Bill was considered by the Legislation Committee yesterday and approved for introduction in the House of Lords as soon as possible. This is just to confirm that we should be grateful if you would arrange for its introduction in the name of Lord Caithness on Monday 29 June and for publication on Wednesday 1 July.

I am sending copies of this letter to Mark Addison (Prime Minister's Office), Rosalind Mulligan (Cabinet Office), Alison Smith (Lord Privy Seal's Office), Murdo Maclean (Chief Whips Office, Commons), Rhodri Walters (Chief Whips Office, Lords) and Brian Shilleto.

Yours sincerely

J F ACTON
Parliamentary Clerk

J D M Rennie Esq

CeBG

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

16pm

01-~~407 7641 Ext 41~~

01 936 6201

The Rt Hon Douglas Hurd MP CBE
Secretary of State for the
Home Department
Home Office
Queen Annes Gate
London
SW1H 9AT

23 June 1987

Dear Douglas:

CRIMINAL JUSTICE BILL: PENALTIES FOR CHILD ABUSE

I have seen a copy of your letter to Willie Whitelaw dated 18th June.

I am entirely content with your proposal to increase the maximum sentence for offences under s.1 of the Children and Young Persons Act 1933 from two years to ten years.

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

Yours ever

John

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

18 June 1987

Dear Willie.

CRIMINAL JUSTICE BILL: PENALTIES FOR CHILD ABUSE

I am writing to let you and other colleagues know that I have decided to use the Criminal Justice Bill to increase the maximum penalty for cruelty to children under section 1 of the Children and Young Persons Act 1933 from 2 years to 10 years.

Recent cases of child cruelty have highlighted a deficiency in the existing penalty structure. Murder, manslaughter and the offence of causing grievous bodily harm all carry a maximum penalty of life imprisonment, and all those who have been convicted in cases where the child has died have been sentenced for one of these offences. If, however, a child was subjected to severe and prolonged ill-treatment which did not involve actual physical assault or lead to death - for instance, isolating it for months or severely malnourishing it - none of the most serious charges would be available and the prosecution could only bring charges under section 1 of the 1933 Act. This make it an offence wilfully to assault, ill-treat, neglect abandon or expose a child in a manner likely to cause unnecessary suffering or injury. The trial judge in the recent case of Kimberley Carlile, who was half starved and locked away from the rest of the family, as well as physically assaulted, criticised the maximum penalty under section 1 as too low. I think he is right on the merits, and that the existing 2 year maximum is no longer defensible. In practice there are almost certainly few cases of mistreatment which do not involve assaults warranting a charge for a more serious offence (for example GBH, which carries a maximum life sentence). But a 10 year maximum would enable the courts to deal properly with any very bad cases of child neglect which do not actually lead to death of involve serious physical assault. This would bring the maximum penalty into line with that for maliciously administering poison so as to endanger life.

I announced the intention to raise the maximum penalty for cruelty to children during the election campaign and I propose to have a new clause in the Bill on introduction. There should be no opposition, I think.

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

Yours ever,
Douglas.

The Rt Hon Viscount Whitelaw, CH, MC

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

18 May 1987

Lenient Sentences

Thank you for your letter of 14 May. The Prime Minister has noted the Home Secretary's proposals on this matter.

I am copying this letter to Mike Eland (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Robert Gordon (Scottish Office), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

P.A. BEARPARK

William Fittall, Esq.,
Home Office.

From: THE PRIVATE SECRETARY

LCCBG

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

15 May 1987

Dear Andy,

with PAB/PM?

LENIENT SENTENCES

William Fittall wrote to you yesterday describing the Home Secretary's present thinking and the action he has set in hand on the reference of sentences to the Court of Appeal. I am afraid that a paragraph was inadvertently omitted from William's letter in the course of typing. The paragraph reads:

> "The Home Secretary also intends to explore the possibility that the prosecution could assume a more positive role in helping the judge at the sentencing stage, as is known to be favoured by the Lord Chief Justice. Again, he would intend, after the Election, to seek the views of the Lord Chancellor and other colleagues."

I should be grateful if you would insert this before the last main paragraph of substance in William's letter.

Copies of this letter go as before.

Yours sincerely,

Philip Mawer

P J C MAWER

P A Bearpark, Esq

From: THE PRIVATE SECRETARY

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cc BG

HOME OFFICE
QUEEN ANNE'S GATE LONDON SWiH 9AT

14 May 1987

Dear Andy

Prime Minister 2

LENIENT SENTENCES

The Home Secretary has asked me to let you have a note of his present thinking and the action which he has set in hand on the reference of sentences to the Court of Appeal. As you know, most of the Criminal Justice Bill, including clause 29 which would have given the Attorney General power to refer sentences for the opinion of the Court of Appeal, will be lost on the dissolution.

In the Second Reading Debate in the Lords, before the date of the election was known, clause 29 came under very severe attack from a combination of the Government's supporters. The Opposition argued that the clause was unnecessary and objectionable, but did not have anything to suggest in its place. The senior judicial figures who spoke - the Lord Chief Justice, Lord Denning, Lord Roskill and Lord Ackner, supported by Lord Campbell of Alloway - favoured a prosecution right of appeal against sentence, and argued that clause 29 was pointless because it carried no possibility of a more severe sentence being substituted in the particular case referred.

The Home Secretary still feels that on the merits clause 29 can be presented as a sensible way of channelling public concern about the occasional over-lenient sentence and ensuring that lessons are learned for the future. It was so presented by David Mellor in the Commons. But he is now in little doubt that it is doomed to fail in the Lords. A confrontation between the two Houses early in the new Parliament would, he thinks, be undesirable, especially when it would appear that those who had previously been the obstacle to change now favoured a more robust solution than that proposed by the Government.

The senior judiciary's change of mind is, in the Home Secretary's view, a highly significant development. There is a strong political case for moving forward. But a "full" right of appeal, in which the prosecution routinely considered the option of appeal in relation to every sentence passed in the Crown Court, would be a substantial, perhaps crippling, new burden on the Crown Prosecution Service, and would have worrying implications for the prison population, which must be a main consideration. The Home Secretary regards these as very strong objections. There are, however, various ways in which a more selective scheme (possibly based on clause 29 but with the accused at risk of a more severe sentence) could operate. The Home Secretary has asked for further study of the possibilities to be undertaken over the next few weeks so that he can be in a position to have an early discussion with the Lord Chancellor, the Attorney General and other colleagues after the election.

→ extra para in attached letter

The Home Secretary observed that the Conservative Party's manifesto on this point has been carefully drafted so that the Government could either stand on clause 29 or move beyond it on the lines sketched above. But any move needs to be carefully planned and its full implications weighed up.

Copies of this letter go to Mike Eland, Richard Stoate, Robert Gordon, Michael Saunders and Trevor Woolley.

Yours ever

W R FITTALL

P A Bearpark, Esq.,

CC BG

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

rbpm

RESTRICTED

The Rt Hon the Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

14 May 1987

Dear Lord President

PAROLE

WILL REQUEST IF REQUIRED

I have seen a copy of Douglas Hurd's letter of 7 May, seeking agreement to the inclusion in the Manifesto of a commitment to institute a review of parole in England and Wales.

I have no objection to what Douglas proposes. Since the relevant legislation is in essence the same for Scotland as for England and Wales, although our procedures and practices differ significantly, a thorough-going review of the kind proposed will inevitably have implications for Scotland and I would welcome your agreement to my setting in hand a broadly similar review.

Since we did not follow England and Wales in 1983 in reducing the minimum qualifying period from 12 to 6 months the same concerns have not arisen amongst the judiciary here over sentencing. On the other hand, I continue to face strong criticism, not only from penal reform groups but also from the Parole Board for Scotland and the Prisons Inspectorate (in a recent report following recent incidents at Peterhead), over our policy of limiting parole expectations for prisoners serving life sentences for certain types of murder or sentences of more than 5 years for offences involving violent crime and drug trafficking. The announcement of a parole review in Scotland would therefore need careful presentation to avoid arousing expectations that it foreshadows some relaxation of this policy.

I am grateful, therefore, that Douglas Hurd, is content to make clear that the type of review he proposes will be concerned with England and Wales. I have in mind that the express commitment in Scotland should be in more general terms, to an examination by the Government of the effect in Scotland of its recent initiatives affecting penal policy and practice. I would wish to consider further the form which such an examination might take. I should therefore be grateful if my Department might be closely associated with the arrangements for the proposed review in England and Wales and with the course of its deliberations, to ensure a due measure of

coordination in preparing recommendations for Ministers' further consideration.

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

Yours sincerely

Roger Gordon

Private Secretary

for **MALCOLM RIFKIND**

Approved by the Secretary of State and issued in his absence at Perth

HOME AFFAIRS

CAPITAL PUNISHMENT

PT 3

2984/031

CCBG
16pm.

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

8 May 1987

Dear Home Secretary,

PAROLE

WILL REQUEST IF REQUIRED

Thank you for sending me a copy of your letter of 7 May to Willie Whitelaw in which you proposed the inclusion in the Manifesto of a commitment to institute a review of parole in England and Wales in view of the inconsistencies of the present structure of sentences and release from custody and the judicial criticisms of the present arrangements.

I agree that you should seek to resolve the problems caused by the inconsistencies of the present arrangements for custodial sentences and I am content with a wide ranging review covering more than the narrow question of parole.

The obvious starting point will be the purposes and justification of custodial sentences. I am glad that you are looking for solutions that would require no net increase in the prison population or in the resources already committed to the penal system. I would however hope that the review could achieve reductions on both these accounts. As you pointed out in your letter of 7 May, the problem of the increasing prison population is worsening. This is costly. And the extraordinarily high figures for recidivism suggest that prison neither reforms nor deters. Every effort is needed to secure permanent reductions in the growth of the prison population. You will recall that in my letter of 31 March, I pressed for the continued search for alternatives to custody which were not only cheaper but no less effective. Your review should help in this.

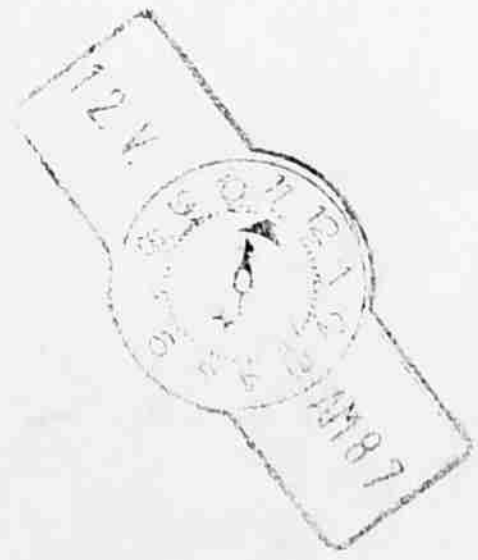
Accordingly I support the inclusion in the Manifesto of the commitment for the wide ranging review that you propose which should, amongst other matters, consider alternatives to custody and take account of the resources available to the penal system.

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

Yours sincerely,

Jim Lester

pp JOHN MacGREGOR
(Approved by the Chief Secretary and signed in his absence).



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nbpr

Chancellor of the Duchy of Lancaster

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Tel No: 270 0020
270 0296

11 May 1987

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home
Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

D Douglas

PAROLE

WILL REQUEST IF REQUIRED

Thank you for the copy of your letter of 7 May to Willie Whitelaw.

I am content to agree, on the basis of your letter, that a review of parole in England and Wales should be instituted. I should also, however, note the importance of thinking further about what we want out of the review before we set it up. In that respect, while I would share your wish not to add to the burdens on the prisons nor consume major additional resources, I would add the objective that the review should seek actively to reinforce the sentencing decisions of judges, if necessary by allowing the judges to specify that those convicted should not be eligible for parole before twelve months of their sentence have elapsed, or even longer depending upon the nature of the offence.

I would also hope that the system of sentencing and of determining the subsequent terms of imprisonment would become more transparent, reflecting both the objective of returning offenders to the community if they can best be rehabilitated there, and the objective that, for some offenders, the sentence received must be exemplary, and a deterrent, and not be subsequently undermined.

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

Yours Norman

NORMAN TEBBIT

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CC BG

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

nbpm

The Rt. Hon. The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
68 Whitehall
London SW1

27 April, 1987

Dear Willie.

Criminal Justice (Scotland) Bill

WILL REQUEST IF REQUIRED

I have seen a copy of Malcolm Rifkind's letter to you of 9 April seeking approval to include a provision in this Bill to allow for procurator fiscal fines to be introduced. I have also seen a copy of Douglas Hurd's letter to you of 22 April.

I endorse everything that Douglas says and, insofar as I have responsibility for the Crown Prosecution Service, I must emphasize the inability of that Service to exercise any similar function either now or in the foreseeable future. I have no objection, therefore, to the proposal being put into practice in Scotland, but this must not be taken as an indication that I would have no objection to similar proposals for England and Wales, on which I should like to reserve my position.

I am sending copies of this letter to other members of H Committee, to Kenny Cameron and to Sir Robert Armstrong.

Yours ever

Michael.

CCBE

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01 936 6201

noon
(L'Pres wants to del)

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London SW1

18 March 1987

Dear Douglas,

ATTACHED.

Thank you for your letter of 5th March, to which I have given much anxious consideration. I have also seen your letter to Willie Whitelaw of 17th March, and Paul Channon's letter to you of the same date.

I confess to some disappointment that you do not feel able to make the limited concession to Clause 2(6) which I advocated in my letter of 23rd January. I can foresee some difficulties for the Serious Fraud Office, particularly in the light of the anomalies I mentioned in my letter. However, I have greater confidence than Paul Channon that the SFO will nevertheless have quite sufficient scope to investigate and prosecute those serious frauds which have shaken confidence in the City.

David Mellor's very skilful defence of the compulsory powers in committee has persuaded me of two things: first, that the radical nature of the new powers in criminal investigation embodied in Part 1 of the Criminal Justice Bill makes the counterbalance of Clause 2(6) inevitable; and, secondly, even if I were not convinced of this view, the line taken in committee bars us from seeking the type of amendment I proposed unless we are prepared to face accusations of bad faith, which would undoubtedly, and with some justification,

be levelled at us.

I therefore, albeit with some reservations which I am sure you will understand, concede that the SFO must live with Clause 2(6) as at presently drafted.

Finally, I welcome the proposals in your letter of 17 March to Willie Whitelaw.

I am copying this letter to the Prime Minister, Secretary of State for Trade & Industry, Lord Chancellor, Members of H Committee and Sir Robert Armstrong.

Yours ever,
Michael.

Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215 5422
GTN 215)
(Switchboard) 01-215 7877

17 March 1987

The Rt Hon Douglas Hurd MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

CRIMINAL JUSTICE BILL : SERIOUS FRAUD OFFICE

Thank you for copying to me your letter of 5 March to Patrick Mayhew commenting on Michael Havers' letter of 23 January about Clause 2(6) of the Criminal Justice Bill. I have also seen John MacGregor's letter of 23 February supporting Michael Havers' views and your letter to Willie Whitelaw of 17 March.

As you will already know from my letters of 24 December and 13 February, I am strongly of the view that Michael Havers is right on this point and I am afraid I can not go along with the conclusions you reach in your letter of 5 March. I think the detailed reasons set out in Michael Havers' letter of 23 January and John MacGregor's of 23 February are very telling ones. The more that recent events in the City develop the more I am certain that it is essential that the prosecution should be free in cross examination to put earlier answers given by a defendant in reply to questions from SFO Investigators if he choses to give evidence and gives a different account in the witness box. Without such a provision, much of the good will be achieved through Clause 2 in appropriate cases will be at risk as a result of a change of story by the defendant in the witness box. It was quite clear from the debate in Commons Committee on 13 January, which you mention, that it was well recognised by all concerned that a balance had to be struck between the powers given to the Serious Fraud Office and the protection of the rights of citizens and organisations - and that

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striking that balance was not easy. But it does seem to me that the line of argument used in the third paragraph of your letter is really tipping the balance much too far in favour of someone who is under investigation for a serious fraud.

We already have the rather strange situation in this Bill that although someone who falsifies documents will be guilty of an offence (Clause 2(11)), there so far is no provision that a person who makes a false statement will be guilty of an offence. Even if that omission were to be rectified as now proposed in your letter of 17 March, the absence of any provision to make use of the statements to challenge contradictory information being given in the witness box, seems to me to be placing the effective operation of the Serious Fraud Office under a very serious disadvantage from the start. I fully agree with Michael Havers that we would thereby be creating a situation which would hardly inspire public confidence in our system of justice; like John MacGregor, I also believe it would hardly inspire public confidence in our declared intention to crack down on serious fraud.

Clearly in view of this important difference of opinion between you on the one hand and Michael Havers, John MacGregor and me on the other, we are going to need to discuss this issue in Committee with other members of H. In that case, I feel I must also revert again to my underlying concern about whether the principle embodied in the present draft of Clause 2(6) is in itself right. As you will know, there is no sign of abatement in the widespread concern about City scandals and as the cases which we currently have in hand develop I am more than ever struck by the anomaly between what we are doing at the moment in current cases under existing legislation and the much weaker powers which Clause 2(6) entails for the Serious Fraud Office. S.177(6) of the Financial Services Act (so recently passed) specifies that 'a statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him'. It will look odd if we are able to do things on insider dealing that we cannot do in relation to serious fraud.

We are very concerned that the SFO should be able to work and work effectively. We would also wish it to be able to take major cases from the start and carry them all the way through to prosecution. With Clause 2(6) as it stands however I believe that if we are to be taken seriously about our resolve to deal firmly with major potential problems in the City, we may well have to continue to use DTI powers rather than let the Serious Fraud Office handle the case from the start. I believe we would all agree that that would not

DW2BOK

be satisfactory but I believe that it is almost inevitable if it remains the case that statements obtained by the SFO under the provisions of Clause 2 can not be used in evidence against the person making the statement.

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

PAUL CHANNON

DW2BOK

400/86/272

QUEEN ANNE'S GATE LONDON SWIH 9AT

5 March 1987

Dear Patrick

SERIOUS FRAUD OFFICE

Michael Havers wrote to me on 23 ~~February~~ January about the use in later court proceedings of statements made by the accused during an investigation by the Serious Fraud Office, in compliance with the new Office's compulsory powers. He accepted that, as clause 2(6) of the Criminal Justice Bill provides, such statements should not generally be admissible as evidence against the person making them. But he proposed, as Paul Channon did in his earlier letter of 24 December, that the prosecution should be able to use them in cross-examination where the accused had chosen to give evidence and had given a different account from the witness box.

I can see the force of Michael's argument, but, as I said in my letter of 15 January, I doubt if it would be practical politics to change the Bill in this way. In the Commons Committee, David Mellor vigorously defended the extent to which self-incriminating information obtained using the compulsory powers could be used in constructing a prosecution against the person concerned. But, in responding to Opposition anxieties about the effect of clause 2 on the right to silence, he relied quite heavily on the fact that under clause 2(6) as it stands statements made in compliance with the compulsory powers are not to be admissible as evidence against those making them. If we were now to retreat from that position, even to the extent Michael has suggested, I think there would be accusations of bad faith and I suspect we would run into difficulties in the Lords.

The criticism we would have to face would be that it is a well established principle that, to be admissible, statements made by the accused must have been made voluntarily. Statements made in compliance with the SFO's powers could scarcely be said to have been voluntary. (If they were, they would of course be admissible in court, and I imagine that in interviewing suspects who might become the subject of criminal proceedings the SFO will try to obtain voluntary statements under caution before resorting to the compulsory powers). If we allowed the prosecution to deploy in court statements made in compliance with the clause 2 powers, even for the limited purpose envisaged in Michael's letter, the potential suspect who was unwilling to answer the SFO's questions voluntarily would in effect be told: "You must answer these questions, on pain of committing a criminal offence punishable

/with up to

The Rt Hon Sir Patrick Mayhew, QC, MP

with up to six months imprisonment; and if you subsequently deviate in court from the answers you give now these answers can be put before the court". In a context in which we are creating, in criminal justice legislation, a body with prosecuting rather than regulatory functions, that seems to me to be rather sticky ground.

I am sorry that I cannot respond more favourably to Michael's proposal. I am copying this to those to whom he copied his letter, and also to the other members of "H" Committee who received the earlier exchanges between Paul Channon and myself, and to Sir Robert Armstrong.

Yours,

Doug'n.

PART 2 ends:-

AB TO PS/LORD CHANCELLOR 23.2.87

PART 3 begins:-

Home Sec to Sol. Gen 5.3.87

~~SS/DTI TO SS/HOME 17.3.87~~