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Capital Punishment
Sentencing Policy
Criminal Justice Bill

HOME AFFAIRS

Part 1: July 1979

Part 4: Jan 1990

In attached folder 1. Home Office Publication : Tackling Crime
2. Criminal Justice White Paper
3. Supervision + Punishment in the Community

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
19.1.90							
19.1.90							
29.1.90							
6.2.90							
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PREM 19/3020

PART 4. ends:-

GS/WIO to Home Sec. 30.9.90

PART 5 begins:-

HO to D.W.SAUNDERS 7.11.90

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.

CM 965. CRIME, JUSTICE and PROTECTING the PUBLIC –
The Government's Proposals for Legislation
Published by HMSO
ISBN 0 10 109652 6

CM 966. SUPERVISION & PUNISHMENT in the
COMMUNITY – A Framework for ACTION
Published by HMSO
ISBN 0 10 109662 3

TACKLING CRIME
Published by the Home Office
Dd 8172049

Signed J. Gray Date 15/11/2016

PREM Records Team



NBPM *ans* *Cepo*

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

30 September 1990

Dear David,

CRIMINAL JUSTICE BILL: PROVISIONS ABOUT CHILD EVIDENCE *at flap*

I am sorry for the delay in commenting on your letter of 2 August 1990 to Geoffrey Howe about your proposals to implement the recommendations of the Advisory Group on Video Recorded Evidence (Pigot Report).

The inclusion of these provisions in the Criminal Justice Bill or their appearance in a separate short Bill would seem to be a valuable step and has my support. I shall consider making similar provisions in Northern Ireland.

I am copying this letter to the Prime Minister and members of H&L Committees, and to Sir Robin Butler and First Parliamentary Counsel.

L even

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PB

PM/SOFS/3877

Home Always! Sentencing
for life

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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

21 September 1990

Dear Home Secretary,

CRIMINAL JUSTICE BILL

The Queen's Speeches and Future Legislation Committee has now completed its consideration of the legislative programme for 1990-91 and the purpose of this letter is to follow up with you, in the light of the Committee's conclusions, the main outstanding issues of this Bill.

Your agreement that the scope of the Bill should be limited has been helpful in securing our objective of a more manageable programme, and I am grateful for that. But the Bill will still be very long and we must maintain our resolve to handle it at all stages in a way which does not place at risk our objectives for this fourth Session. It therefore remains essential that the Bill should be ready for the earliest possible introduction, that the material it contains should be properly prepared so that a minimum of subsequent amendment is required, and that significant new material should not subsequently be introduced by Government amendment, justifying the criticism that we are legislating 'on the hoof' and giving the Opposition in both Houses reasons for delay. With these general business management points in mind I turn to the specific outstanding issues.

In view of the scope of the Bill which we have now agreed I wonder whether the working title of 'Criminal Justice' remains apt. There is, I fear, some risk that it may prompt discussion and amendment in areas which we have deliberately excluded. This is a risk in both Houses but perhaps more particularly in the Lords, where the rules of relevance may on occasion be interpreted less strictly than in the Commons. I therefore suggest that you consider an alternative title, possibly 'Treatment of Offenders'.

It is important that the remaining policy issues should be resolved quickly. I understand that, following adverse reactions from the judiciary, some aspects of your sentencing policy proposals may require to be looked at again, while you have only recently proposed changes in the treatment of young offenders. I

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know that Parliamentary Counsel is anxious to have instructions on these matters as soon as possible and I hope they can be resolved quickly. You have now written about unit fines, with an early deadline for clearance, but your proposals for dealing with drug traffickers' assets are still awaited. You will need to bring them forward soon if they are to have a chance of inclusion in the Bill.

QL discussed in some detail the two other major possibilities for inclusion in the Bill which are currently under consideration, the Pigot recommendations children's video evidence and extra-territorial jurisdiction in fraud cases. On the first of these, while the Committee felt that there would be considerable political advantage in making a general commitment to legislate, there were serious doubts about some aspects of the proposals, on the grounds set out by the Attorney General in his letter of 10 September. QL took the view that it would be impossible to sort out these difficulties in time for the provisions to be included in the Criminal Justice Bill and that you should work towards the preparation of a separate Bill, for presentation later in the Session. Subject to having policy clearance in time it would be open to you to make clear, for example when the Criminal Justice Bill is introduced or at its second reading, how the Pigot provisions would be handled. On serious fraud, the Committee considered a similar approach, but concluded that it was unnecessary to envisage a further Bill and that the necessary provisions, which I understand would be short, should be included in the Criminal Justice Bill. We were advised that this would not affect the scope of the Bill. I hope you can agree to proceed on this basis.

I am copying this letter to the members of QL Committee and to Sir Robin Butler and First Parliamentary Counsel.

Yours sincerely,

Geoffrey Howe

GEOFFREY HOWE

(Approved by the Lord President
& signed in his absence)

The Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Queen Anne's Gate
London SW1H 9AT



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BHP
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QUEEN ANNE'S GATE LONDON SW1H 9AT

21 September 1990

CRIMINAL JUSTICE BILL: PROVISIONS ABOUT CHILD EVIDENCE

✓ Acp
Thank you for your letter of 10 September about implementing Pigot. I am grateful for your support in principle for changing the law in this area. As you know, Geoffrey has already helpfully given advance drafting authority for these provisions. Work here on detailed instructions is now well under way and I think we need to look at the resulting package to see to what extent it succeeds in avoiding the pitfalls you mention.

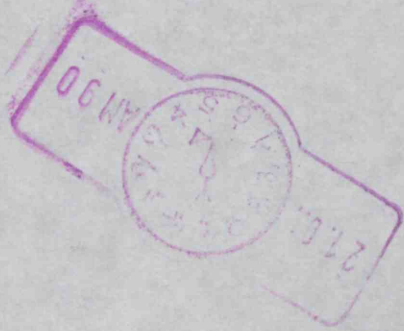
As you rightly say, much, including a major part of the case for field trials, depends on the precise status given to the proposed code of practice in determining questions of admissibility. I understand your reservations and am by no means wedded to the code of practice approach if we can achieve the objectives in the primary legislation. But these are questions on which Parliamentary Counsel will have a view and I think we may need to reconsider the point when we can see the balance that is struck. We shall also need to review whether we can do without a field trial - and, in particular, whether the CPS can firm up its estimates without one. Certainly I cannot seek fresh provision on the basis of what we have now.

You are undoubtedly right about all-party interest in changing the law to help child witnesses. But we cannot assume that everyone will agree we have gone far enough. My present view remains firmly that we would invite trouble for ourselves by handling Pigot as a separate Bill. But let us see what the draft clauses look like.

I am copying this letter as before.

The Rt Hon Sir Patrick Mayhew QC MP
Attorney General
9 Buckingham Gate
LONDON SW1E 6JP

HONGKONG : Semerana PT





DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS

Telephone 01-210 3000

From the Minister for Health

SEP

n.b. P.M.
BTP
21/9

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
London SW1

20 SEP 1990

R21

Dear Geoffrey,

CRIMINAL JUSTICE BILL : PROVISIONS ON CHILD EVIDENCE

I have seen a copy of the Home Secretary's letter of 2 August to you.

I am content with his proposals on the substantive issues and strongly support his view that they should be implemented in the Criminal Justice Bill, rather than separately. Delay would be very badly received, and would only increase pressure to take action through the Criminal Justice Bill.

I should be grateful for an opportunity to comment further if the possibility of separate legislation is pursued.

I am copying this letter to the Prime Minister, members of H & L Committees, Sir Robin Butler and First Parliamentary Counsel.

yours ever
Virginia

VIRGINIA BOTTOMLEY

136-YdeS

Home Address

Senter's  Henry

174





071-828 1884

The Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Home Office
50 Queen Annes Gate
LONDON
SW1H 9AT

9 BUCKINGHAM GATE
LONDON SW1E 6JP

n.b.p.m.
BHP
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19 September 1990

Dear David:

CRIMINAL JUSTICE BILL: YOUNG OFFENDERS

Thank you for your letter of the ~~17th~~ September 1990 outlining your proposals to modify, in the context of the forthcoming Criminal Justice Bill, the provisions contained in the White Paper "Crime, Justice and Protecting the Public" relating to the sentencing of young offenders.

These are matters of policy for you, posing rather difficult choices. I support the option you have chosen.

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

Yours sincerely,

David



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seen by BHP *Rle*

QUEEN ANNE'S GATE LONDON SW1H 9AT

17 September 1990

Ken Gifford

CRIMINAL JUSTICE BILL: YOUNG OFFENDERS

As you know, we are preparing for the early introduction next session of a Bill giving effect to the proposals in the White Paper "Crime, Justice and Protecting the Public".

The White Paper floated tentatively the suggestion that the sentence of detention in a young offender institution might be abolished for girls under 18. The rationale was that the sentence is rarely used for girls of this age, most of whom can be dealt with properly and safely in the community. The very small number convicted of the most serious crimes could still be detained under section 53 of the Children and Young Persons Act 1933. This suggestion was opposed by some of those who sent comments on the White Paper. In particular, it was criticised because it perpetuated and extended differences in the use of custody for boys and girls.

The present custodial sentencing arrangements make separate provision for boys and girls in two ways: the sentence of detention in a young offender institution is available for 14 year old boys but not girls of that age; and girls under 17 cannot be given a sentence of four months or less, while the minimum for boys is three weeks. The first of these differences is being tested in a case in which it is claimed that detention of a 14 year old boy was in breach of the European Convention on Human Rights because it discriminated against him on grounds of his sex. I am not confident that the decision will be favourable to us.

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1A 2AT

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I have been considering how to proceed in the light of the ECHR case and the reaction to the White Paper proposal. I have concluded that the custodial sentencing arrangements for boys and girls should be brought into line. In 1989, some 200 14 year old boys received a custodial sentence; this compares with about 800 in 1985. There is a strong view that custody should not be used for boys of this age, except for the worst offences. There are good constructive and demanding programmes for punishing juveniles in the community. For the very serious 14 year old offenders, for whom these programmes would not be suitable, detention under section 53 of the 1933 Act would remain available.

I therefore plan to include in the Bill a provision to abolish the courts' powers to impose the sentence of detention in a young offender institution on 14 year old boys. I shall not proceed with the White Paper suggestion of abolishing this sentence for girls under 18. The Bill will, however, make provision for the consolidation of the minimum sentence length for girls and boys at 2 months. I believe these changes are desirable on their merits. We will get more credit from taking them now rather than being seen to be forced to take them either by an unfavourable decision on the ECHR or following pressure for changes during the passage of the Bill. Otherwise, I would expect amendments to abolish young offender institution detention for 14 year old boys, which would be supported by some Government backbenchers in both Houses.

I intend to announce the changes in a speech on young offenders, which I am giving to the Annual Conference of the Howard League on 19 September.

I am copying this letter to the Prime Minister, the members of the Home Committee, the Attorney General and to Sir Robin Butler.

[Handwritten signature]
Cm



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071-828 1884

The Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Home Office
50 Queen Annes Gate
LONDON
SW1H 9AZ

10 September 1990

Dear David:

CRIMINAL JUSTICE BILL: PROVISIONS ABOUT CHILD EVIDENCE

Thank you for copying to me your letter of the 2nd August 1990 outlining proposals to implement the recommendations of the Pigot Report.

The Report's identification of shortcomings in the present arrangement is certainly persuasive; I would therefore have no hesitation in principle in endorsing measures which take advantage of modern technology and enable the maximum amount of reliable evidence to be received by courts in circumstances which minimise the distress (and possible deterring) of child witnesses. But my present view of Pigot is that it provides a sound policy steer which requires rather more official work than I understand has been possible in order to work it up to the sort of proposals which can form the basis of legislation. In handling terms this points to legislation taking the form of a separate short Bill which could be trailed at an early stage but introduced later once more work has been done. Since the Bill is likely to have all-party support, it would not be prejudiced by this approach. I think policy approval at this stage would be premature.

Your present proposal for the admission of video recorded interviews directly links admissibility with compliance with a proposed Code of Practice. The difficulty I perceive is

*n.b. P.M.
at 4.30 p.m.
BHP
11/9*

CC 11/9
9 BUCKINGHAM GATE
LONDON SW1E 6JP



that - in contrast with the situation as regards tape recorded interviews - we are here amending the substantive rules of evidence so as to render admissible what is at present excluded as hearsay. It is a job for primary legislation rather than a Code of Practice to delineate the extent to which the hearsay rule is abrogated. It will need to be clear whether the interviews to be admitted are those taking place and recorded during the investigation itself, or whether there will come a stage towards the conclusion of the investigation where the child witness is asked to make a formal video recording for evidential purposes. If it be the latter, will the prosecution be afforded more than one opportunity to make the video if for some reason they do not like the way the first recording came out? What safeguards will exist to ensure that the end product is not a "polished account" which does not necessarily afford the jury a reliable opportunity to assess demeanour? I strongly doubt whether it is feasible or desirable to leave all these important issues to a Code of Practice.

The statute will also need to address the situation where the defence wish to call a child witness. It would be difficult to justify a change in the rules of evidence which affect only one party; there might well be ECHR implications. A child said to have been present at an incident whose account does not support the prosecution witnesses may well be required to testify. It is likely that we would encounter opposition to any arrangements which required a defendant to reveal his defence in advance (e.g. by having a police officer or social worker present at the video recording), yet one would wish to ensure that by affording the defence the same facilities as the prosecution - as I think we must do - we do not facilitate possible abuse.

As well as providing a much clearer framework as to



admissibility, the statute is likely to deal with some of the practical issues (e.g. handling of tapes to preserve their confidentiality) which go very much to the rights of the defence and defendants. In some cases it will be necessary in order to achieve the degree of confidentiality which is appropriate to circumscribe existing rights (e.g. to copy documentary evidence).

I have two points to make so far as field trials are concerned. First, your letter suggests that the development of a workable Code of Practice for interviews etc will be one of the main objectives of the field trials. The close link which you propose between the Code of Practice and admissibility of the video recorded evidence could have the effect that in cases dealt with as part of the field trial, important issues will be determined according to a Code of Practice which is itself experimental. Field trials are usually associated with the practical and administrative arrangements surrounding a procedural change. Some defendants will be convicted on the strength of evidence rendered admissible by compliance with an experimental Code which has subsequently been abandoned or substantially amended as the result of practical experience. I do not like the feel of that.

Secondly, the suggestion that field trials such as you have in mind should be centred on one or two Crown Court centres would have the consequence that different rules of evidence would apply at those Crown Courts than in relation to similar trials held elsewhere. I do not think many people will like that either.

You suggest in paragraph 4 of the annex to your letter that all children should be presumed by law to be competent witnesses. Taken in conjunction with the abolition of the



laws of corroboration as regards child witnesses contained in the 1988 Act, this leaves the admissibility of child evidence totally at large and discretionary.

There is a risk that the judiciary will themselves resort to rules of thumb in the absence of any statutory guidance and some unacceptable local practices may develop. My main concern however is for the difficulties which will arise for the prosecutorial decision. A heavy responsibility is going to rest on the Crown Prosecution Service in determining when it is safe to prosecute and when it is not safe to prosecute. In theory, the word of a three year old will be sufficient to convict a man of offences punishable with life imprisonment. The CPS will inevitably need to develop its own policy guidance, and that may be interpreted by some as the CPS circumscribing the operation of an Act of Parliament. Where the CPS declines to prosecute, as inevitably it will from time to time, decisions are likely to be controversial. It will be difficult to advance any justification for such decisions other than they depend on the professional judgment of a crown prosecutor.

All my instincts are against quite such an unrestricted approach, especially in the present climate where the pressures for prosecution are very strong.

Finally, there is the vexed question of resources. We are about to embark on measures whose main objective is to improve the quality of justice. Such estimates of resource implications as have been given by the CPS are extremely tentative and could well be higher. What is clear is that once we have embarked upon this policy it will be impossible in political terms to turn back. I think we should take another look at the resource implications as and when proposals are more fully developed. You will not be surprised



to hear that the CPS is simply not able to absorb additional costs.

Copies of this letter go to the Prime Minister, Members of H and L Committees, Sir Robin Butler and First Parliamentary Council.

Law, even,

Adams

Howe Affairs: Samuel Jackson Bill, P 4



FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN



*n.b. P.M.
BHP
7/9*

HOUSE OF LORDS,
SW1A 0PW

LE11/70/12

DL3/152/1

6 September 1990

Dear David,

CRIMINAL JUSTICE BILL : PROVISIONS FOR CHILD EVIDENCE

Thank you for the copy of your letter *at flap* to the Lord President of 2 August. I am pleased to note that your proposals for implementing the report of the Advisory Group on Video Evidence correspond closely with those agreed between our officials.

I am content with the proposals as an outline scheme to be carried forward, and recognise that it will be some time before the proposed practical trial will yield detailed information on which firm resources estimates for Legal Aid, the Court Service and other Departments can be based.

I share your concern about the potential handling difficulties if Pigot is dealt with other than in the current Criminal Justice Bill, and agree that that topic might best be dealt with separately from this discussion of policy.

*Yours ever,
James.*

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

Home Affairs: Sentencing
BTU P. 4





NBPM

CMG

The Rt Hon David Waddington QC MP
Home Secretary
Home Office
Queen Anne's Gate
London
SW1H 9AT

30 August 1990

Dear Home Secretary,

CRIMINAL JUSTICE BILL:
VIDEO RECORDINGS ACT 1984

attached

Thank you for copying to me your letter of 1 August 1990 seeking policy approval for amendments to the Video Recordings Act 1984 to facilitate better enforcement.

I can see no difficulty in principle to the extension of the time limit for proceedings under the Video Recordings Act 1984. It would however be reassuring to know that the proposed increase was intended to catch offences detected outside the ordinary time limit rather than allow the period of investigation and case preparation to be prolonged. The latter would not sit comfortably with our overall efforts to speed up the criminal justice process.

I can also see some advantage in an adjustment in the arrangements for certificate by evidence so that the BBFC may certify that no work of a given title has been classified. The extent of that advantage is however difficult to predict. Where the prosecution is for a straightforward offence of publishing an uncertificated work, the requirement that works bear a title should ensure that the proposed arrangement is effective.



But the prosecuting authorities frequently encounter distribution of unclassified material bearing the title of a certified work or the distribution of unedited versions of works which have been certificated only on the basis of cuts being made. So far as the former are concerned, there will be a need for careful checking by the enforcement authorities with the BBFC whenever it is suspected that a particular work bears a false or duplicated title. If checks show that to be the case, the prosecution will need to call for a certificate that the particular work (as opposed to title) has not been certificated. As regards works which do not correspond with the certificated version, the prosecution will only be able to prove its case by adducing evidence of a comparison between the authenticated version and that which is the subject of charges. Here, I cannot see any alternative to a scrutiny by the BBFC and the saving therefore be correspondingly modest.

Finally, I should pass on to you the reservations expressed by the CPS at the possibility of an arbitrary limit by the BBFC on the number of videos to be scrutinised. Although the CPS is keen not to overload indictments, there will be occasions when evidence needs to be adduced about larger numbers.

Copies of this letter go to colleagues on L and H Committees.

Yours sincerely

Stephen Wosler

Approved by the Attorney General and signed
in his absence.

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NBPM CAS

CCP



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
London
SW1

21st August 1990*Dear Geoffrey***CRIMINAL JUSTICE BILL: PROVISIONS ABOUT CHILD EVIDENCE**

I have seen a copy of David Waddington's letter of 2 August concerning his proposals to implement the recommendations of the 'Pigot Report'.

Both Richard Ryder and I have made plain our concern that the proposals should be fully costed before taking any decision on introducing legislation in this area. I am therefore grateful that this work has now been done. But I am concerned about the wide differences in costs that arise depending on the assumptions made on caseloads. In the circumstances I think David is quite right to propose a field trial to help develop a code of practice and determine the most advantageous and cost effective way to proceed. It should also inform us about the likely impact on caseloads and hence costs.

I am content for David to proceed as proposed. But this is subject to the very clear understanding that the field trial is seen as a trial. No commitment should in my view be made to fully implement the proposals until the results have been analysed and considered, including how the costs would be met.

You will, I am sure, understand that I must protect my position on public expenditure. So my agreement must also be based on the understanding that the costs, both of the trial and any further implementation, will be met from agreed provision. I should say that, if the trial raises expectations for full implementation, yet the costs come out on the high side of the current estimates there can be no guarantee of any additional funding. I would be grateful if colleagues would bear that in mind when considering whether to proceed.

I am copying this letter to the Prime Minister, members of H and L committees, Sir Robin Butler and First Parliamentary Counsel.

Norman Lamont
NORMAN LAMONT

HAMB AFFAIRS: Sencencia PTCI



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cc/v



Prime Minister

You may like to note particularly x + y on the last page.

QUEEN ANNE'S GATE LONDON SW1H 9AT

2 August 1990

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Dear Lord President,

CRIMINAL JUSTICE BILL: PROVISIONS ABOUT CHILD EVIDENCE

Following my meeting with you on 10 July about the contents of the Criminal Justice Bill, I am writing to seek colleagues' policy approval for my proposals to implement the recommendations of the Advisory Group on Video Recorded Evidence (Pigot Report).

Will request if required

I am grateful for your authority to go ahead with the drafting of these proposals, and I have noted what you say in your letter of 30 July about the possibility of a separate short Bill on these proposals as an alternative to their inclusion in the Criminal Justice Bill. My view remains that we should be missing a political trick and possibly adding to rather than taking away from the Parliamentary handling difficulties by separating the estimated seven clauses on Pigot from the Criminal Justice Bill and putting them in a Bill of their own. But this is something that we will have to resolve later.

The background to the proposals is, as colleagues will recall, the intense cross-party pressure during the passage of the last Criminal Justice Bill to allow video recordings of child evidence to be used in abuse cases. Douglas Hurd deflected the pressure by agreeing to set up an advisory group, which reported last December. We invited, and received, comments from the judiciary, legal professions and police on the report, as well as from leading child welfare agencies and social services. There was unanimous support for allowing video recorded evidence to be used as the child witness's evidence-in-chief. There is mounting concern about child abuse and a widespread public expectation that we will now legislate to help the child victim in court.

Policy Proposals

There are three basic elements to the Pigot proposals. The first is to ensure that in most cases a video recording of the main police/social services interview with the child witness will be used as the witness's evidence-in-chief. This should reduce the burden on the child of recounting his or her experience from scratch months later and help ensure that the court hears the child's story, fresh and complete. The second element is to amend the rules bearing on the status of child evidence so as to remove unnecessary

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

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and artificial obstacles. The third element is to try to protect the child witness from a gruelling cross-examination, designed to break him or her in front of a jury.

.... I set out my detailed recommendations in the attached annex. Colleagues will see that I am keen to implement as many of the Pigot recommendations as I can, but I am inclined to modify the Pigot proposals about cross-examination and corroboration. The modified provisions with regard to the former may not, however, be thought to be an adequate response to the problem and we may well come under pressure to accept Pigot in toto. The modifications owe much to discussions with James Mackay's officials and I am grateful for their contribution. I believe that the proposals deliver a workable, streamlined package which will help bring child abusers to book without prejudicing a fair trial for the accused.

Field Trial

It will be critically important to the orderly implementation of these proposals that we should develop a workable code of practice for interviews which commands the confidence of the courts and the legal profession, and will cut time spent viewing and disputing tapes - potentially the biggest single cost (to the legal aid fund). This will need practical trial, as will the development of standards for satisfactory and economical equipment, full assessment of any additional training requirements, and the savings that should arise from more guilty pleas. I propose a field trial based on police forces which are already equipped and trained to conduct video recorded interviews and those Crown Court centres already equipped to reply them. The trial would be planned during the passage of the Bill to begin on Royal Assent in the summer of 1991. We would need to assess the results and cost of trial before deciding to proceed to full implementation. If we do decide to proceed, the code of practice would, I think, need to be submitted for Parliamentary approval, sometime towards the end of 1992. I doubt that full implementation would be possible much before the beginning of the 1993/94 financial year. We shall review this in the light of practical experience.

Costs

We do not expect to incur capital costs for the trial and are planning that running costs will be met from within each Department's existing resources.

A major difficulty in assessing the full costs and savings is assessing the impact on caseloads. The indications point in opposite directions. The stress for children of giving evidence under present procedures clearly deters prosecution in some cases; but so does the lack of corroboration. Also, the take-up rate for live video links is low; fewer at present than 10% of the 2,500 cases for which the Crown Court is being equipped. All this suggests that if we assume (in line with current

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predictions for Crown Court business) that the number of cases currently covered by the proposals increases by 5% per year until 1992, the maximum additional annual cost of trials (including legal aid) could be as high as £12.5 millions (1990 prices). If we assume that the proposed procedures would only be adopted in the same percentage of cases as live video links, the estimated annual cost is just £0.5 million. We expect significant savings from by-passing committal proceedings and an increase in guilty pleas. But we will need the field trial to quantify them.

At the conclusion of the field trial, expenditure in 1992/93 is likely to concentrate on equipment (estimated at £0.5 million capital cost) with some associated running costs and expenditure for the CPS and legal aid fund. I would expect a total bid for 1992/93 from all Departments of the order of £2 million. We will need to refine this in the light of the trial.

Other Implications

My proposals have no significant implications for EC matters or the European Convention on Human Rights.

I am copying this letter to the Prime Minister, members of H and L Committees, Sir Robin Butler and First Parliamentary Counsel. It would be helpful to have colleagues' approval by the beginning of September.

Yours sincerely,

Paul Smeeth

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE

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ANNEX

PROPOSALS FOR IMPLEMENTING REPORT OF ADVISORY GROUP ON VIDEO EVIDENCE

1. We should adopt the Advisory Group's recommendation that the new procedures should apply to all alleged victims and to witnesses in cases tried on indictment for violence, cruelty and neglect (with an upper age limit of 14) and sexual offences (upper age limit of 17). It is too early to propose extension to other "vulnerable" witnesses adults, except that we propose to include mentally handicapped adults (whose appearances at Crown Court are few) at the judge's discretion.

2. As recommended, there should be a presumption that video-recorded interviews, conducted in accordance with an agreed code of practice, should be admissible in cases described in the previous paragraph unless the court is satisfied that it would be contrary to the interests of justice to admit them. This gives less discretion to the courts than some judges would like, but a more open-ended provision would provide scope for endless wrangling between defence and prosecution and could undermine the whole initiative. Disputed tapes can be reviewed by a judge before the trial but there would be a strong presumption for admission where the code of practice had been followed.

3. As recommended, a Crown Court judge should be empowered to grant an application by the Crown Prosecutor for any case covered by the scope of these proposals which is triable either way to be heard at the Crown Court without the need for committal by magistrates. Most of the offences concerned are triable either way but almost all go to Crown Court. Unless we avoid committal in this way (or are prepared to contemplate equipping magistrates' courts) the effects of Pigot will be nullified. I think we should also consider non-statutory measures to ensure a "fast-track" procedure for child abuse cases. I shall need to be ready on introduction of the Bill with some firm proposals in this area. I shall be in touch with James McKay about this separately.

4. As recommended, all children should be presumed by law to be competent witnesses. Judges would retain their power to admonish children to give a full and truthful account. (Previous judgments by the Court of Appeal had in effect set a criterion for competence of a minimum mental age of 8, though that has to some extent been undermined by a judgement in March this year.) The law should make clear that each case should be considered on its merits. All children under the age of 14 should also give their evidence unsworn. (The oath has doubtful significance to children of this age and the practical distinction between children's sworn and unsworn evidence was largely abolished by the Criminal Justice Act 1988.)

5. I do not propose to accept the Advisory Group's recommendation to abolish the rule (applicable only to sexual

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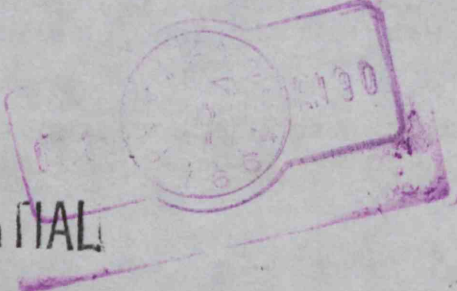
offences) that juries should be warned against convicting on uncorroborated evidence. Abolition would be premature while the Law Commission is reviewing corroboration in general.

X
6. I do not propose to accept the Group's recommendations about cross-examination of child witnesses. My predecessor made it clear to the Advisory Group in its terms of reference that the Government "could not contemplate removing the right of the accused to have such a crucial witness cross-examined at his trial". The Group's answer is a preliminary hearing, also video-recorded, and in "an informal setting", where the advocates and trial judge can view the initial video-recording and "cross-examine" the witness about it. Any recall of the witness during the trial would, under Pigot, be handled in like manner to the preliminary hearing ie there would be an adjournment and a filmed out-of-court cross-examination in an informal setting. There are strong differences of opinion about these proposals. Enforcement and judicial consultees drew attention to the practical and resource implications and doubted their efficacy. They pointed to the severe difficulties of ensuring attendance of all the actors at each and every preliminary hearing and pre-trial review and to the impact of such arrangements on judge-power and listing, together with legal aid costs. They suggest that the system prepared by the Advisory Group might well entail greater delays for the child and, more significantly, could well be counter-productive in terms of saving the child witness from unnecessary stress. In particular it is agreed that these arrangements would almost invite a series of informal hearings with the child recalled for successive challenges. I propose instead that cases where it is intended to submit video tapes in evidence should be committed direct to one of the Crown Court centres equipped for CCTV live link procedures. There would be no attempt to cross-examine the child before the trial; should either party want to cross-examine after the evidence-in-chief video has been played, this would be done via the live CCTV link.

Y
7. There is one additional proposal, made by the Law Society in its comments on the Advisory Group's Report. The Society recommends that defendants in sexual offences cases should lose their shield against having previous relevant convictions disclosed where the defence involves imputations against the character of the victim. This is an interesting, logical proposal with likely public appeal. It would help adult as well as child victims of sexual offences. On the other hand, the proposal has not been tested in consultation. I propose, subject to colleagues' views, to review the matter when we are nearing introduction, perhaps arranging a Question before we finally commit ourselves, to test the water.

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CONFIDENTIAL





QUEEN ANNE'S GATE LONDON SW1H 9AT

August 1990

CRIMINAL JUSTICE BILL: VIDEO RECORDINGS ACT 1984

There has been increasing public and Parliamentary concern about the enforcement of the Video Recordings Act. In particular this has followed an article in the Sunday Mercury which reported that a 14 year old girl had succeeded in obtaining video recordings classified as '18' at nine out of the ten shops she approached. At a recent exhibition for the video trade, 'Video 90', David Mellor told trade representatives that the Government entirely shared this concern, and he warned that if the present system of self-regulation by the video trade backed up with criminal offences did not work, we would have to consider a statutory licensing scheme.

However, before bringing in such a regime we would wish to be satisfied that the present enforcement arrangements have been given every opportunity to work. To that end I propose that we should make two small changes that both the British Board of Film Classification and representatives of the Trading Standards Officers believe would help.

These are:

- a) To extend the time-limit for prosecutions under the Video Recordings Act from six months to 12 months.

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall

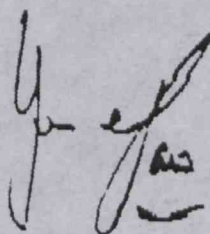
- b) To enable the BBFC to certify in evidence that no video work of a given title has been classified; or that a work of that title is classified for viewing by a given age group, without the present need to view the work itself. This would be made to work by a new requirement that all labels on video recordings should include the title of the work concerned.

At present the Board is compelled to view the video work in question before issuing such a certificate. Because this process is time-consuming, the Board has decided it can only issue certificates in respect of ten video recordings per prosecution, no matter how many were seized. Under the proposed new arrangement, the Board would only need to view an entire video in cases of doubt, where, for example, the same title was shared by several works.

I am anxious that to enact these proposals as early as possible to make the law in this area more effective and, failing that, to strengthen our position when we come to consider whether a statutory licensing regime is necessary.

Other things being equal, I would have wished to argue for the inclusion of these proposals in the Criminal Justice Bill, but I share your concern that that Bill should not be made more difficult to manage by the addition of miscellaneous new subjects. These changes might, however, be suitable for a handout Bill and would appeal to the backbenchers and I would like to pursue that possibility. Failing that, I would hope that these provisions could be included in the possible Criminal Law Bill for the 1991/92 Session which we discussed when we met on 10 July.

I am copying this letter to colleagues on L and H Committee.

A handwritten signature in dark ink, appearing to be 'J. G. L.' or similar, written in a cursive style.

NBPM *abs*

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
London
SW1A 2AT

Richmond House

79 Whitehall

London SW1A 2NS

Telephone 071 210 3000

*From the Secretary of**State for Health***16 JUL 1990***Dear Sir,***PAROLE AND RELATED ISSUES IN SCOTLAND**

Malcolm Rifkind wrote to members of H Committee on 27 June seeking agreement to the publication of a response to the Report of Lord Kincaig's Review Committee on Parole and Related Issues in Scotland (Cm 589: March 1989), and approval in principle to proceed with legislation to give effect to his conclusions in the Criminal Evidence and Procedure (Scotland) Bill in the 1990/91 Session. *Acas*

There are two specific aspects of the proposals in which I have a direct interest. The first relates to Malcolm's proposals for the release of children sentenced under sections 206 or 413 of the Criminal Procedure (Scotland) Act 1975. The equivalent provision in England and Wales is section 53 of the Children and Young Persons Act 1933. The Home Secretary's recent White Paper 'Crime, Justice and Protecting the Public' (Cm 965) indicated that the Government agreed with the proposals of the Carlisle Committee that the parole arrangements for juveniles detained under section 53(2) should be brought into line with those proposed for adults. Malcolm's proposals would have similar effect in Scotland and, as such, have my full support.

The second relates to the proposal that the Government should agree in principle with the recommendation of the Kincaig Committee that prisoners who have been transferred to mental hospitals should be considered for release on licence in the same way, as far as practicable, as prisoners who are detained in penal establishments; and that they should be released directly from hospital wherever possible. I note that proposals for revised parole arrangements in Chapter 6 of the Home Secretary's White Paper (Cm 965) made no specific reference to the position of prisoners transferred to mental hospitals in England and Wales. I suggest, therefore, that our respective officials will need to discuss the implications of Malcolm's proposals for prisoners transferred to mental hospitals in England and Wales.

C A R I N G F O R T H E 1 9 9 0 s



With that proviso, I am content with Malcolm's proposal to publish the response to the Report and agree in principle that legislation should be included in the Bill in the 1990-91 Session to give effect to his conclusions.

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

KENNETH CLARKE

HONG AFFAIRS : Semelana PT4





QUEEN ANNE'S GATE LONDON SW1H 9AT

Prime Minister ²

MS

10 July 1990

10/7

Mr Malcom,

mb

hap

Thank you for sending me a copy of your letter dated 27 June to Geoffrey Howe with which you enclosed your response to the Report of Lord Kincaig's Review Committee on Parole and Related Issues in Scotland.

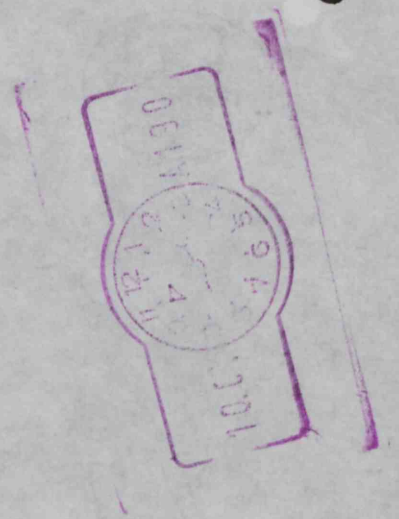
I am content with your proposals, which our officials have discussed. As there are a number of differences between our schemes, it will be important to keep in touch so that we can satisfactorily explain the variations.

I am copying this letter to the recipients of yours.

John G. Law

The Rt Hon Malcolm Rifkind MP
Secretary of State for Scotland
Scottish Office
Dover House
Whitehall
London SW1

HOME AFFAIRS: External Policy Pt 4





NBPM

CS

CCP

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

S. 7. 120

In Reply,

FINE ENFORCEMENT: ATTACHMENT OF INCOME SUPPORT

Thank you for copying to me your letter of 11 June to Geoffrey Howe about this.

I fully endorse your proposals as a useful contribution to reducing the prison population without weakening respect for the law. As you acknowledge, this mirrors one of the improvements we have introduced in the enforcement of community charges against wilful non-payers where attachment of benefit is an altogether more civilised sanction than imprisonment.

I accept your proposed order of call in ranking deductions for the purpose of the 15% maximum limit and I am grateful that you have allowed community charges to take immediate precedence here. I note your caution in examining whether attachment should be immediate or should follow means enquiries and I understand colleagues' concern to avoid unnecessary additional pressure on DSS. That of course has to be weighed against the additional work caused by means enquiries in our Courts. This is finely balanced and more for James MacKay than for me. However at a time when it seems likely that community charge enforcement itself must be expected to impose some extra work on the Courts, it may well be that magistrates have less elasticity than DSS staff.

I accept that we need to be cautious about this and that it might be wrong to eliminate the means inquiry before the attachment order is made. If in practice however we discover that a two-stage process is leading to unacceptable work loads for the Courts I myself would favour an early move to the more direct route.

I am copying this letter to the same recipients that received yours.

Chris Patten

CHRIS PATTEN

no request for red



DSG

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

2 July 1990

*Dear Sir,*PAROLE AND RELATED ISSUES IN SCOTLAND

The Prime Minister has seen and noted without comment your Secretary of State's letter of 27 June to the Lord President seeking the agreement of H Committee to the publication of the Report of Lord Kincaig's Review Committee on Parole and Related Issues in Scotland.

I am copying this letter to Tim Sutton (Lord President's Office) and Sonia Phippard (Cabinet Office).

Yours sincerely,
Caroline

Caroline Slocock

Jim Gallagher, Esq.,
Scottish Office.

RESTRICTED

RESTRICTED



SCOTTISH OFFICE

WHITEHALL, LONDON SW1A 2AU

Prime Minister²

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

Those proposals are broadly similar to those you have agreed on parole for England and Wales. The similarities and differences are explained overleaf. There is no need to read the draft report. CDS 29/6

27 June 1990

Dear Geoffrey,

PAROLE AND RELATED ISSUES IN SCOTLAND

I am writing to seek the agreement of H Committee to the publication of the attached response to the Report of Lord Kincaid's Review Committee on Parole and Related Issues in Scotland (Cm 598: March 1989), and to the instruction of legislation, where necessary, to achieve my objectives in the Criminal Evidence and Procedure (Scotland) Bill next Session.

Background

Major reviews of the parole system in Scotland and in England and Wales were among our 1987 Manifesto commitments. The Carlisle Committee's recommendations for reforms in England and Wales were the basis for the proposals set out in Chapter 6 of the Home Secretary's White Paper "Crime, Justice and Protecting the Public" (Cm 965), publication of which H Committee approved on 16 January. The Kincaid Committee's parallel recommendations with regard to conditional early release and post-release supervision in Scotland have been considered in the light of the response to consultation upon them and of David Waddington's proposals.

Main Proposals

The attached paper sets out in some detail proposals based substantially on the Kincaid Committee's recommendations, which are firm so far as concerns requirements to legislate. The main elements are as follows:-

- Every prisoner with a determinate sentence will serve at least half his sentence in custody and, if convicted of a further offence after release, will be at risk of being returned to prison to serve out any remaining part of the sentence.

- Those serving sentences of less than 4 years will normally be released at half sentence. When passing a sentence of one year or more but less than 4 years, the courts will have discretion to order post-release supervision for a period of up to 6 months. Where no such supervision order is made, local authorities will be required to provide social work help on release if the prisoner requests it.

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- Those serving sentences of 4 years or more will become eligible for parole at half sentence. If parole is not granted, the prisoner will be conditionally released at the two-thirds point under supervision.
- Remission, which at present reduces most sentences by one-third, will be abolished. Prison Governors' existing power to award forfeiture of remission will be replaced by an effectively similar power to delay release.
- The courts will be required to take account more consistently of periods spent in custody on remand: that is, to "backdate" sentences. (At present, courts in Scotland when passing sentence are required only to "have regard" to such periods).

These are broadly similar to what is proposed for England and Wales. In particular, the threshold for parole, parole eligibility, automatic release at half sentence for those sentenced to less than 4 years, and discretionary recall by the courts on conviction of a further offence will be basically the same north and south of the border. One difference lies in the proposed arrangements for post-release supervision. In England and Wales, all prisoners serving one year or more are to be subject to supervision until the three-quarters point. What I propose for Scotland is that those sentenced to 4 years or more should, on release, be subject to supervision potentially up to the expiry of sentence, while post-release supervision of those sentenced to one year or more but less than 4 years should be at the discretion of the courts. In this I have been persuaded by the Kincraig Committee's reasoning, which was, essentially, that not all shorter term prisoners require post release supervision and that limited resources should be applied where they are most needed, bearing in mind that in Scotland this function falls to local authority social work departments.

Expenditure and manpower

The estimated financial effects of my proposals are shown in the attached table. I expect that savings in prison service expenditure should at least be sufficient to meet the increased cost of centrally funded social work services. The prospective reduction in prison population arising from these proposals, taken together with a range of other factors affecting the nature and size of prison population in Scotland, will have implications for the future size and shape of the prisons estate. These will be the subject of separate discussions on this wider basis between my Department and the Treasury.

European Community

There are no EC implications.

European Convention on Human Rights

Possible ECHR implications will be carefully examined as these proposals are developed in detail so that any necessary safeguards can be built in. At present, I see no cause for concern.

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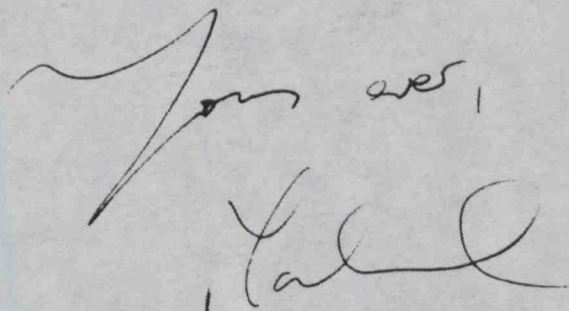
Likely response

In general, I expect these proposals to be well received by the Scottish Judiciary, prison Governors and staff, the social work profession, voluntary organisations and others concerned. The Kincaid recommendations were the result of their consultations and were broadly commended, and my proposals have taken account of reservations which were expressed on particular matters during my consultations on the published report. There will no doubt be differences of view on matters of detail, but I expect no serious controversy in relation to these proposals or in relation to the legislation which will be required to implement them.

Implementation

We have already agreed that legislation to implement these proposals should be included in the Criminal Evidence and Procedure (Scotland) Bill in the 1990-91 Session, and I now seek approval in principle for the legislation required to give effect to my conclusions. I should be grateful for any comments colleagues may have within 10 days of the date of this letter so that the document may be published and the requisite legislation may be prepared.

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

A handwritten signature in dark ink, appearing to read 'Malcolm Rifkind', with a stylized flourish above the name.

MALCOLM RIFKIND

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PROPOSALS FOR REFORM OF EARLY RELEASE AND
POST-RELEASE SUPERVISION IN SCOTLAND

Estimated increases/savings in expenditure

(£,000 at 1989 prices)

	<u>1992-93</u>	<u>1993-94</u>	<u>1994-95</u>
Parole system	+ 10	- 67	-134
Social Work supervision and support	+485	+705	+885
Savings (marginal costs) due to reduction in prison population	-509	-708	-835
Net savings	- 95	- 80	- 84



DRAFT: 19 JUNE 1990

SCOTTISH HOME AND HEALTH DEPARTMENT
PAROLE AND RELATED ISSUES IN SCOTLAND

THE GOVERNMENT'S RESPONSE TO THE REPORT
OF THE REVIEW COMMITTEE (THE KINCRAIG REPORT)

[July] 1990

THE KINCRAIG REPORT ON PAROLE AND RELATED ISSUES IN
SCOTLAND

THE GOVERNMENT'S RESPONSE

CONTENTS

	Paragraphs
INTRODUCTION	1 - 6
THE KINCRAIG COMMITTEE'S RECOMMENDATIONS	7 - 11
NEW ARRANGEMENTS FOR CONDITIONAL EARLY RELEASE	
Long term prisoners	12 - 15
Shorter term prisoners	16 - 19
Recall	20 - 23
Transitional arrangements	24
PAROLE	
The functions of the Secretary of State	25 - 28
Criteria for parole	29 - 32
The parole decision-making process	33 - 42
SUPERVISION	
Structural arrangements	44
Funding	45 - 46
Levels of Provision and standards of supervision	47
The supervision of young offenders	48
OTHER ISSUES	
Fine defaulters	49
Training for freedom etc	50
Remission and prison discipline	51
Children sentenced under sections 206 and 413	52
Prisoners transferred to mental hospitals	53
Time spent on remand	54
Suspended and part-suspended sentences	55
RESOURCES	56
CONCLUSION	57
SUMMARY	

INTRODUCTION

1. In pursuit of their commitment to the maintenance of law and order and the reduction of crime the Government have vigorously explored and adopted fresh means of dealing with offenders. A widening range of non-custodial sentences has been developed and the need to improve methods of enforcing punishment through fines and reducing the number of fine defaulters in custody has been recognised. The Government have also announced their decision to refund to local authorities the full approved costs of providing the required level and quality of services in the criminal justice system provided by local authority social work departments. This will allow the expansion and development of such services in Scotland and the setting of improved national standards for probation, parole supervision and the social enquiry reports provided to assist the courts when sentencing.

2. For more serious offences, however, especially crimes of violence, imprisonment remains the only acceptable means of meeting the requirements of justice and securing the protection of the public. This makes it all the more important that the nature, objectives and effectiveness of imprisonment should be subject to critical appraisal in the light of those objectives. For those offenders who are necessarily in custody the Government has been looking at new approaches which would give opportunities to the prisoner to address his offending behaviour and to contribute positively to society on discharge. The ways in which the Scottish Prison Service will approach this challenge for one important group of prisoners are described in the Scottish Prison Service paper Opportunity and Responsibility published in May 1990.

3. Attention has also recently focused on the longstanding arrangements for early release from prison and on the need for, and availability of, post-release supervision. These particular issues, which were examined in the report of the Review Committee on Parole and Related Issues in Scotland, are the subject of this paper.

4. Early release is generally taken to mean either parole or remission. The parole system in Scotland for prisoners serving determinate sentences has operated for over 20 years. Introduced in 1968 under the Criminal

Justice Act 1967 (the relevant provisions of which have now been re-enacted in the Prisons (Scotland) Act 1989), it reflected the view that lengthy imprisonment did not in itself fully prepare an offender for his re-integration into society but that release under supervision at a point when he had reached an identifiable peak in his training, and when risk to the public was minimised, could help him adapt again to life in the community. Not all prisoners can be paroled. For some the potential risk to the public will be too great to justify early release. For others it will be impracticable, because of the shortness of the sentence, properly to assess fitness and suitability for parole. For all prisoners, including those ineligible for parole, the long standing provision for remission of one-third of sentence on the ground of industry and good conduct applies.

5. Under the Prisons (Scotland) Act 1989, a prisoner who is serving a determinate sentence becomes eligible for parole after serving a year or one-third of his sentence, whichever is the longer. The Criminal Justice Act 1982 allows the Secretary of State to reduce the minimum qualifying period for parole by statutory instrument, but this power has never been invoked in Scotland. In effect, therefore, and taking into account the provision for remission, prisoners other than those sentenced to life imprisonment have to be serving sentences of more than 18 months to qualify for parole.

6. Within this statutory framework, the Parole Board for Scotland, local review committees and the Scottish Prison Service have worked with no little dedication and skill for more than two decades. Parole has not, however, escaped the critical appraisal referred to in paragraph 2. Doubts have been expressed about the whole ethos of parole. Concerns have been registered about a system which allows long term prisoners, who will have committed the most serious crimes, to be considered for parole after serving one third of their sentences while short term prisoners cannot be released before the two-thirds stage. (In response to these concerns the Secretary of State announced, on 18 December 1984, that he would be reluctant to exercise his discretion to authorise early release on parole, save in exceptional circumstances, any more than a few months before the prisoner would otherwise have been released at the end of a sentence of over 5 years for violent crime or drug trafficking). Questions have also been raised about the relevance of the

present provision for remission and its relationship with parole. Against this background the Government decided that the time was ripe to review the existing arrangements for parole, remission and related issues and to consider whether any changes could beneficially be made. Accordingly in December 1987, the Government set up a Committee under the Chairmanship of Lord Kincaid to undertake this task.

THE KINCRAIG COMMITTEE'S RECOMMENDATIONS

7. The Government are greatly indebted to Lord Kincaid and the members of his Committee for their detailed and comprehensive Report ("Parole and Related Issues in Scotland - Report of the Review Committee": Cm 598: March 1989). The Committee's well-argued and coherent package of recommendations has provided the very substantial basis from which the Government's own proposals, described in this paper, have been developed.

8. Some 40 responses were received to the Government's invitation to interested bodies and individuals to submit comments on the Report. Most were supportive of the general principles enunciated by the Committee, although opinions differed as to how these principles should be applied. The Government are grateful for the comments received and have taken them into account in formulating their proposals.

9. Four basic principles emerge from the Committee's Report:

- first, that a parole system has a useful role to play within the existing penal system, recognising as it does the possibility of change in an individual and enabling prisoners to be released selectively on that basis;
- second, that meaning should be restored to the full sentence pronounced by the court, with release before the end of sentence always being conditional;
- third, that all prisoners should serve at least half their sentence in custody; and
- fourth, that all long term prisoners should be subject on release to compulsory supervision.

10. The Government have built their proposals on these fundamental principles. In particular, the Government accept that parole has an important and constructive part to play in the present sentencing regime, the more so if it is geared, as is proposed, to criteria which set risk to

the public as the primary consideration in every case. At the same time, the Government recognise that the existing system, which permits a prisoner to be released on parole after serving only one-third of his sentence, fits ill with the public perception of just retribution as expressed in the original sentence imposed by the court. Nor does parole at such an early stage sit comfortably with the arrangements for the release of short term prisoners. The Government therefore fully endorse the Committee's view that all prisoners should serve at least half of their sentence in custody before release.

11. Proposals for the conditional early release and possible recall of prisoners serving longer or shorter determinate sentences, for new supervision and parole arrangements and on a number of related issues are developed in the body of this paper. The paper does not, however, deal with the Committee's recommendations concerning life sentence prisoners. The Government are at present considering the report of the House of Lords Select Committee on Murder and Life Imprisonment (HL Paper 78: July 1989) and have not as yet reached conclusions on these matters.

NEW ARRANGEMENTS FOR CONDITIONAL EARLY RELEASE

Long term prisoners

12. The Committee recommended that parole should be available only to those prisoners serving sentences of over 5 years, thereby applying only to the most serious offenders who present the gravest risk to the public. The preponderance of comments received on this point supported the Committee's view that the present parole threshold should be raised, but there was no consensus on what the new threshold should be. Concern was, however, expressed that many prisoners convicted of crimes of violence and sex and of drug-related crimes who receive sentences of 5 years or less would, in accordance with the Committee's further recommendations, be released automatically after serving half their sentences without the benefit of compulsory post-release supervision. In 1988, for example, some 80% of offenders receiving sentences of from 4 to 5 years were convicted of such crimes. In the Government's view, the advantages of bringing this group within the parole system are compelling. Doing so will not only ensure that the risk of such persons re-offending is carefully assessed before early release is contemplated, it will also ensure that they are, on release, automatically subject to supervision. It is proposed, therefore, that the threshold should be set at 4 years: that is, all those serving sentences of 4 years and over would come within the parole system. Aside from the public interest considerations this would have the additional advantage of establishing a common threshold for parole in Scotland and in England and Wales.

13. The Government agree with the Committee that every offender who has a sentence of such length as to qualify for parole, but who does not receive it, should be released at the two-thirds stage of his sentence subject to supervision for the final third of the sentence in accordance with conditions prescribed by the Parole Board. This will have a dual advantage: first, meaning will be restored to the final one-third of the sentence; and, second, the offender will have the benefits of supervision on release and will face the threat of recall if conditions are breached.

14. The Government accept the Committee's view that the parolee should, until the end of his sentence, remain liable to recall if he commits a

further offence. They take a different view, however, on the way in which that sanction should be applied. That different view is reflected in the proposals set out in paragraphs 21 and 22.

15. In consequence of the proposals to raise the qualifying period to 50% of sentence and to require conditional release at two-thirds, the "parole window" would be reduced to one-sixth rather than one-third of sentence. The Government accept this consequence as consistent with the aim of restoring meaning to the sentence of the court. Moreover, as noted by the Committee, relatively few prisoners achieve parole under the present arrangements before the half-way stage.

Shorter term prisoners

16. There are difficulties in properly assessing an individual's suitability for release in the case of short term prisoners and, if the threshold for parole is to be set at 4 years, it follows that offenders with lesser sentences would not be eligible for discretionary early release. The Government accept, however, that such prisoners should not be at a disadvantage compared with those serving lengthier sentences. They propose, therefore, to adopt the Committee's recommendation that a prisoner who is not eligible for parole should be released at the half-way stage of his sentence. Like a longer term prisoner, he would be liable to recall, on the basis described in paragraph 21, if he is convicted of a further offence before the expiry of his sentence.

17. The Committee recommended that there should be no compulsory supervision for prisoners released from sentences of 5 years or less, but that section 27 of the Social Work (Scotland) Act 1968 should be amended to give local authorities a specific duty to provide a service of advice, guidance and assistance for any person released from a custodial sentence who requests such a service within a specified period. This recommendation was supported by local government bodies, and the Government are happy to accept it in principle. They recognise that there is within the prison population a particularly vulnerable group who, on release, may be at risk of petty offending or may otherwise experience significant resettlement problems. This group has already been identified as a priority for social work help during imprisonment. Under the

proposed new arrangements, part of the social work task at that time will be to encourage such prisoners to seek assistance on their release and to help them make the necessary arrangements, prior to release, to secure such assistance. Where such assistance has been declined or where the need for it not been identified before release, such a need should become evident within the first year following release, and that is the time limit which the Government intend to apply to the new statutory duty. In accordance with the proposal that all those serving sentences of 4 years and over should come within the parole system, the duty to provide assistance on application will apply in respect of those released from sentences of up to 4 years.

18. While the Government agree with the Committee that it would not be practical to require supervision on release for all shorter term prisoners, they have taken note of the concern which has been expressed about the need for supervision of certain offenders, particularly those convicted of violent offences or offences against children, who may because of the nature of their offence be regarded as constituting a more serious risk to the community on release. To meet that concern, the Government propose that the courts should be given discretion to impose, in addition to a sentence of imprisonment of between 1 and 4 years, a period of compulsory supervision following release in cases where they consider that the offender will then present a potentially greater risk to the public than others. Assessment of the need for such supervision would be based on information already supplied to assist the Court in determining sentence, such as social enquiry, medical or psychiatric reports. Where relevant information is not available, the court may wish to call for reports specifically for this purpose. It is proposed that the period of supervision in such cases should be limited to a maximum of 6 months, the aim being to provide supervision and support during the critical immediate post-release period.

19. It is envisaged that supervision conditions would be set by the court, at the point of sentence, and would be of a standard format, similar to the present parole licence. It would be open to the court to impose additional conditions where appropriate. It would also be open to the supervising social work department to apply to the court for the imposition of additional conditions prior to the individual's release if such conditions seem necessary to reduce risk to the community.

Recall

20. The Committee recommended that, for both long and shorter term prisoners, there should be automatic recall to prison following conviction of an offence punishable on indictment by imprisonment (that is, an offence capable of being tried on indictment and of being punished by imprisonment, even if in fact a particular offence were to be dealt with summarily or lead to a lesser punishment). They also recommended that the period of detention following recall should be the full period of the original sentence outstanding at the date of commission of the new offence. There was considerable opposition to these recommendations amongst those consulted, on the grounds that they were too draconian and inflexible. For example, they would mean that if immediately after his conditional release at the half-way point of a long sentence a man were to be convicted of a relatively minor common law offence he would in consequence be returned to prison for the remaining years of that sentence, with no further prospect of earlier release. The Government strongly endorse the Committee's recommendation that release should be conditional, but believe that a greater degree of flexibility is desirable.

21. The Government propose that, when a conditionally released offender is convicted of a further offence, the court should have discretion, in addition to imposing a sentence for the new offence, to order his recall for a specified period up to the maximum of the original sentence outstanding at the time of commission of the offence. It is not proposed that district courts should be empowered to order recall, but if because of the nature or circumstances of a further offence a district court were to consider that recall would be justified that court would be empowered to refer the case to the court which dealt with the original offence. The decision of a court to order recall would be appealable to the High Court of Justiciary, which would have the power to reverse the order or vary the period of recall. To discourage frivolous or automatic appeals, the power to vary would include a power to increase the duration of the recall period up to the period outstanding at the date of release from the original sentence, rather than the date of commission of the new offence. Where a person has been recalled, and is not then subject to a sentence of imprisonment for the new offence, he would again be conditionally released after serving two-thirds of the period of recall prescribed by the

Court. It would be within the discretion of the Court to order the recall period to run concurrently with, or consecutively to, any custodial sentence imposed for the new offence.

22. Where an offender who is sentenced to 4 years or longer is released on parole or under supervision and subsequently breaches his conditions of release, he will also, as now, be liable to recall by the Secretary of State. The Government agree with the Committee that in such circumstances the offender should be given a copy of the supervising officer's report, specifying the reasons which have led to his recall. As at present, the offender will have the right to make representations to the Parole Board against his recall. The Government propose that the offender should have the right to present his case orally if he so wishes, and that the Board should be empowered to take oral evidence from the offender, the supervising officer and any other relevant witness. It is envisaged that, in accordance with the arrangements described in paragraph 36 below, oral evidence would in such circumstances be taken by a member of the Board who would undertake the necessary interviews and prepare a report for the Board's consideration. In the Government's view, this arrangement is preferable to the Committee's recommendation that, if an offender disputes the facts which led to his recall, there should be a hearing conducted by a panel of 3 Board members at which both he and the supervising officer would present their arguments.

23. Offenders sentenced to one year or more but less than 4 who are subject to a discretionary supervision requirement imposed by the sentencing court (under the proposed new power referred to in paragraph 18) will similarly be liable to recall if they are found to be in breach of their supervision conditions. Alleged breaches of conditions for this category of offender will be dealt with by the courts, as is the case at present with breaches of probation and community service orders.

Transitional arrangements

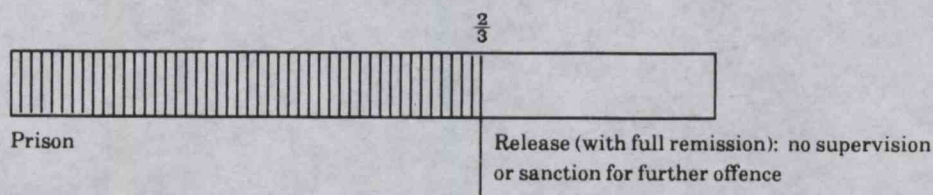
24. In Chapter 13 of their Report, the Committee made a number of helpful suggestions for dealing with the difficulties which will inevitably arise in making reasonable and fair provision for those who are serving prison sentences at the time of introduction of the proposed new

arrangements for early conditional release and post release supervision. No adverse comment was received on these suggestions and the Government accept the basic principle that no prisoner who has already been sentenced should be substantially disadvantaged by the introduction of the new system. Accordingly, the Government propose that transitional arrangements should be broadly as recommended by the Committee.

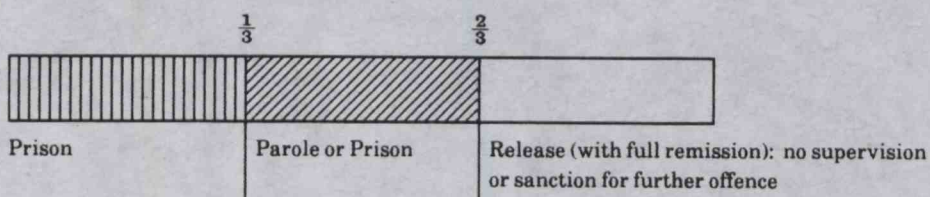
The difference between the present arrangements and the proposed new arrangements is illustrated in the following diagrams.

Present arrangements for adult offenders serving determinate sentences:

Sentence of up to 18 months

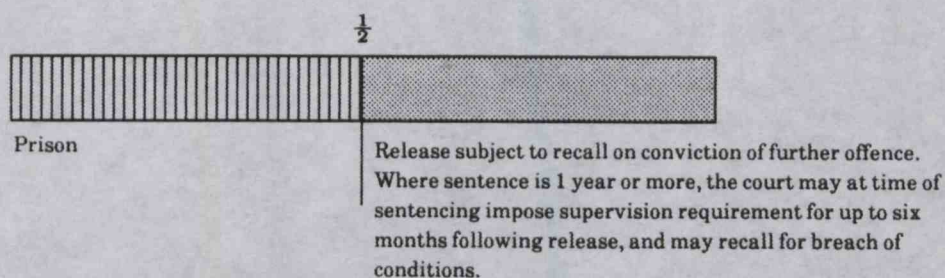


Sentence of more than 18 months

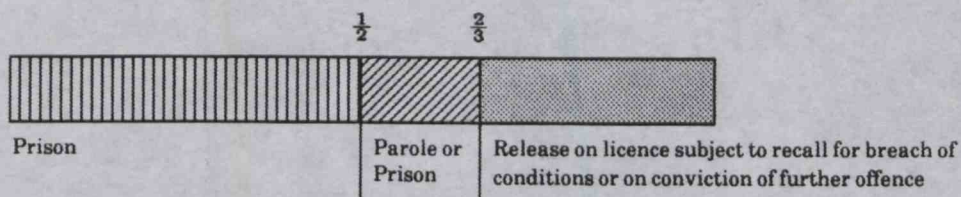


Proposed new arrangements:

Sentence of less than 4 years



Sentence of 4 years or more



PAROLE

The functions of the Secretary of State

25. At present the Secretary of State has no power to release a prisoner on parole except on the recommendation of the Parole Board. But he may refuse to accept a recommendation from the Board. The Committee concluded that there should be no change in the formal role of the Secretary of State and that in particular he should continue to be answerable to Parliament for parole policy. It was recommended, however, that all cases should go for consideration to the Board without preconceptions and on an equal basis and that the Secretary of State should only enter the parole process after consideration of each case by the Board. He would retain the right to reject any recommendation on grounds of public policy.

26. The Government accept the Committee's recommendations in principle. They believe that the Secretary of State's accountability to Parliament both for parole policy and the parole system must not be eroded. This is an integral part of his responsibilities for law and order for which he is answerable to Parliament. It must remain his function, consistent with the powers given to him by Parliament, to set the policy framework within which the Parole Board should operate. He must also, because of his law and order responsibilities, retain the power to reject recommendations for release in particular cases if, in his view, the public interest requires him to do so.

27. The Government recognise, however, that in practice the Secretary of State rarely disagrees with decisions made by the Board and that normally he intervenes only in connection with cases covered by the policy on parole outlined in the 1984 statement or involving terrorist offences. All other recommendations from the Board are usually accepted. In fact, scrutiny of every case by or on behalf of the Secretary of State to determine whether release is appropriate would be an onerous task even under the proposed new system under which around 400 cases are likely to go to the Board annually. The Government propose, therefore, to seek powers to enable the Secretary of State to delegate to the Board responsibility for release decisions. When exercising their delegated

powers, the Board would operate according to prescribed criteria and would also be bound by any policy directions or guidance given by the Secretary of State.

28. The Government agree that it is desirable that the Board should have the opportunity to consider all parole-eligible cases. This at once ensures a consistency of approach and enables the Board's considerable expertise to be brought to bear in every case. The Government accordingly accept that all cases should be referred to the Board without any prior sifting.

Criteria for parole

29. The Committee recommended that the basic considerations which affect the granting of parole should be set out in legislation and that the central question for the Board should be whether the offender could be safely released on licence, having regard to the risk to the public from re-offending. Any other factors, which nevertheless might be set out in statute, should be subordinate to that consideration.

30. The Government agree that risk to the public should be the paramount consideration in assessing whether a prisoner should be released before the two-thirds stage of his sentence. In assessing the risk, the Government believe that 3 specific tests should be applied:-

- whether the prisoner is likely to commit further serious offences while under supervision;
- whether his early release some time after half his sentence rather than after two-thirds would significantly increase the risk of serious harm to the public; and
- whether he is willing to cooperate with his supervisor and it is likely that extended supervision in the community would reduce the risk of his re-offending in future.

31. In their evaluation, the Board would require to take into account the prisoner's offence and criminal history; his response to all aspects of the prison regime during the current sentence; his social history, work record and domestic background; his domestic situation on release; his employment prospects; medical reports; his general attitude to offending and to society; and any other available indicator of the likelihood of his re-offending and the consequent risk to the safety of the public.

32. The Government believe that these criteria are sufficiently stringent to replace the present restrictive policy on parole for those sentenced to more than 5 years for offences involving violence and drug trafficking, which was announced in 1984. The proposed criteria, which focus on the risk of serious harm to the public, make it likely that many offenders convicted of violent crime will not be released on parole. There will also be some offenders whom the Board will judge may be released with little or no risk. In assessing the risk of serious harm to the public, the Government believe that a small risk of violence should carry more weight in the parole decision than a larger risk of further property crime. This would be made clear within the policy guidance given to the Board by the Secretary of State.

The parole decision-making process

33. At present around 1100 determinate sentence prisoners are considered for parole annually. About 600 of these cases are referred to the Board, following consideration by Local Review Committees and the Secretary of State acting through his officials. Under the new proposals the number of prisoners eligible for parole consideration or determination of licence conditions is likely, on present trends, to fall to around 400. All of these cases, as explained in paragraph 28, will be considered by the Board. Against this background, the Government agree that there will be no justification for the continuing existence of Local Review Committees, which should accordingly be wound up when they have completed their consideration of the cases of those who, on the date of implementation, are already serving parole-eligible sentences of up to 4 years. These Committees have made an outstanding contribution to the operation of the parole system since its inception and the Government take this opportunity to acknowledge the service provided to the public

by all past and present members. The Government hope that some lay members will feel able to take on the role of parole advisers mentioned in the next paragraph.

34. With the abolition of Local Review Committees, a prisoner who is eligible for parole will lose his present right to an interview with a member of such a Committee before his case is considered. To compensate, the Kincraig Committee recommended that panels of 3 individual members of the Parole Board should visit each establishment to listen to any prisoner who wishes to present his case orally. The Committee also recommended that parole advisers should be appointed at each prison to assist prisoners with their written representations.

35. It is, of course, essential that every prisoner eligible for parole should be able to make representations to the Parole Board. The Committee's view was that an interview procedure can operate to avoid the criticism that the prisoner did not have a proper opportunity to present and argue his case. But although the Committee considered that the three member panel which they proposed should not take any decision on parole, the holding of interviews or hearings by such panels would inevitably mean an important shift in the decision-making process away from decisions based solely on objective consideration by the Board as a whole in the light of documented evidence. It would be difficult for interviewing panels to avoid forming their own view on the prisoner's suitability for parole on the basis of the interview. This would be bound to be reflected in subsequent discussion of the case by the full Board, and would tend to distort objective assessment of the case, not necessarily to the prisoner's advantage. Less articulate prisoners might fail to do themselves justice at an interview whereas, conversely, the more articulate and persuasive prisoner would tend to present a more convincing case.

36. Leaving aside the important practical considerations which would arise if members of the Parole Board had to be available, in addition to their other commitments, to constitute 3 member panels to carry out some 8 interviews per week in establishments in different parts of the country, the Government take the view that objective consideration of documented evidence by the full Board should remain the principal basis for parole

decisions. A right to make oral representations should thus be additional to - and not in any sense a substitute for - the right to make written representations. An interview would accordingly be an opportunity for the prisoner to ask questions and to supplement his written representations. Conceivably, after their initial consideration of a case, the Board might themselves feel that an interview would be helpful. The Government therefore propose that an interview should be held at the instance of either the prisoner or the Board, and that it should normally be undertaken by a single member who would then convey to the Board the points made orally by the prisoner or any additional information.

37. It follows that the prisoner's written representations must be regarded as a vital component of the parole dossier, and that they should be expressed in a way which fully and accurately reflects the prisoner's views and the impression which he wishes to convey to the Board. While some prisoners are well able to express themselves adequately in writing, others are not able to do so without assistance. The Government therefore accept the Committee's recommendation that parole advisers should be available at each prison to help any parole-eligible prisoner who requires assistance with his written representations.

38. At present, the prisoner has no access to most of the documented information included in the parole dossier on the basis of which the Parole Board makes its decision, nor is he given any formal notification by the Board of its reasons for coming to an unfavourable decision. The Committee recommended (by a majority) that the full contents of the dossier should be available to the prisoner, and (unanimously) that if the Board recommends against parole it should be required to state the specific reason or reasons for concluding that the prisoner cannot safely be released.

39. The Government accept the general thrust of the Committee's recommendations towards a more open decision making process. They recognise, however, that there are inherent difficulties in giving prisoners automatic and unlimited access to the parole dossier. While some believe that such openness ought to encourage carefully considered and accurate reporting, others take the view that it would put pressure on those who prepare reports for the Board to avoid frank expressions of

opinion which may be challenged, thus leading to bland and therefore less helpful reports and a reduction in the quality of information available to the Board. From the prisoner's own standpoint, reports prepared for the Board - for example, on his health or domestic circumstances - may contain information which would not appropriately be disclosed to him in that way.

40. The Government have fewer reservations about the argument that, where the Parole Board decides not to recommend release, the prisoner should be informed of the reasons for the Board's decision. This would leave him in no doubt about the particular deficiencies or circumstances which led the Board to its conclusion and, where the remedy lies in his hands, would enable him knowledgeably to direct his energies towards the specific improvement needed to justify a recommendation for release.

41. On balance, the Government believe that the current arrangements should be reviewed with the ultimate objective of allowing prisoners access to information going to the Board and of disclosing reasons, while accepting that some safeguards might be necessary to restrict disclosure of certain information in particular cases. The Committee also recommended that a comprehensive review of the contents of the parole dossier should be undertaken and that the dossier should include a copy of a report from the trial judge, made at the time of sentence, rather than copies of earlier reports or notes which might contain details not proved in court. The Government is giving further consideration to these matters, and would welcome any fresh or additional views which interested individuals or organisations may wish to put forward.

42. The Government accept the Committee's view that there should be no special right of appeal against a refusal of parole, but that the existing right of prisoners to petition the Secretary of State should be strengthened by giving the Secretary of State a formal power to refer parole cases back to the Board if he considers there has been a material change in circumstances or a mistake which seems likely to have affected the outcome of the case.

SUPERVISION

43. As noted in paragraph 13, the Government propose that all prisoners serving sentences of 4 years or more should be released subject to supervision at the two-thirds stage if they are not paroled at an earlier stage. Proposals for the supervision of shorter term prisoners are discussed in paragraphs 17 to 19. The following paragraphs in this section deal with a number of other issues relating to supervision.

Structural Arrangements

44. The Government accept the Committee's view that there is no need to alter the structural arrangement under which statutory supervision for released prisoners is carried out by local authority social workers. They also recognise the valuable role played by the voluntary sector in the provision of a wide range of support services (eg accommodation, alcohol and drug-related programmes, and employment services) which are increasingly available to persons subject to statutory supervision. An integrated approach between the statutory and voluntary sectors will lead to a more effective service and local authority strategic planning will be encouraged to reflect this.

Funding

45. The Committee recommended that supervision of released prisoners should be funded on an agency basis with the Government meeting the full cost. The Government, who bear the full cost of social work within prisons and recently introduced an agency funding arrangement for community service, have already announced their intention to extend 100% funding to other social work services in the criminal justice system, including statutory supervision. The necessary legislative authority is being sought and a Consultation Group, including representatives of the judiciary, the police, local authorities, voluntary bodies and social work practitioners, as well as Government officials, has been set up to advise on implementation of the proposals.

46. Although it was not specifically suggested by the Committee, the Government have also decided to include among the services eligible for 100% funding support assistance provided by local authorities under the

new statutory duty proposed in paragraph 17 above. Furthermore, the Government intend to give effect to the Committee's suggestion that section 27B of the Social Work (Scotland) Act 1968 which enables grants to be made to local authorities for provision of residential accommodation for certain categories of offenders, should be amended to take account of persons who are not subject to statutory supervision and who require assistance under the new provision.

Levels of Provision and Standards of Supervision

47. The Committee noted that current levels of provision for the support and supervision of released prisoners are inadequate, and recommended the promulgation of national guidance setting minimum standards for supervision. The Government accept these comments and part of the work of the Consultation Group referred to in paragraph 45 will be to draw up National Standards for the statutory supervision of released prisoners. The National Standards will apply to all forms of statutory supervision including supervision imposed at the court's discretion. These standards will seek to ensure the provision of a rigorous, efficient and effective service which offers a higher level and quality of supervision and support than is often available at present. The National Standards will address practice and management issues in relation to the frequency, duration and content of supervision; arrangements for enforcement, breach, amendment and revocation of supervision requirements; the use of supervision in respect of offenders requiring assistance with special problems (eg mental health problems, sexually abusive behaviour etc); and associated administrative and managerial issues, including training and inter-agency co-operation. Guidance will also be offered in respect of the proposed statutory duty to offer and provide assistance to discharged prisoners who may need or seek such assistance.

The Supervision of Young Offenders

48. At present, there is a statutory requirement for all young offenders serving over 6 months to be subject to supervision on release. The Committee recommended that this requirement should be repealed and that the supervision of young offenders should be put on the same statutory basis as the supervision of adults. A number of commentators were concerned that this would remove supervision from some persons who were vulnerable and susceptible to wrong influences. The Government

acknowledge that concern, but are equally mindful of the points made by the Committee that young offenders often resent what they see as an addition to their sentence and that to provide blanket mandatory supervision for a particular group purely on the basis of age and without due regard to individual needs would result in less effective targeting of resources and a lesser service for more needy cases. On balance, and having regard to the proposed discretionary power for the courts to order supervision, and to the availability of assistance on request and the intention to encourage vulnerable prisoners to seek it, the Government have decided to accept the Committee's recommendation.

OTHER ISSUES

Fine Defaulters

49. The Committee concluded that automatic conditional release should not apply to persons committed to prison in default of payment of a fine. They saw objections in principle to anything akin to a suspended sentence applying to such persons. The Government recognise the somewhat more than theoretical difficulties outlined by the Committee, but have also considered the strong views expressed by several of those who commented on the Report, to the effect that fine defaulters should not be discriminated against. On balance, the Government incline to the view that fine defaulters should not, in this respect, be treated differently from other prisoners.

Training for Freedom, etc

50. The Committee recommended that there should be an expansion of Training for Freedom and other means of testing prisoners in the community by home leave, work or training outside. The Government fully accept this recommendation. The Scottish Prison Service intends to publish later this year a paper developing proposals for an expansion of opportunities for pre-release training.

Remission and Prison Discipline

51. The Committee saw no place for anything akin to the present system of remission forfeiture within the context of the release systems they proposed. Instead, they recommended that, to offset the removal of the Governor's power to award forfeiture of remission, consideration should be given to expanding the range and availability of privileges for prisoners, which could then be forfeited as part of a disciplinary award. The Government agree that privileges should be expanded, both as a desirable end in itself and to help reduce reliance on the power to delay release, but take the view that such expansion has not proceeded far enough to allow that sanction to be removed in the near future. The Government therefore propose that the power to delay release should be retained as a sanction against serious misconduct in prison. As at present the punishment would be limited to 14 days for each incident.

The Government also propose that Governors' cumulative powers in this regard should be restricted to one-sixth of sentence (as compared with remission forfeiture of up to one-third of sentence).

Children sentenced under Sections 206 or 413

52. In respect of children sentenced under sections 206 and 413 of the Criminal Procedure (Scotland) Act 1975, the Committee's main conclusions were that procedures for the detention, release and supervision of such children should continue to be separate from those for adults and young offenders; that a new panel should be established to consider the release on licence of children held under section 206; and that new arrangements should be introduced to provide for the automatic conditional release of children at the half way stage of sentence or, in the case of those eligible for parole, for their consideration for parole at that stage. The Government agree with the broad conclusion that while procedures for the detention, release and supervision of children should remain separate every reasonable step should be taken to remove undesirable anomalies in the treatment of child offenders as compared with adults. They therefore propose that, as recommended by the Committee, the children concerned should be eligible for automatic release at the half-way point of sentence, or for parole at that point in a sentence of 4 years or more, subject to supervision for the remaining period of sentence and to recall on conviction of a further offence or breach of conditions. The Government also agree that a new panel, including members with special experience of child offenders, should be established to consider the release on licence of children sentenced under section 206, and have it in mind that such a panel might, in practice, operate as a sub-committee of the Parole Board. They do not, however, share the view that the panel should advise on the placement of such children.

Prisoners transferred to Mental Hospitals

53. The Committee recommended that prisoners who have been transferred to mental hospitals should be considered for release on licence in the same way, so far as is practicable, as prisoners who are detained in penal establishments; and that they should be released directly from hospital wherever possible. The Government agree in principle with this recommendation and, as the Committee mentioned in paragraph 9.14 of

their Report, new procedures have been introduced to meet those aims. Consideration is being given to the question whether any further changes are required in the procedures relating to detention and post-release supervision under the criminal justice and mental health systems.

Time spent on Remand

54. The Committee recommended by a majority that in future all custodial sentences should be backdated to the date when the offender was first remanded in custody unless the court considers that there are special reasons for ordering that the sentence should commence at a later date, in which event the reasons should be stated at the time of imposing the sentence. A minority of the Committee held that the courts should retain the option of deciding what allowance to make for remand time, and this minority view was subsequently supported by the Scottish judiciary. In considering these conflicting recommendations, the Government have taken into account the extreme practical difficulties of providing the courts at the time of sentence with an accurate record of all relevant periods which the convicted person may already have spent in custody, possibly on a variety of charges in a number of different jurisdictions. Accordingly, the Government propose that the courts should retain discretion to determine what allowance to make in respect of periods spent in custody on remand, but that the terms of sections 218 and 431 of the Criminal Procedure (Scotland) Act 1975 should be reviewed to determine what clarification they may require following the ruling in Doolan v Lockhart 1987 that the court required to have regard to the remand period may elect not to take it into account in determining the length of sentence. The Government propose that, when determining the length of sentence, the court should be required to take into account such information about periods spent in custody on remand as is available to the court, but should not be required automatically to backdate the sentence to the date on which the offender was first remanded in custody. The court would also be required to give reasons if it decided that the sentence should not be backdated at all. The Government agree with the Committee that it should remain the function of the court to specify on the warrant the date of commencement of the sentence.

Suspended and part-suspended Sentences

55. The Government accept the Committee's view that there is no sufficiently persuasive case for introducing the suspended or part-suspended sentence into Scots law.

RESOURCES

56. The Committee estimated that the new release schemes would result in savings in the daily prison population of between 380 and 460. Lowering the parole threshold to 4 years will reduce substantially the envisaged savings, albeit that the reduction may be partially offset by rather fewer offenders being recalled than the Committee envisaged if a discretion is given to the courts in the way the Government proposes. Overall, however, the Government foresee some modest reduction in the prison population as a result of the new release arrangements. The more consistent back-dating of sentences to take into account time spent on remand should enhance the savings. On the other hand, the lower threshold allied to the proposal to empower the courts to require compulsory supervision in appropriate cases where the sentence is less than 4 years, will mean more offenders being released on licence than the Committee predicted. Together with the proposals for a higher level of supervision and support, this will require a substantial increase in commitment of social work resources to offenders on release. Overall the expenditure implications of the Government's proposals should at worst be broadly neutral.

CONCLUSION

57. The proposals in this Paper, based substantially on the Kincaid Committee's recommendations, form a structured and well balanced framework for the release of offenders from prisons and young offenders institutions in Scotland. The Government intend to take the earliest suitable opportunity to bring forward such amendments to existing legislation as are necessary to implement these proposals. The views of interested parties have to a very large extent already been made clear both in evidence to the Committee and in response to consultation on their

Report, and have been taken into account in the formulation of the proposals. Any further comments, and, in particular, comments on matters which are still under consideration, may be sent (by 14 September 1990 please) to

The Secretary
Scottish Home and Health Department
Room 107
Calton House
5 Redheughs Rigg
Edinburgh
EH12 9HW
(Telephone: 031 244-8777)

- From which address further copies of this paper may be obtained.

SUMMARY

General (paragraph 10)

1. Parole should be retained.
2. Parole should not be available to short-term prisoners.
3. All prisoners should serve at least half their sentences in custody before release.

Long Term Prisoners

4. The threshold for parole should be set at 4 years (paragraph 12).
5. Release on licence should be mandatory at two-thirds of sentence (paragraph 13).

Shorter Term Prisoners

6. Prisoners serving less than 4 years should be released at half-sentence, subject to recall (paragraph 16).

7. There should be no automatic requirement for supervision, but

7.1 Local authorities should be required to provide assistance if requested (paragraph 17).

7.2 The courts should have discretion to impose supervision requirements for up to 6 months following release of those sentenced to between one year and 4 years. This discretion would be exercised at time of sentencing (paragraph 18).

7.3 Supervision conditions should be of a standard format, but it should be open to the courts to impose additional conditions and open to social work departments to apply for such conditions to be imposed (paragraph 19).

Recall

8. The courts, other than district courts, should have discretion to order recall for specified period up to maximum of original sentence outstanding at time of commission of new offence (paragraph 21).

9. District courts should be empowered to refer cases to court which sentenced for original offence (paragraph 21).

10. Decision to recall should be appealable (paragraph 21).

11. There should be conditional release after two-thirds of the recall period has been served (paragraph 21).

12. The recall period should at the court's discretion be either concurrent with or consecutive to any new custodial sentence (paragraph 21).

13. Where an offender who is released on parole or under supervision breaches conditions of release he will as now be liable to recall by Secretary of State. He will be given a copy of the report specifying reasons for recall and will have right to make representations to the Parole Board. (Paragraph 22).

14. Offenders who breach supervision requirements imposed by the courts should be liable to recall by the courts (paragraph 23).

Transitional Arrangements

15. Transitional arrangements should be broadly as recommended by the Committee (paragraph 24).

Parole - The Functions of the Secretary of State

16. There should be no change in the formal role of the Secretary of State (paragraph 26).

17. Powers will be sought to allow responsibility for release in certain cases to be delegated (paragraph 27).

18. All cases will be referred to the Parole Board without prior sifting (paragraph 28).

Criteria for Parole

19. Basic considerations affecting the grant of parole should be set out in legislation (paragraphs 30 to 32).

The Parole Decision-Making Process

20. Local Review Committees should be wound up (paragraph 33).

21. Prisoners should have the right to make oral representations (paragraph 36).

22. Parole advisers should be made available (paragraph 37).

23. Further consideration is being given to the question whether prisoners should have unrestricted access to information in the parole dossier and should be informed of the reasons for an unfavourable decision (paragraphs 38 to 41).

24. There should be no special right of appeal against refusal to parole (paragraph 42) but the Secretary of State should have power to refer cases back to the Board.

Supervision - Structural Arrangements

25. Supervision should continue to be carried out by local authority social workers (paragraph 44).

Supervision - Funding

26. Core social work services in the criminal justice system are to be 100% Government funded (paragraph 45).

27. Assistance provided under the duty proposed in paragraph 17 will be included amongst offender-related services, and section 27B of the 1968 Act should be amended as recommended (paragraph 46).

Levels of Provision and Standards of Supervision

28. National Standards to be drawn up (paragraph 47).

Supervision of Young Offenders

29. Supervision of young offenders should be on the same statutory basis as supervision of adults (paragraph 48).

Fine Defaulters

30. Fine defaulters should be eligible for conditional early release (paragraph 49).

Training for Freedom, Etc

31. There should be an expansion of opportunities for pre-release training (paragraph 50).

Remission and Prison Discipline

32. Governors should retain power to defer release (paragraph 51).

Children (paragraph 52)

33. Procedures for detention, release and supervision of children should continue to be separate.

34. Automatic conditional early release should apply to children.

35. A new panel should be set up to consider conditional release of children.

Prisoners Transferred to Mental Hospitals

36. Prisoners who have been transferred to mental hospitals should be considered for conditional release and should where possible be released directly from hospital (paragraph 53).

Time Spent on Remand

37. Courts should be required to take into account time spent in custody on remand (paragraph 54).

Suspended and Part-Suspended Sentences

38. No case for introducing such sentences into Scots Law (paragraph 55).

From: THE PRIVATE SECRETARY



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

15.2.90

CDP
2872

Dear Mr Powell,

IN { Mr Patten though you might like to have copies
ATTACHED of recent Home Office publications. I enclose
Folder the criminal justice White Paper "Crime,
Justice and Protecting the Public"; and the
associated Green Paper "Supervision and
Punishment in the Community".

Mr Patten asked that I especially draw your
attention to the explanatory leaflets we have
produced on each of the Papers.

Yours sincerely,
Claire Craig

CLAIRE CRAIG

C Powell Esq



QUEEN ANNE'S GATE LONDON SW1H 9AT

Pam Minister?

9 February 1990

CHS

12/2

[Handwritten mark]

Dear Lord President,

GREEN PAPER ON THE PROBATION SERVICE

... Following the discussion at H Committee on 16 January, I enclose a proof copy of the Green Paper on the Probation Service, "Supervision and Punishment in the Community".

The text has been amended to take account of the points made in discussion. The section on the amalgamation of probation services has been re-drafted (paragraphs 5.4 to 5.11) and reference is now made to the Lord Chancellor's continuing review of family law and jurisdiction (paragraph 10.15). I propose to publish the Green Paper on Thursday 15 February. Announcement will be made via an arranged Parliamentary Question.

I am copying this letter to the other members of H Committee, the Foreign Secretary, the Attorney General, No 10 and Sir Robin Butler.

Yours sincerely,

Pam Starr.

(Approved by the Home Secretary
and signed in his absence)

The Rt Hon Sir Geoffrey Howe, QC, MP
Lord President of the Council

BRIEFING NOTE

HOME OFFICE (CRIMINAL JUSTICE) PUBLICATIONS - FEBRUARY 1990

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TIMETABLE

6 February	White Paper (Oral Statement by S of S)	"CRIME, JUSTICE AND PROTECTING THE PUBLIC"
8 February	Draft Circular	"INTER-DEPARTMENTAL GUIDANCE ON CRIME PREVENTION"
14 February (to be confirmed)	Green Paper	"SUPERVISION AND PUNISHMENT IN THE COMMUNITY"
22 February (European Victim's Day)	Information Statement and Guidance	"VICTIM'S CHARTER"
Week beginning 26 February	Discussion Paper	"PARTNERSHIP IN DEALING WITH OFFENDERS IN THE COMMUNITY"

SUMMARY

White Paper: Crime, Justice and Protecting the Public

The White Paper contains the Government's proposals for legislation, which it is hoped will be embodied in a Criminal Justice Bill in the Autumn. It is intended:

- to ensure that offenders are punished according to the seriousness of their crimes and receive their just deserts;
- to give the public better protection, especially from serious violent crime; and

- to improve the prospects of more criminals becoming law abiding citizens.

The White Paper is cross-referenced with and backed up by proposals for tightening up supervision in the community. These are set out in the Green Paper on the Probation Service and a companion paper on working with the voluntary and private sectors. The main proposals are

- a coherent legislative framework for sentencing, with the severity of the punishment matching the seriousness of the crime (criminals should get their "just deserts") and a sharper distinction in the way the courts deal with violent and non-violent crimes;

- longer sentences for violent and sexual offences, if this is necessary to protect the public from serious harm;

- encouraging greater use of punishment in the community by giving courts powers to combine community service and probation orders and to impose curfews;

- encouraging greater use of financial penalties, especially compensation to victims and "unit" fines which take account of offenders' means;

- making the time actually served in prison closer to the sentence ordered by the court: all prisoners will serve at least half their sentences in custody, and prisoners serving sentences of four years or more would not get parole if this would put the public at risk. Courts will be empowered to return released prisoners to custody up to the end of their sentence if they are convicted of a further imprisonable offence.

- wider powers for the courts to take more responsibility for crimes committed by their children.

Green Paper: Supervision and Punishment in the Community: A Framework for Action

For the White Paper's proposals to be successful the courts must have confidence in the quality of supervision given to offenders in the community. This confidence will rest on sentencers having the power to sentence flexibly and to know more exactly what will be required of the offender as a result of their decisions.

The Green Paper requires from the probation service and others in the voluntary and private sectors

- a clear recognition that punishment in the community requires both care and control;
- provision of a comprehensive service meeting nationally prescribed standards and development of new methods of supervision which will carry credibility with victims, the courts and the public at large;
- integration of the probation service with other elements of the criminal justice system, for probation officers are first and foremost officers of the court.

Discussion Paper: Partnership in Dealing with Offenders in the Community

This discussion paper supplements the White and Green Papers; it envisages a more effective partnership between the probation service with the independent sector in providing services within the criminal justice system. The aim is to take advantage of the flexibility and potential for innovation which partnership will give, in order to

- provide a wider range of schemes for dealing with offenders in the community;
- involve the community at large much more in work with offenders;

- draw on a wider pool of experience and expertise and ensure that services provided are cost-effective and that the voluntary sector gives value for money.

Information Statement and Guidance: Victim's Charter

This is a declaration of the Government's concern for victims of crime, and complements the White and Green Papers. It shows how the criminal justice services could take better account of victims' needs. It sets out for the first time how the victims of crime should be treated, and what they are entitled to expect. It is partly a description of current activity and partly a spur to the police, Crown Prosecution Service and courts to treat victims better. Key areas include:

- the Government's major achievements since 1979 in promoting victims' interests;
- the need to inform victims who are called upon to give evidence of when they will be required, what to expect, and the outcome of the case;
- guidance to the police on taking victims' views into account when deciding whether to caution or prosecute offenders.

Draft Circular: Crime Prevention - the Success of the Partnership Approach

A joint Circular issued by five Departments in 1984 was an important milestone in the growth of a co-ordinated approach to the prevention of crime. It now needs to be updated. The new draft Circular is being issued for consultation with the police, local authorities, fire and probation services, and independent sector organisations. It gives examples of successful local initiatives, provides models for building local multi-agency schemes and invites councils' chief executives and chief officers of police to submit to the Home Office by September 1990 a joint report on the arrangements that have been made or it is proposed to make, to strengthen crime prevention in their area.

Criminal Justice

3.32 pm

The Secretary of State for the Home Department (Mr. David Waddington): With permission Mr. Speaker I should like to make a statement about the Government's proposals for criminal justice—[*Interruption.*]

Mr. Bob Cryer (Bradford, South): On a point of order, Mr. Speaker. We cannot hear the Home Secretary.

Mr. Speaker: Order. May I ask hon. Members who are not remaining for this important statement to leave the Chamber quietly?

Mr. Waddington: I am grateful to the hon. Member for Bradford, South (Mr. Cryer).

With permission, Mr. Speaker, I should like to make a statement about the Government's proposals for criminal justice legislation, which we are publishing today in the White Paper "Crime, Justice and Protecting the Public".

In preparing these proposals for a coherent legislative framework for sentencing, our aim has been to ensure that offenders are punished according to the seriousness of their crimes and receive their just deserts, and to see that the public are properly protected. Really serious crime, especially serious violent crime, has to be followed by really severe punishment, and I am sure the House would agree that the right punishment for serious violent crime is a long prison sentence. But we know that prison can all too often reinforce criminal habits, and many more people convicted of less serious offences could be punished in the community, where they could repay their victims and do tough and demanding work for the community.

It is therefore important that the judges, before passing a custodial sentence, should satisfy themselves that no other course is right, and it is important that realistic options for punishment in the community should be available, with those options presented clearly to the courts. We therefore propose, first, that the Crown court should have a new power to impose a longer sentence on a persistent violent offender than would be justified solely by the seriousness of the immediate offence, in order to protect the public from serious harm from him. But the distinction between violent crime and property crime should be more clearly marked by changes: in the maximum penalty for theft, from 10 to seven years; and in the maximum for non-domestic burglary, from 14 years to 10 years. The maximum for burglary from a person's home, quite rightly, would remain at 14 years.

We propose, secondly, that new legislation should require a court to consider whether the offence is so serious that only a custodial sentence is justified. For all but serious offences the court would be required to give reasons for passing a custodial sentence and, before doing so, would have to consider a probation report setting out options for punishment in the community.

We further propose to increase the courts' powers to impose community penalties. There would be a new power to combine community service and probation. Community service ensures that the offender makes reparation to the community through unpaid work. Probation gives offenders an opportunity to sort out their problems and to lead a law-abiding life in future. We do not think that one should exclude the other. The courts would also, and additionally if appropriate, be enabled to

make curfew orders, with monitoring, to keep offenders at home and away from their criminal associates at particular times of the day.

We plan new national standards for the most important aspects of the probation service's work, including preparing reports for the courts and running probation centres. We shall shortly publish consultation documents about some of these standards and about the future organisation of the probation service. We believe that the probation service should make more use of voluntary organisations and of the private sector to carry out its increased responsibilities effectively. The probation service will, however, keep its central role in supervising offenders and ensuring that court orders are carried out.

Many offences can be dealt with adequately by financial penalties. The priority should be offenders paying compensation to their victims, but fines could be used effectively for more offences if they were assessed in units according to the seriousness of the offence and then converted into money according to an offender's means.

We believe that custody should be reserved for the most serious offenders. We can justify spending well over £1,000 per month in housing, feeding and clothing a criminal, and we can justify depriving an offender of the opportunity to maintain his family, compensate his victim, or make reparation to society, only when the offence is so grave that there is no realistic alternative to imprisonment. But when imprisonment is the right and proper sentence, it is essential that the sentence served should be more closely related to the sentence passed, and we are going to introduce new parole arrangements based largely on the recommendations of the committee set up to review parole arrangements in England and Wales, and chaired by my noble Friend Lord Carlisle of Bucklow. The Government are most grateful to my noble Friend and his committee for their really valuable work.

These would be the effects of the changes. First, remission, which at present reduces most sentences by a third and which is in addition to any parole granted, would be abolished. All prisoners would serve at least half their sentence in custody whereas at present most can be released after one third.

Secondly, those serving up to but not including four years' imprisonment would have to serve half their sentence, followed, except in the case of sentences under a year, by a period on licence under supervision.

Thirdly, those serving from four up to, but not including, seven years would serve at least half their sentence and would then be eligible for release on a selective basis until they have served two thirds of their sentence. The decision on this would be delegated to the Parole Board. When released they would be under supervision until three quarters of their sentence has expired.

Fourthly, those serving seven years or more would be subject to release on a selective basis after half their sentence, but the final decision will rest not with the Parole Board but with the Secretary of State.

The decision whether or not to release a person on parole would be clearly based upon the risk to the public of that person committing a further serious offence. We intend to take new powers to give policy directions to the Parole Board so that we can lay down these criteria. This would make for far greater consistency in the decisions to release, the conditions of the parole licence and the arrangements for supervising prisoners after release.

have not reproduced the result obtained by the independent researcher who proposed a link with fire resistant chemicals. We shall, of course, consider whether it would be right to issue warnings in the light of the scientific assessment currently being undertaken—[HON. MEMBERS: "Come on!"] One was concerned to get an accurate assessment of the report; Opposition Members perhaps are not.

Mr. Ashdown: Is the Prime Minister aware that, despite his welcome speech on Friday, President de Klerk's Government today kicked out two British journalists—Mr. Paul Weaver of *Today* and Mr. Gareth Forby of Independent Radio News—apparently for unwelcome reporting of the Gattling cricket tour? Will the Prime Minister now realise that this is not the time to relinquish sanctions but the time to continue international action until a true democracy is established and Mr. Nelson Mandela and his people are free?

The Prime Minister: President de Klerk's speech was very widely welcomed—I believe the world over. As we

agreed both at the last meeting of the European Community and in the Commonwealth, it is necessary to have encouragement for such steps as well as chastisement for what has not yet been done. We believe that when Mr. Mandela is released it would be advisable to relax some of the very minor sanctions that we have—in particular, the voluntary ban on new investment.

The right hon. Member referred to the two journalists. As he knows, President de Klerk announced on 2 February that the state of emergency would be fully lifted as soon as circumstances on the ground permitted. We support the freedom of the press and we have told the South African authorities that we regret the expulsions. Perhaps the right hon. Gentleman will look at the reasons that have been given for the expulsions. I am advised that one of the journalists entered South Africa as a tourist, failing to obtain the necessary brand of visa and permit. The other gave a first-person account of a demonstration at Johannesburg airport that greeted the cricket tourists' arrival but it later transpired that he had not been present. I emphasise that that is the explanation that the South Africans have given of the incident.

If a released prisoner is convicted of a further imprisonable offence before the end of his sentence, the court would be able to return him to custody to serve out the remainder of that first sentence, in addition to any sentence it gives for the new offence.

There are important proposals in the White Paper about young offenders. The juvenile court would become a youth court and would deal with offenders aged 17 as well as those aged 16 and under. We intend to increase the powers of the courts to make parents take greater responsibility for the offences committed by their children under 16. In particular, we intend to require parents to attend in all cases when their children are brought before the court on a criminal charge, and we are going to make it possible for the magistrates to take into consideration the means of a parent in deciding on the appropriate fine.

The Government firmly believe that in all we do we should have at the forefront of our minds the victims of crime. It is time to spell out what victims are entitled to expect and the help available to them, and to consider what more needs to be done. We shall therefore on 22 February, European Victims Day, publish our victims charter. But the proposals I have outlined today should make sure that criminals are properly punished.

These proposals point to the most fundamental and far-reaching changes for at least half a century in the way we punish offenders in this country. They are part of our wider policies on crime, with the greater emphasis we have given to crime prevention and more help and support for victims. They offer just deserts to the offender and reassurance to the law-abiding citizen.

Mr. Roy Hattersley (Birmingham, Sparkbrook): May I begin by offering our strong support for the principles on which the White Paper is based? The only critical question that we have to ask about those principles is, why has it taken the Government so long to accept them?

May I assure the Home Secretary that we agree that it is right to draw a sharp distinction in sentencing policy between violent and sexually related crimes on the one hand and less serious crimes against property on the other? It is clearly right that those who commit violent and sexually related crimes should serve substantial prison sentences. It is equally right that less serious offenders should, whenever possible, be punished within the community.

Paragraphs 2.7 and 3.2 of the White Paper give a devastating account of the real effect of prison on first and trivial offenders. No one who reads them can doubt the wisdom of placing a greater emphasis on alternatives to custodial sentences, not least because prison is often more likely to promote a life of crime than to prevent it.

I offer the Home Secretary our support for a number of his specific proposals: reduction in some maximum sentences, relation of fines to ability to pay, requiring courts to consider the probation service's report before awarding a custodial sentence and then give reasons for insisting upon prison. We also support the abolition of partly suspended sentences and bringing 17-year-olds into juvenile courts.

Our specific questions and our areas of disagreement concern not the Home Secretary's objectives but the way in which he hopes to achieve them; not the principles but the best way of putting the principles into practice.

The White Paper rightly talked about the need for more consistent sentencing, and implied that it could be

achieved under existing arrangements. Why is the Home Secretary so sanguine about that prospect? There are still intolerable discrepancies between sentencing in different courts, sentencing of men and women, and sentencing of black and Asian British and other citizens.

For some time, the Government have been urging the judiciary to make more use of non-custodial sentencing, but very often the judiciary has not responded. Without taking further steps to ensure greater consistency, how can the Home Secretary be sure that his hopes will be realised? Why has he set his face against a sentencing council, which virtually all those who share his aim regard as necessary if his aim is to be fulfilled? Will he think again about the necessity and desirability of introducing such a council?

Is the Home Secretary confident that his proposals for combined sentencing will not produce a result exactly opposite to that which he intends? Is there not a risk that some courts will immediately apply simultaneously probation and community orders and, if the orders are broken or the offence is repeated, immediately impose a prison sentence?

We welcome the Carlisle report proposal to make probation automatic for prison sentences of less than four years. But what assessment have the Government made of the effect on the number of men and women serving custodial sentences if the Carlisle report is immediately implemented? If parole is awarded only when half the sentence has been served, will not the prison population rise by about 4,000? It would be absurd if the first effect of this White Paper was an actual increase in the prison population.

Can the Home Secretary explain the decision to alter the procedure for young offenders? We welcome the decision to allow 17-year-olds to appear before juvenile courts, but why is the Home Secretary proposing to alter the punishment available for 16-year-olds when there has been so much success in dealing with this age group in recent years?

The Home Secretary referred to the future statement he is to make about support for victims. Can he assure us that, when that statement is made, it will, as an absolute minimum, replace the rights to compensation which were removed or reduced by the Criminal Justice Act 1988? Will he also reconsider the change that he recently made in the threshold for those entitled to claim compensation for violent crime? Those changes removed the right to compensation from something like 10,000 people a year. Since he is to make the announcement on European Victims Day, can we take it for granted that the Government will recognise the European convention on compensation for victims of violent crimes?

The White Paper makes very many references to the probation service and its importance to the Home Secretary's plans. Can we be promised that nothing that the Government do—of course, I refer to privatisation and loss of status—will undermine the service's morale?

Finally, I reiterate our support for the White Paper principles. The Government's task is now to achieve their stated aims of reducing both crime and the prison population from their present record levels. The real test of the White Paper is the determination and courage with which the Government put its principles into practice.

Mr. Waddington: I am grateful to the right hon. Gentleman for his generous support for the proposals. It is a little churlish to complain about the proposals only

[Mr. Waddington]

just having been brought forward because, during the past few years, a number of Criminal Justice Bills have passed through the House and paved the way for this measure. I mention in particular the 1983 Act and the 1988 Act. The community service orders are already in place and are being most successfully operated by the probation service.

I am grateful to the right hon. Gentleman for emphasising the need for us to make a bigger distinction between violent crime and property crimes. I took the trouble to read the Opposition's so-called "White Paper" on this issue. There is a great distinction between the approach suggested by the Opposition and the Government's approach.

We are determined to make the sentence served far closer to the sentence passed by making everyone serve 50 per cent. of his or her sentence in custody. The Opposition have shrunk from that most important conclusion which would give added protection to the public, and are determined to stick to a policy which would release into the community even violent criminals after they had served only a third of their sentence.

The right hon. Gentleman is entirely right: we must aim for more consistency in sentencing. However, he was less than just to the judiciary when he said that they had not responded to the calls which had come from this place for changes in sentencing practices. Far from it being the case, as was misstated by the right hon. Gentleman, that the prison population is at record levels, it has fallen by 2,500 in the past 12 months, not least because judges have responded to calls to send fewer young people to prison.

I hear what the right hon. Gentleman has to say about a sentencing council. There is no need for a new elaborate and formal structure which would interfere with judicial discretion. We certainly do not want to take action which might result in mandatory sentences which would mean far longer sentences and more people in prison than now. There is a danger of being forced towards a more rigid system.

The object we wish to achieve—a more coherent sentencing practice—can be achieved in four ways: first, by the new requirements which we shall place on courts so that they must give reasons for choosing a custodial sentence rather than punishment in the community, show that they are satisfied that only a custodial sentence is justified and consider options for punishment in the community before sending anyone to prison. Secondly, new maximum penalties laid down by the House send out signals to the judiciary that we believe that a greater distinction should be made between property crimes and crimes of violence.

Thirdly, at present, the Court of Appeal gives guidance on sentencing, and there is every reason to suppose that it will use that power more frequently to achieve the result which this House undoubtedly wants. Fourthly, not long ago, the House gave the Attorney-General a new power to refer over-levient sentences to the Court of Appeal; that power was opposed by Opposition Members. However, it is clearly a most useful power which is now being used effectively and playing a big part in achieving coherent sentencing practice. On top of all that, the Judicial Studies Board plays an even more active role with its training arrangements and the operations it carries out to disseminate good sentencing practice.

I take the point that the right hon. Gentleman made about the danger of magistrates and judges combining too often different forms of non-custodial sentences. We need to spell out the relevant and appropriate importance of one form of non-custodial sentence as compared to another.

The right hon. Gentleman asked me for an estimate of the effect of the proposals. I must refer the right hon. Gentleman to chapter 9 of the White Paper. We point there to what would happen if one made a series of assumptions. Nobody can put forward a firm estimate of the precise consequences of each part of the package, but we can look to the future with confidence, and there is every reason to believe that this measure will have a downward effect on the prison population.

I should say, in answer to the right hon. Gentleman's question about young offenders, that, by setting up youth courts, which will deal with 17-year-olds as well as 16-year-olds, we have to face the fact that such courts will be dealing with young people at different levels of maturity. Therefore, it is essential that the youth courts should have flexibility in sentencing powers. They should be able to impose, for example, community service orders on a 17-year-old or on a 16-year-old, a supervision order on a 16-year-old, or a probation order on a 16-year-old, if he is as mature as a 17-year-old co-defendant. We want more flexibility to be available to magistrates in the youth courts because they have to deal with 17 and 16-year-olds.

I heard what the right hon. Gentleman had to say about the Criminal Injuries Compensation Board. We still have the most generous system of criminal injuries compensation in the whole of the western world, and I assure him that we shall proceed to ratification of the European convention on compensation for victims of violent crimes.

I am sure that the right hon. Gentleman was right to mention the morale of the probation service. I have been immensely impressed with the way in which the service has responded to the new challenges which it has had to face in recent years. The way in which it has operated community service orders should command the admiration of all of us. It knows that we are talking not of a slimmed-down, but of an expanded, probation service because of the new challenges that we have to face. Not only are there more community service orders for it to administer, but the new licensing provisions will mean more supervision of offenders released from periods in custody.

Sir John Wheeler (Westminster, North): Would my right hon. and learned Friend agree that his White Paper proposals today are among the most radical and most practical to emerge for nearly 50 years, not least because he defines a proper use for the sentence of imprisonment? Secondly, he makes parents properly accountable for the wrongdoing of their offspring and thirdly, he proposes that hooligans will at last be dealt with in an accountable way, which the public would want.

Mr. Jeremy Corbyn (Islington, North): Can we have a long answer?

Mr. Waddington: I shall be very brief.

I agree with what my hon. Friend has said about hooligans, and I do not think that we can overestimate the importance of the new provision for curfew orders, which will be very relevant to the problem. I think that the proposals are both radical and practical. As for parental

anything of that kind. We are legislating. It is frequently necessary, where processes are concerned, to define a point for the purpose of legislation.

Perhaps I may take the simple example of marriage. Marriage is a continuing process. There are various elements within that process; but, nevertheless, for practical purposes, within human society it is necessary to define the moment at which people get married. All I want to suggest is that at various points in the Bill it may be necessary for us to make certain definitions. They may not be scientifically satisfactory and they may be to some extent arbitrary, but if we are legislating it is necessary to do so. I hope that we shall not shrink from that and fall back into a kind of vague process—theology, as one might say—merely to avoid making such definitions.

Lord Adrian: I shall follow along the lines taken by the right reverend Prelate. I too am concerned about the definition of terms in legislation and their meaning in the Act, as it will be. We need a term to describe the early stages of the process; that is, after the sperm has entered the egg, and the first appearance of what might, in a sense, biologically be called an embryo. The word "conceptus" has been used by the noble Baroness, Lady Elles, and by the noble Lord, Lord Walton. It is a good term. It is one used by embryologists when they wish to define the particular period while the chromosomal material from the mother and the father is being reorganised into the potentiality of a new individual. The conceptus can be thought of as a blueprint, and the embryo can be thought of as the individual growing which results from the blueprint having been achieved.

The process of achieving the blueprint (the plan) is complicated and risky and one can tell that it has come to an end at the first division into the two-cell zygote; but the point about using the word "conceptus" is that in that stage the fertilised egg is a concept of an individual and not the individual. It is only when the blueprint has been achieved and the building begins—one brick being laid on the next—that one can say that the embryo starts.

It is important—this is the point that the right reverend Prelate was making—in legislation not so to stretch the words into new definitions that there are unforeseen consequences. I entirely agree that if research is lost and is to be banned, which I believe would be a great tragedy, it is important that the 30-hour period be covered. I understood the noble and learned Lord the Lord Chancellor to say that the Government are prepared to consider that point and will come back with appropriate amendments.

Baroness Elles: I should like to express my gratitude to all noble Lords who have taken part in the debate on the amendment to Clause 1. It is, as has been evident from noble Lords who have spoken—especially those with scientific experience—a difficult matter. I am therefore extremely grateful to my noble and learned friend the Lord Chancellor for the way in which he has approached it. He has undertaken that it will be

looked at again. I hope that the 30 hours will be covered in some way, thus reflecting the views of some noble Lords, and that the subject will come back on Report. If the amendment is not satisfactory, it is understood that I reserve my right to table some other amendment, possibly along the lines discussed this afternoon. On that undertaking, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Baroness Blatch: This will be a convenient moment for the House to hear the Statement, and therefore I beg to move that the House do now resume.

Moved accordingly, and, on Question, Motion agreed to.

House resumed.

Criminal Justice Proposals

4.26 p.m.

Earl Ferrers: My Lords, it may be for the convenience of your Lordships if I repeat a Statement which is being made by my right honourable friend the Home Secretary in another place about the Government's proposals for criminal justice legislation, which we are publishing today in the White Paper *Crime, Justice and Protecting the Public*. The Statement is as follows:

"In preparing these proposals for a coherent legislative framework for sentencing, our aim has been to ensure that offenders are punished according to the seriousness of their crimes and receive their just desserts, and to see that the public are properly protected. Really serious crime, particularly serious violent crime, has to be followed by really severe punishment and I am sure the House would agree that the right punishment for serious violent crime is a long prison sentence. But we know that prison can all too often reinforce criminal habits, and many more less serious offenders could be punished in the community where they can repay their victims and do tough and demanding work for the community.

"It is therefore important that the judges should, before passing a custodial sentence, satisfy themselves that no other course is right; and it is important that realistic options for punishment in the community should be available with those options presented clearly to the courts. We therefore propose, first, that the Crown Court should have a new power to impose a longer sentence on a persistent violent offender than would be justified solely by the seriousness of the immediate offence in order to protect the public from serious harm from him; but the distinction between violent crime and property crime should be more clearly marked by changes in the maximum penalty for theft from 10 to seven years and in the maximum for non-domestic burglary from 14 years to 10 years; the maximum for burglary from a persons' home quite rightly would remain at 14 years; secondly, that new legislation

The group recently organised a Gallup poll. It was conducted from 13th to 18th December. Gallup polls are always undertaken in a very fair way; indeed, you cannot put down leading questions and hope to receive an answer. The company decides how the questions are put and they are put in a fair and responsible way. The poll was commissioned by the Society for the Protection of Unborn Children on behalf of Life. It showed that 57 per cent. of the public oppose the use of human embryos for the development of new contraceptives and that 68 per cent. opposed their use for the development of abortifacients. It is intolerable that such experiments should be permitted in this way, without defining more accurately how life begins.

Those noble Lords who support such experimentation would like to include provision for experimentation up to 14 days in Clause 11, if they can get a majority. But I do not wish to discuss that matter now. However, they have also made clear the fact that they would like all research carefully controlled and licensed. As the Bill stands, anyone can produce embryos and perform any kind of research upon them without a licence, so long as they were destroyed before the first cleavage; that is, before the two-cell zygote started to form. I do not really think that those noble Lords would like to see this in effect. I hope therefore that we can agree to correct this drafting error.

An embryo must come into existence when separate gametes cease to exist—that is, when the 23 chromosomes of the man and the 23 of the woman have united. We are defining that as when the sperm has penetrated the egg, for want of a better definition. However, I should like to state quite clearly that the group believes that the beginning of life is the very beginning and it wants that fact to be covered in the Bill when the noble and learned Lord returns to the matter on Report.

Lord Walton of Detchant: I do not wish to prolong the debate on this issue, having heard the very well-argued speech of the noble Baroness, Lady Elles, and the comments made by the noble and learned Lord the Lord Chancellor about the prospect of this amendment being modified on Report. However, there are one or two points that I should like to draw to the Committee's attention. They relate to the definition. I do not believe that one can define an embryo until the genetic material from the gamete of the male—that is, the sperm—and the genetic material in the ovum of the female have fused.

I appreciate the reason for the noble Baroness's wish that this gap of up to 30 hours from the moment when the sperm penetrates the ovum should fall within the ambit of the Bill. I believe that at that stage it would be proper to call the combination of the sperm and the ovum the conceptus. After all, it is the product of conception, but it is not in my view yet an embryo until the fusion has taken place between the material from the sperm and that from the ovum and until it has then demonstrated its ability to divide at the two-zygote stage. That is the crux of the argument at present. However, the problem is that after the sperm has penetrated the ovum and even when two pro-nuclei have formed,

one of them containing material from the sperm and the other containing material from the ovum, the process may end at that stage and the conceptus may degenerate. Moreover, even at the single-cell zygote stage, when fusion has taken place, degeneration may yet again occur spontaneously.

Of course there are other situations where there may be three pro-nuclei within the conceptus at that stage, but two of these may have come from the ovum by division of the ovum without fusion and, therefore, without fertilisation. I think that that issue makes the whole problem extremely complex. Therefore, I very much hope that a way can be found of protecting the conceptus within this early period without prejudice to the status of the embryo as defined in the Bill.

4.15 p.m.

The Earl of Halsbury: I referred to this point on Second Reading. I said then that I thought the Government had got the Bill right: that conception is not a moment in time, but a process in time. I should like to congratulate the noble and learned Lord on the lucidity with which he described the process of fertilisation. He did so in very simple language that we could all understand. Fertilisation should be completed at the right temperature. Therefore, is inserting a thermometer into the mixture an experiment? I shall return to that point later when dealing with my definition of an experiment.

In our ordinary lives we are not accustomed to processes which have no definable or identifiable beginning. Yet, we know that if we wake up with a cold in the head and with a runny nose it could develop into bronchial pneumonia and we might die. There is an identifiable end to life, but not necessarily an identifiable beginning to one's terminal illness. Indeed, one may have picked up the bug the day before but one does not know when or from whom. The process of fertilisation is something which has no identifiable beginning. Quite apart from the process of contact between the egg and the sperm, there is a prior process of chemotaxis in which the sperm swims up, as it were, a concentration gradient towards the ovum which is emitting something which attracts it—much as moths can be attracted from very great distances by the odour of a female moth.

The process of penetration is not like sticking a drawing pin into a piece of paper; it is a process of mutual digestion between the skin of one and the skin of the other. It again is a process of time which has no identifiable beginning, and so I cannot support the amendment. If the noble Baroness chooses to divide the Committee, I shall have to go into the Lobby against her.

The Lord Bishop of London: Following what the noble Earl has said, I should like to make one general point. It is true, as he says, that there are many situations in human life where we are involved in a process. The taking of any point in that process is, to some extent, an arbitrary matter. In considering the Bill, we are not involved in making scientific definitions, extending scientific research, or

●ould require a court to consider whether the offence is so serious that only a custodial sentence is justified. For all but serious offences the court would be required to give reasons for passing a custodial sentence and would have to consider a probation report setting out options for punishment in the community before doing so.

"We further propose to increase the courts' powers to impose community penalties. There would be a new power to combine community service and probation. Community service ensures that the offender makes reparation to the community through unpaid work. Probation gives offenders an opportunity to sort out their problems and to lead a law-abiding life in future. We do not think that one should exclude the other. The courts would also, and additionally if appropriate, be enabled to make curfew orders, with monitoring, to keep offenders at home and away from their criminal associates, at particular times of the day.

"We plan new national standards for the most important aspects of the probation service's work, including preparing reports for the courts and running probation centres. We shall shortly publish consultation documents about some of these standards and about the future organisation of the probation service. We believe that the probation service should make more use of voluntary organisations and the private sector to carry out its increased responsibilities effectively. The probation service will, however, keep its central role in supervising offenders and ensuring that court orders are carried out.

"Many offences can be dealt with adequately by financial penalties. The priority should be offenders paying compensation to their victims. But fines could be used effectively for more offences if they were assessed in units according to the seriousness of the offence and then converted into money according to an offender's means.

"We believe that custody should be reserved for the most serious offenders. We can only justify spending well over £1,000 per month in housing, feeding and clothing a criminal, we can only justify depriving an offender of the opportunity to maintain his family, compensate his victim or make reparation to society when the offence is so grave that there is no realistic alternative to imprisonment. But when prison is the right and proper sentence then it is essential that the sentence served should be more closely related to the sentence passed and we are going to introduce new parole arrangements based largely on the recommendations of a committee set up to review parole arrangements in England and Wales and chaired by my noble friend Lord Carlisle of Bucklow. The Government are most grateful to my noble friend and his committee for their really valuable work.

"This would be the effect of the changes: first, remission, which at present reduces most sentences by a third and which is in addition to any parole granted, would be abolished. All prisoners would spend at least half their sentence in custody whereas at present most can be released

after one third; secondly, those serving up to but not including four years' imprisonment would have to serve half their sentence, followed, except in the case of sentences under a year, by a period on licence under supervision; thirdly, those serving from four years up to but not including seven years would serve at least half their sentence and would then be eligible for release on a selective basis until they have served two thirds of their sentence. The decision on this would be delegated to the Parole Board. When released they would be under supervision until three-quarters of their sentence has expired; fourthly, those serving seven years or more would be subject to release on a selective basis after half their sentence but the final decision will rest not with the Parole Board but with the Secretary of State.

"The decision whether or not to release a person on parole would be clearly based upon the risk to the public of that person committing a further serious offence. We intend to take new powers to give policy directions to the Parole Board so that we can lay down these criteria. This should make for greater consistency in the decisions to release, the conditions of the parole licence and the arrangements for supervising prisoners after release.

"If a released prisoner is convicted of a further imprisonable offence before the end of his sentence, the court would be able to return him to custody to serve out the remainder of that first sentence in addition to any sentence it gives for the new offence.

"There are important proposals in the White Paper about young offenders. The juvenile court would become a youth court and would deal with offenders aged 17 as well as those aged 16 and under. We intend to increase the powers of the courts to make parents take greater responsibility for the offences committed by their children under 16. In particular we intend to require parents to attend in all cases when their children are brought before the court on a criminal charge and we are going to make it possible for the magistrates to take into consideration the means of a parent in deciding on the appropriate fine.

"The Government firmly believe that in all we do we should have at the forefront of our minds the victims of crime and it is time to spell out what victims are entitled to expect and the help available to them and to consider what more needs to be done. We shall therefore on 22nd February, European Victims Day, publish our Victims Charter. But the proposals I have outlined today should make sure that criminals are properly punished.

"These proposals point to the most fundamental and far-reaching changes for at least half a century in the way we punish offenders in this country. They are part of our wider policies on crime with the greater emphasis we have given to crime prevention and more help and support for victims. They offer just deserts to the offender and reassurance to the law-abiding citizen."

My Lords, that concludes the text of the Statement.

4.35 p.m.

Lord Mishcon: My Lords, the House will be grateful to the Minister for repeating a most important Statement on a most important White Paper. The aims of that White Paper—namely, that those who commit violent crime should be adequately punished—must be right, and that part of the White Paper that deals with the protection of the public must be right. When I talk in terms of violent crime I obviously include violent sexual crimes as well.

We listened to this Statement and to the White Paper against a background that has been mentioned so often in your Lordships' House; namely that we have the largest number of prisoners in Europe both in absolute terms and in proportion to our population. The House will therefore be interested to see how far this White Paper deals with that problem.

The phrase at the beginning of the Statement is used correctly:

"we know that prison can all too often reinforce criminal habits".

I looked in the Statement for a reference, presumably to be made in the White Paper, to what one does about the serious problem that we have of recidivism and in regard to our necessary task of rehabilitation. I found no reference to that important matter. I saw no reference to the after-care of prisoners when they come out in order to try to stem the tide of recidivism. I wonder whether the Minister when he replies would tell us whether there are any progressive measures aimed to deal with that important matter, especially, as I have said, when one considers the numbers in our prisons.

The Carlisle committee—that presided over by the noble Lord, Lord Carlisle—was mentioned in the sense not only of dealing with remission but of making prison sentences more realistic in regard to the sentences imposed. We shall have to reflect upon that measure and again, as I say, look to see what effect it is going to have upon the overcrowded prisons that we have at the moment.

Probation officers have been mentioned. I think of them at once in regard to after-care and rehabilitation. Can we be quite sure that the role that is being set for probation officers will in no way demean their status and certainly not interfere with their very honourable and useful position in society as being the friends, and advisers and supervisors too of those who are in prison and come out of it?

I think that all of us are interested in the problem of juvenile crime. After all, it is unfortunately the juveniles, the young people, who contribute most to the numbers of criminals we have in this country, which is a very regrettable state of affairs.

We were all interested in the idea of the youth court incorporating those who are 17. That seems to me to be a useful step. There was reference to parents being brought into court and into the criminal situation which surrounds their children. That is absolutely right, not so much from the point of view of making parents responsible for the crimes of their children, unless the lack of parental care or the surroundings at home are responsible for the

criminality of the children, but of trying to establish a partnership which could and should exist between court and parents in order to try to save juveniles from a life of crime. That is obviously an important measure.

Victims of crime were mentioned. I was happy to see that the Statement drew particular attention to that matter and to a celebration that will take place in regard to victims of crime. However, will the Government remember that the Criminal Justice Act 1988 reduced and in some cases removed compensation for victims of crime? Will the Government also remember that the minimum threshold for those entitled to claim compensation was reduced, thereby removing the right to compensation from some 10,000 people a year?

In drawing attention to these matters I do not wish it to be thought that my remarks are unnecessarily critical of a White Paper which has many good features about it. That is obvious from the Statement. However, there are matters to which attention should be drawn because they are so important. I end with the reference to consistency of sentence. The public, perfectly reasonably, are perturbed about the inconsistency and at times complete unreasonableness, as they see it, in the two extremes of too much leniency or too much severity. There does not appear to be a consistency which can be agreed. I say that most respectfully as regards the judges as I know they meet from time to time, indeed it would appear almost continually, in order to deal with sentencing policy.

If we are sincere, as I am sure the judges are, in saying that we want to protect the public, to reduce crime in this country, to ensure that our prisons are not overfilled and to ensure that justice emanates from the way in which sentences are imposed, should there not be a sentencing council which meets regularly and continuously and which would deal consistently with sentencing policy? That would not only afford justice but also help in reducing the shocking figures of crime in this country as all of us would wish.

Lord Harris of Greenwich: My Lords, I join with the noble Lord, Lord Mishcon, in thanking the noble Earl for repeating this Statement. I, too, think that there are a number of sensible proposals in the document. However, it would obviously be premature to express an opinion on many of them without having had the opportunity of reading the White Paper. The White Paper deserves to be judged by three tests. The first is whether it will bring down the size of our inmate population. As the noble Lord, Lord Mishcon, has observed, we have the highest prison population in Europe. That is, unhappily, nearly the only European league table of which this country is top.

Secondly, in aiming to give effect to that reduction in the size of the inmate population, have the Government put forward enough non-custodial alternatives to imprisonment, including parole, which will give some guarantee that many of those now held in custody could be transferred to the community? Thirdly, on the matter of victims, I



FILE SRW

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

5 February 1990

Dear Sir,

CRIMINAL JUSTICE WHITE PAPER

Thank you for sending me a copy of your letter of 2 February to Tim Sutton to follow up the discussion at H Committee on the Criminal Justice White Paper "Crime, Justice and Protecting the Public". Subject to the views of colleagues, the Prime Minister is content with what the Home Secretary now proposes and with the terms of the revised white paper. She notes that he wishes to make an oral statement on Tuesday 6 February.

I am copying this letter to the Private Secretaries to members of H, Juliet Wheldon (Attorney General's Office) and Sonia Phippard (Cabinet Office).

Yours sincerely,

(CAROLINE SLOCOCK)

Colin Walters, Esq.,
Home Office.

KK

From: THE PRIVATE SECRETARY



File

CC D10
Q
PLGSS

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

5 February 1990

Dear Tim,

CRIMINAL JUSTICE WHITE PAPER

... I attach a copy of the oral statement which the Home Secretary proposes to make tomorrow, Tuesday 6 February, to coincide with the publication of the Government's White Paper "Crime, Justice and Protecting the Public".

The final text of the White Paper was circulated under cover of Colin Walters's letter to you of 2 February. There was an error in the tenth line of the third paragraph of that letter. The word "not" should be inserted between the words "would prefer" and "to link".

I am copying this letter to Caroline Slocock, Private Secretaries to other members of 'H' Committee, Juliet Wheldon (Attorney General's Office) and Sonia Phippard.

Yours sincerely,

P R C Stor

P R C STORR

Tim Sutton, Esq
Private Secretary to the Lord President
of the Council

CRIMINAL JUSTICE PROPOSALS

With permission, Mr Speaker, I should like to make a statement about the Government's proposals for criminal justice legislation, which we are publishing ^{today} in the White Paper, "Crime, Justice and Protecting the Public"

In preparing these proposals for a coherent legislative framework for sentencing, our aim has been to ensure that offenders are punished according to the seriousness of their crimes and receive their just deserts, and to see that the public are properly protected. Really serious crime, particularly serious violent crime, has to be followed by really severe punishment and I am sure the House would agree that the right punishment for serious violent crime is a long prison sentence. But we know that prison can all too often reinforce criminal habits, and many more less serious offenders could be punished in the community where they can repay their victims and do tough and demanding work for the community.

It is therefore important that the judges should, before passing a custodial sentence, satisfy themselves that

2.

no other course is right: and it is important that realistic options for punishment in the community should be available with those options presented clearly to the courts. We therefore propose:

(i) that the Crown Court should have a new power to impose a longer sentence on a persistent violent offender than would be justified by the seriousness of the offence in order to protect the public from serious harm from him; but the distinction between violent crime and property crime should be more clearly marked by changes in the maximum penalty for theft from 10 to 7 years and in the maximum for domestic burglary from 14 years to 10 years. The maximum for burglary from a person's home would remain at 14 years;

(ii) that new legislation should require a court to consider whether the offence is so serious that only a custodial sentence is justified. For all but serious offences the court would be required to give reasons for passing a

3.

custodial sentence and would have to consider a probation report setting out options for punishment in the community before doing so.

We further propose to increase the courts' powers to impose community penalties . There would be a new power to combine community service and probation. Community service ensures the offender makes reparation to the community through unpaid work which should be tough and demanding. Probation gives offenders an opportunity to sort out their problems and to lead a law-abiding life in future. We do not think one should exclude the other. The courts would also and additionally if appropriate be enabled to make curfew orders, with monitoring, to keep offenders at home and away from their criminal associates, at particular times of the day.

We plan new national standards for the most important aspects of the probation service's work including preparing reports for the courts and running probation centres. We shall shortly publish consultation documents about some of these standards and about the future organisation of the

Probation Service. We believe that the Probation Service should make more use of voluntary organisations and the private sector to carry out its increased responsibilities effectively. The Probation Service will, however, keep its central role in supervising offenders and ensuring that court orders are carried out.

Many offences can be dealt with adequately by financial penalties. The priority should be offenders paying compensation to their victims. But fines could be used effectively for more offences if they were assessed in units according to the seriousness of the offence and then converted into money according to an offender's means.

We believe that custody should be reserved for the most serious offenders. There is no justification for spending well over £1,000 per month in housing, feeding and clothing a criminal: there is no point in depriving an offender of the opportunity to maintain his family, compensate his victim or make reparation to society unless the offence is so grave that there is no realistic alternative to imprisonment. But when prison is the right and proper

sentence then it is essential that the sentence served should be more closely related to the sentence passed and we are going to introduce new parole arrangements based largely on the recommendations of a Committee set up to review parole arrangements in England and Wales and chaired by My Noble Friend, Lord Carlisle of Bucklow. The Government is very grateful to the Committee for its work.

This would be the effect of the changes:

(i) remission, which at present reduces most sentences by a third and which is in addition to any parole granted would be abolished. All prisoners ^{would} ~~will~~ spend at least half their sentence in custody whereas at present they can be released after one third;

(ii) those serving up to but not including four years imprisonment would have to serve half their sentence, followed, except in the case of sentences under a year, by a period on licence under supervision;

(iii) those serving from four years up to but not including seven years would serve at least half their sentence and would then be eligible for release on a selective basis until they have served two thirds of their sentence. The decision on this would be delegated to the Parole Board. When released they would be under supervision until three quarters of their sentence has expired;

(iv) those serving seven years or more would be subject to release on a selective basis after half their sentence, but the final decision will rest not with the Parole Board but with the Secretary of State.

The decision whether or not to release a person on parole would be clearly based upon the risk to the public of that person committing a further serious offence. We intend to take new powers to give policy directions to the Parole Board so that we can lay down these criteria. This should make for greater consistency in the decisions to

release, the conditions of the parole licence and the arrangements for supervising prisoners after release.

If a released prisoner is convicted of a further imprisonable offence before the end of his sentence, the court would be able to return him to custody to serve out the remainder of that first sentence in addition to any sentence it gives for the new offence.

There are important proposals in the White Paper about young offenders. The juvenile court would become a youth court and would deal with offenders aged 17 as well as those aged 16 and under. We intend to increase the powers of the courts to make parents take greater responsibility for the offences committed by their children under 16. In particular we intend to require parents to attend in all cases when their children are brought before the court on a criminal charge and we are going to make it possible for the Magistrates to take in to consideration the means of a parent in deciding on the appropriate fine.

Mr Speaker, the Government firmly believes that in all we do we should have at the forefront of our minds the victims of crime and it is time to spell out what victims are entitled to expect and the help available to them and to consider what more needs to be done. We shall therefore on 22 February, European Victims Day, publish our Victims Charter. But the proposals I have outlined today should make sure that criminals are properly punished.

Mr Speaker, the proposals I have outlined point to the most fundamental and far-reaching changes for at least half a century in the way we punish offenders in this country. They are part of our wider policies on crime with the greater emphasis we have given to crime prevention and more help and support for victims. They offer just deserts to the offender and reassurance to the law-abiding citizen.

From: THE PRIVATE SECRETARY

Prime Minister



On (X), 'H' wanted to make a distinction between the great majority of cases and particularly serious cases of theft. The Home Secretary has decided not to pursue this.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

2 February 1990

On (Y), the Chief Secretary made the point at 'H' - which you supported - that some flexibility was needed in case a fine lay in charges in sentencing led to overcrowding.

CRIMINAL JUSTICE WHITE PAPER

I don't think you need to read the revised draft, but you may like to look at the attached summary.

IN
ATTACH60
FOU061

Following the discussion at H Committee on 16 January (H(90)1st), I enclose a copy of the final version of the criminal justice White Paper "Crime, Justice and Protecting the Public". The text has been amended to take account of the points made during the H discussion and in the Lord President's letter of 19 January. It includes an introductory summary of the proposals.

Confer with

(X) +

(Y)

Subject to the views of colleagues

Yes
not

On further consideration, the Home Secretary did not think it possible to alter the proposal to reduce the maximum penalty for theft to 7 years. He believes that this is crucial to the sharper distinction we want the courts to make between violent and property crime and as a signal to the courts to reduce the length of sentences, so that the new arrangements for parole do not increase the numbers in custody. If the Attorney General sees difficulties over serious fraud cases, the Home Secretary suggests his officials should get in touch with ours, so that we can consider the issues when developing detailed proposals.

H Committee was concerned that the Home Secretary should have adequate powers to take effective action if the prisons become overcrowded. The Prime Minister shares this concern (Caroline Slocock's letter of 24 January). The proposals will take away two of the Home Secretary's existing powers to reduce pressure on prison accommodation by altering the period of remission and the minimum qualifying period for parole. The Home Secretary will consider whether his remaining powers to release prisoners are adequate. However, at this stage, he would like to leave the options open and would prefer to link any new powers with parole and the selective arrangements for releasing prisoners convicted of the most serious crimes. The Home Secretary did not think it necessary to include a reference to this in the White Paper.

/The Home Secretary

Tim Sutton, Esq
Private Secretary to the Lord President
of the Council

The Home Secretary proposes to publish the White Paper on Tuesday, 6 February, and to make an oral statement in the House.

I am copying this letter to Caroline Slocock, Private Secretaries to the other members of H Committee, Juliet Wheldon (Attorney General's Office) and Sonia Phippard.

Caroline
C. J. Walters

C J WALTERS

CRIME, JUSTICE AND PROTECTING THE PUBLIC

Proposals for legislation

SUMMARY OF THE GOVERNMENT'S PROPOSALS

The main proposals in the White Paper are:

- a coherent legislative framework for sentencing, with the severity of the punishment matching the seriousness of the crime and a sharper distinction in the way the courts deal with violent and non-violent crimes;
- new powers for the Crown Court to impose longer sentences for violent and sexual offences, if this is necessary to protect the public from serious harm;
- new powers for all courts to combine community service and probation and to impose curfews on offenders, so that more offenders convicted of property crimes can be punished in the community;
- reducing the maximum penalties for theft and burglary, except burglaries of people's homes, which can be a very serious matter;
- requiring the courts to consider a report by the probation service before giving a custodial sentence and to give reasons for imposing a custodial sentence, except for the most serious offences;
- encouraging more use of financial penalties, especially compensation to victims and fines which take account of offenders' means;
- making the time actually served in prison closer to the sentence ordered by the court, replacing the present system

of remission and parole by new arrangements which ensure that all prisoners serve at least half their sentences in custody; prisoners serving sentences of 4 years or more would not get parole if this would put the public at risk;

- new powers for the courts to return released prisoners to custody up to the end of their sentence, if they are convicted of a further imprisonable offence;
- all prisoners serving sentences of a year or more to be supervised by the probation service on release, with new national standards for supervision;
- wider powers for the courts to make parents take more responsibility for crimes committed by their children;
- more flexible powers for the courts to deal with 16 and 17 year old offenders;
- changing the juvenile courts to youth courts, to deal with defendants under the age of 18.

Any comments on the proposals in this White Paper should be sent by 30 April 1990 to:

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

ANALYSES OF LABOUR PARTY'S PROPOSALS " A SAFER BRITAIN"

Introduction

- Crime statistics have risen alarmingly over last 10 years
- Fear of crime blighting many lives
- Too little concern for victims
- Too many people sent to prisons
- Treatment of juvenile criminals needs reform
- Many local and remand prisons appalling
- Need for reform of appeals against miscarriage of justice.

6 point plan of action:-

1. A comprehensive crime prevention programme.
2. A package of measures which establishes rights of victims of crimes.
3. A programme of sentencing reform.
4. Changes in the provision for juveniles and young adult offenders.
5. Reform of the prison system.
6. Major changes in present system of dealing with miscarriages of justice, including a requirement for corroborating evidence to accompany confessions.

Plus establishment of a new Department for Legal Administration to replace Lord Chancellor's Department.

Comment

There is little in points 1-4 of the 6 point plan which will not be covered in the Government's own proposals which will come out later this month.

The main argument for a Department of Legal Administration is that it would be responsible to the House of Commons. The split of responsibilities with the Home Office looks broadly unchanged.

Crime Prevention

A Labour government would work with local authorities on crime prevention and would give them more resources for the task. The paper argues for more concierges and bus conductors, and for security equipment which old people can afford.

Comment

The Government is already co-operating with local authorities and other local agencies on crime prevention - hence the revised circular aimed at laggardly areas.

Victims

A Labour government would ensure that victim support groups were able to maintain the highest standards of service throughout the country. Victims should have the right to be kept informed at all stages of the criminal justice process. On criminal injuries, Labour would (it is implied) reverse the recent decision to raise the limit for payments to victims from £550 to £750.

Comment

There is nothing in the Labour Party proposals on victim support and victims rights which is not included in the Government's proposal "victim's charter".

Sentencing

A Labour government would change the law on sentencing adults to prison to bring it into line with the 1982 Act which discourages prison sentences for juveniles.

There would be a Sentencing Council to ensure consistency in sentencing . This might be part of the Court of Appeal.

Fines would be linked to ability to pay.

A Courts Inspectorate on the lines of the Prison Inspectorate is proposed.

Comment

The Government's White Paper will put forward precisely the change in the law on sentencing adults which is proposed. It will also link fines to ability to pay.

It is not clear what real difference there would be between a Sentencing Council, composed of judges, which was part of the Court of Appeal, and the greater role for the Court of Appeal in giving sentence guidelines proposed by the Government.

Juveniles and Young Adults

The paper advocates "cautioning panels" to achieve greater

consistency in the practice of cautioning as opposed to arrest.

It argues for reform of the juvenile court system, raising the age limit for 'adult' trials from 17 to 18, and appears to favour parents being present at court hearings on juveniles.

Comment

The Government will suggest something close to 'cautioning' panels in its discussion document on the Probation Service and the voluntary sector. The White Paper will propose raising the upper age limit for juvenile courts from 17 to 18, and the presence of parents at court hearings.

Prisons

A Labour government would set out minimum standards of cell size, sanitation etc in a Code.

The paper argues for a Prison Ombudsman, the abolition of the Prison Medical Service, the establishment of a Prison Disciplinary Tribunal, an amended version of the Carlisle proposals on parole (to ensure that the numbers in prison do not increase) and a review of the Rehabilitation of Offenders Act.

Comment

The White Paper will implement the Carlisle proposals on parole.

Miscarriage of Justice

The paper argues that English law on confession evidence

should be brought into line with that in Scotland where there has to be corroborating evidence.

A Labour government would not weaken the present right to silence. An independent review is proposed to investigate suspected miscarriages of justice, taking over much of the role of the Court of Appeal and the Home Secretary in this area.

A safer Britain

Labour's White Paper
on criminal justice

January 1990

Labour



Printed and published by The Labour Party,
150 Watworth Road, London SE17 1JT.

A SAFER COMMUNITY

THE LABOUR PARTY

WHITE PAPER ON CRIMINAL JUSTICE

Introduction

There is widespread concern about the functioning of the criminal justice system in Britain. The crime rate has risen alarmingly during the last ten years according to both official recorded crime figures and British Crime Survey estimates. Recorded offences have risen by 46% in England and Wales since 1979.¹ Crime is perceived as a major problem by the public, and the fear of crime blights the lives of many people and in particular women and the elderly. Yet crime prevention is given little priority in the criminal justice system and is grossly under-resourced. The present government has been prepared to spend over £1 billion on new prisons, but has allocated only a fraction of this sum to its geographically and financially limited crime prevention measures. This is starkly exemplified by the allocation of just £250,000 to the whole of Birmingham. Whilst street crime and burglary are naturally the offences that most alarm the public, it is important not to ignore the formidable and growing problem of economic crimes and crimes against the community such as the dumping of waste products and bank, computer and tax fraud. The sums of money involved dwarf those lost through theft, burglary and robbery, but enforcement agencies such as the Inland Revenue employ few staff to deal with fraud and have been subject to staffing constraints.

When a crime has been committed the victim is often treated in an insensitive and inconsiderate manner. Victims can face considerable emotional and financial hardship, but there is no coherent approach to meeting victims' needs.

The British Courts are grossly over-reliant on custodial sentencing. Recent Council of Europe figures indicate (see table at the end of this section) that the United Kingdom imprisons more people both in absolute terms and in proportion to its population than any other Member state. The average prison population in 1988 was 49,900². The proportion of offenders who

¹ Criminal Statistics for England and Wales 1988 CMND 847 HMSO 1989

² Prison Statistics for England and Wales 1988 CMND 825 HMSO 1989.

are imprisoned has increased substantially over the last decade as a result of a government obsession with custodial sentencing for all crimes, and a lack of any concern for the treatment and education of offenders. The task of discouraging recidivism has been low on their agenda. Only one in five of those imprisoned have committed offences involving violence, sex, robbery or drugs. The Labour Party believes that prison should be used as a last resort for those convicted of serious offences, and that there is a need to reduce both the number and the length of prison sentences for most categories of offence. Non custodial sentencing must, therefore, be used more widely. Even the government has belatedly espoused these views in its 1988 Green Paper "Punishment, Custody and the Community". This policy will not be achieved by merely tinkering with the present system. It requires a comprehensive package of sentencing reforms.

There is particular concern about the treatment of juveniles and young adult offenders. Whilst there has been considerable progress in reducing the number of juveniles in custody, they can still be remanded and sentenced to totally inappropriate prison department establishments. There is no consistency between the treatment of juveniles and young adult offenders. Far too little attention has been given to the 17 to 20 year old age group. A higher proportion of the custodial population in the United Kingdom consists of young people than almost any other country in western Europe. This whole area of the criminal justice system is in need of review.

The prison system requires urgent reform. Many of our prisons are an affront to a civilised society. They are overcrowded and in an appalling physical state. In many respects prison regimes have deteriorated in recent years. Prisoners have few rights, limited access to work, education and other facilities and little opportunity to voice their concerns. The Prison Act 1952 is outdated, and in need of substantial revision.

The recent Guildford Four case has highlighted another major area of concern. Our present criminal justice system does not adequately deal with miscarriages of justice. Changes must be introduced into the laws which relate to confession evidence, and into the position of the Court of Appeal and the Home Secretary in dealing with alleged miscarriages of justice.

The Labour Party's plans for the criminal justice system include all these elements.

1. A comprehensive crime prevention programme.
2. A package of measures which establish the rights of victims of crimes.

3. A programme of sentencing reform.
4. Changes in the provision for juveniles and young adult offenders.
5. Reform of the prison system.
6. Major changes in present system of dealing with miscarriages of justice, including a requirement for corroborating evidence to accompany confessions.

Underlying all these changes are the key principles enunciated in the Party Review document "Democracy for the Individual and the Community". There must be equality under the law, equal access to the law and equal treatment before the Courts regardless of race and gender. All those who become involved with the criminal justice system whether as victims, offenders, relatives or staff should have the right to be treated with respect and dignity.

The Policy Review also proposes the establishment of a new Department for Legal Administration. This would replace the present Lord Chancellor's Department which administers a very substantial budget, but which is not directly accountable to the House of Commons. The new department would be headed by a Minister in the House of Commons and would be responsible for the administration of justice. The Home Office would retain powers over policing, penal policy, and the criminal law. Many of the issues raised in this alternative White Paper would fall within the remit of the new department.

COUNCIL OF EUROPE FIGURES ON COMPARATIVE PRISON POPULATIONS

The latest available comparative figures for the prison population of member states of the Council of Europe are for 1st September 1988. The figures are as follows:

<u>Country</u>	<u>Prison population on 1.9.1988</u>	<u>Number of prisoners per 100,000 population</u>
United Kingdom	55,457	97.4
Turkey	51,810	95.6
Luxembourg	322	86.5
West Germany	52,076	84.9
Portugal	8,181	83.0
France	46,423	81.1
Austria	5,862	77.0
Spain	29,344	75.8
Switzerland	4,679	73.1
Finland	3,598	73.0
Denmark	3,469	68.0
Malta	221	67.0
Belgium	6,450	65.4
Italy	34,675	60.4
Sweden	4,716	56.0
Ireland	1,953	55.0
Norway	2,041	48.4
Greece	4,288	44.0
Holland	5,827	40.0
Cyprus	219	39.3
Iceland	89	35.6

Therefore, the United Kingdom has a higher prison population, both in absolute numbers and relative to its overall population, than any other member state of the Council of Europe. Furthermore, the figure for the United Kingdom does not include 1,511 prisoners, mostly unsentenced, who were held in police custody on that date.

CRIME PREVENTION

The vast increase in recorded crime since 1979 bears witness to the failure of the conservatives, the self-proclaimed party of law and order, to control crime. Crime surveys repeatedly illustrate the depth of concern about this issue in local communities. The fear of crime restricts opportunities and lifestyles. More than 50% of women and the elderly in some areas are afraid to go out alone at night³. It is true that the fear of crime is often disproportionate to the actual risk and that a relatively small proportion of crimes involve serious violence. Nevertheless the government has conspicuously failed the primary need of any society - to be safe. Indeed Thatcherite economic and social policies have created the conditions which undermine community safety. Government policies have led to impoverished and decaying inner city areas, unemployed, financially destitute and alienated young people, homelessness and a massive divide between the haves and have nots - poverty in the midst of affluence.

The Labour Party's crime prevention programme recognizes the impact of social and economic policies on crime, and the futility of attempting to make communities safer without reversing many of the priorities of this government. Investment in inner cities and in housing programmes and the reform of social security provision are crucial areas.

Within the context of these fundamental policy changes the Labour Party will launch a comprehensive crime prevention initiative spearheaded by local authorities working in close partnership with the police, local communities, private enterprise and voluntary organisations. The government's obsessive dislike of local authorities has inevitably distorted their approach to community safety as they have reduced local authority involvement to a minimum. Yet, as so many of the wide-ranging tasks that have to be undertaken to reduce crime fall within their remit, local authorities are the key strategic agency. Street lighting, planning decisions and home and building design all affect crime rates. Local Government can upgrade street lighting, introduce security packages for all its properties, improve the design and layout of estates and town centres, and improve the management of town centres, housing estates and public facilities. Effective crime prevention on inner city housing estates where crime rates are highest is dependent on

³ Mike Hough and Pat Mayhew "Taking Account of Crime: Key Findings from the 1984 British Crime Survey" HO Research Study No.85 HMSO 1985

more staff such as resident caretakers and concierges. More staff on public transport systems are also needed. The presence of other people can have far more impact than physical security measures in making people secure.

The provision of play and youth facilities is vitally important, to ensure young people have access to constructive recreational opportunities. Half of all recorded crime and three quarters of all recorded burglaries are committed by those who are under 21⁴. But youth provision is often totally inadequate particularly in areas of greatest deprivation. The French Government's imaginative and successful *étés jeunes* initiative is an example of what can be achieved in crime prevention work with young people. *Etes jeunes* was set up in the wake of the violence in Lyon and Marseilles in 1981 and is a major programme of activity for inner city youth during the summer months. It has been followed by a comprehensive crime prevention policy for youth which emphasises the need for training and employment.

In the UK dramatic reductions in crime rates have been effected where local authorities have targeted the measures outlined above in areas where crime has reached worrying levels.

Success is dependent on a close working relationship with the police, who clearly have a major role. There are aspects of crime prevention that only the police can deal with such as patrolling the streets. Neighbourhood policing schemes will be a vital component of crime prevention strategies in many areas. The police advise individuals and designers on crime security measures, and have been active in establishing Neighbourhood Watch Schemes. These schemes have proved popular but the police are now managing approximately 70,000 of them in addition to their normal duties. Despite expressing constant support for the schemes, the government has not provided the resources needed for this large expansion in police work.

Local community groups such as tenants associations and Neighbourhood Watch Schemes must be consulted, involved and encouraged.

Local authorities are currently severely hampered in their ability to undertake crime prevention work. They face enormous financial constraints as a result of the £20 billion loss in rate support grant. There is also no statutory duty upon them to undertake this work. This makes it difficult to find powers under which schemes can be financed, lowers the emphasis placed on community safety by Councils, and undermines the status of

⁴ Criminal Statistics for England and Wales 1988

community safety work. The Labour Party will rectify this situation by imposing a statutory duty on local authorities to introduce crime prevention measures and will ensure that community safety is given priority across the country. A similar clause is included in the London Local Authority Bill, although, at the insistence of Conservative authorities, the duty has been watered down to a power. The government has attempted to limit the clause still further by proposing to restrict local authorities to operating through voluntary associations in relation to crime prevention matters.

Legislation will also ensure the obligatory inclusion of crime prevention in local authority development plans and planning permission criteria.

The Labour Party believes that security equipment is as important to the elderly and those on Social Security benefits as it is to the rest of the community. We will therefore examine ways of providing them with equipment they can afford. These groups will also benefit from many of the services provided by local authorities.

It is important to ensure that crime prevention measures do not increase the fear of crime. The recent report of the Working Group on the Fear of Crime to the Home Office Standing Conference on Crime Prevention, has drawn attention to this danger. The government's own crime prevention advertising campaigns were criticised for this. Their effectiveness in reducing crime is also open to question. Advertising creates an illusory sense of activity if not accompanied by effective programmes in the community.

Our proposals will both incur expenditure and result in savings. Successful crime prevention generates substantial savings in police and Court time and ultimately for the prison system. Community safety is such an important issue that spending is amply justified and the people of this country will undoubtedly see it as money well spent. Crime prevention also saves money for local authorities who for example have to lay out considerable sums in removing graffiti and repairing vandalism. Crime prevention is linked to economic prosperity. High crime rates can be responsible for the decline in neighbourhoods just as they can be a result of that decline. At the present time resources in the criminal justice system are overwhelmingly directed towards dealing with offences after they have been committed. These priorities are misplaced and resources should be diverted to crime prevention.

There is no reason to believe that a change in this emphasis will cause a greater net call on public funds.

The Labour Party believes that crime prevention is such an important issue that we shall introduce a Crime Prevention Bill incorporating these proposals.

VICTIMS

Far too little attention is given to victims in the criminal justice system. Once a crime has been committed a principal aim of the system should be to help victims as far as possible to recover from their experiences. There are three main practical ways of doing so. The first is to offer support and any practical help needed, the second to ensure that they receive considerate treatment in the criminal justice process; and the third to provide compensation. A Labour Government will improve all three. It will give as great a priority to assistance for victims as to dealing with offenders.

Not only the state agencies of law enforcement but members of the local community have a vital part to play in helping victims to recover from their experience.

Concern for Victims

Victims can be deeply reassured by the simple knowledge that the crime they have suffered matters to other people and that their feelings about it are experienced by many others. They are helped by knowing that practical assistance is available if needed. Victim support groups throughout the country have shown that this reassurance and help is available within the community. People from a wide range of backgrounds and experience, with suitable training can provide support to victims of even the most serious crimes including rape and sexual assault, racial harassment and to the families of victims of murder.

The Labour Party will ensure that victim support is able to maintain the highest standards of service throughout the country; to provide a programme of training; and to facilitate development work aimed at meeting the needs of particular groups such as victims of domestic violence and those who are victims in the course of their work.

We are committed to providing women's refuges and Rape Crisis Centres on a secure basis for women seeking help, advice and refuge.

Victims and Criminal Justice

Victims must be treated considerately by the agencies of criminal justice. The Labour Party believes that the victim of crime as the person directly affected has a right to be kept informed at all stages of the justice process from the moment of reporting a crime. Victims should be regularly provided with information as to whether or not a suspect has been arrested, released on

bail, cautioned, prosecuted, convicted or sentenced. For example, some victims wish to attend Court to hear the outcome of their case; they should be kept informed so that they can do so. We recognise that some progress has been made in this direction, but much more could be done.

In particular a Labour government will take steps to improve channels of communication from the victim to decision makers, such as the Crown Prosecution Service or the Parole Board. For example, when he or she has evidence of earlier threats or intimidation this could affect the conditions attached to release on bail or parole. We do not propose that victims should take any part in the actual decision making. This would be inappropriate. However, they should be asked by the Crown Prosecution Service to describe the offence and be interviewed by the Probation Service in connection with parole reports.

The Labour Party is concerned to improve the treatment of victims of sexual assault and rape. We shall ensure that these victims are interviewed by a woman police officer given the choice of a third party being present during questioning and are provided with information about support groups. We shall require medical examinations of victims of rape and sexual assault to take place in specialist rape centres.

For many victims the experience of giving evidence is very stressful, especially when they are cross-examined by defence counsel who is attempting to undermine their credibility. It is important not to reduce the rights of defendants facing any sort of prosecution. But we shall consider ways of giving victims/witnesses better protection.

We welcome recent changes which will allow children to give evidence by live video link. We are also sympathetic to the calls from the Pigot Committee for out of court video taped interviews for children and all vulnerable witnesses. In Scotland, the Court is cleared when victims of rape and sexual assault are giving evidence. We will seriously consider how we can draw from both the Scottish procedure and the Pigot Committee recommendations in order greatly to improve the system in England and Wales. We shall also clarify the law to provide simple measures which will enable victims to give their evidence more clearly and with reduced distress. This will include allowing witnesses to give evidence from behind a screen, when appropriate, and providing sound amplification so that victims do not have to be asked to speak loudly or repeat themselves.

Compensation

Whilst Britain pioneered the concept of state compensation for victims of violent crime, the Criminal Injuries Compensation Board has not been able to keep pace with demands placed upon it. The Labour Party will ensure that the Criminal Injuries Compensation Board is able to deal with all the cases it should cover. We would take the opportunity provided by computerisation to streamline the administration, for example by dealing with straightforward and less serious cases administratively, and to make greater use of interim awards.

The Labour Party is committed to helping more victims to obtain the recognition of society's concern by enabling the Criminal Injuries Compensation Board to consider smaller claims than the present threshold which the Government has recently raised from £550 to £750. We are critical of this decision which was made primarily to reduce the number of future claims at a time when the backlog of applications is embarrassingly high. We shall also restore compensation for clothing and personal possessions damaged in the course of a violent attack or rape, which the Government removed in the 1988 Criminal Justice Act.

There are several anomalies in social security provisions for victims. At present unemployed victims of crime lose the full value of any substantial compensation payment because they lose part of their benefit entitlement as a result, whereas for people who are employed there is no such deduction. In addition a person with a low income who is robbed of all of his or her money or essentials such as clothing or furniture must now generally apply for a loan not a grant. If he or she is already paying off a loan perhaps after a previous burglary it may not be worth applying because the payments would be impossibly high. A Labour Government will review social security regulations which penalise victims.

We believe that compensation should be available to all victims of crimes of violence. Any exception should be very narrowly drawn. Victims have been refused compensation after not reporting a crime immediately because they were in hospital or because of earlier criminal convictions for offences totally unrelated to the crime of which they are victims. A move in this direction has been made in the Criminal Justice Act 1988; we will monitor the operation of the relevant sections of the Act and amend it if necessary.

A Labour Government would work towards ensuring compensation for citizens of the UK who become victims of violent crime in other member states of the Council of Europe in the same way as their citizens when in this country. We would therefore ratify the

European Convention on the compensation of Victims of Violent Crime which has not yet been ratified by the present government, although it came into force in February 1988.

We are concerned by the problem of those who live in high risk areas and for that very reason are unable to obtain insurance protection at a rate they can afford. We propose to study the feasibility of a 'safety net' national insurance scheme to cover people on low incomes. Meanwhile we shall encourage the spread of block insurance policies which enable the risk to be spread among the tenants of local authorities, housing associations or private property owners.

Compensation by Offenders

In 1982 a public opinion poll found that 66% of those questioned approved of compensation orders and 85% approved of community service.⁵ Several other studies have made similar findings. There is growing interest in restorative justice based on the principle that the offender should be required to make reparation through money or service to the victim or the community. The Labour Party believes that reparation should be an important feature of criminal justice policy, provided that the effect on the victim is kept at the forefront. We support the concept of mediation between victim and offender and will encourage and monitor further experimentation.

A Labour Government will take steps to improve the arrangements for victims to let courts know if they wish to receive compensation and if so the extent of the loss or harm they have suffered. We will examine the operation of the compensation system in cases where the offender receives a caution. At present when an offender is cautioned the victim does not have the opportunity to obtain compensation except in a few areas where a special project has been set up for this purpose.

Many victims who seek compensation are reluctant to receive it in small, often irregular instalments, over a long period. We would, therefore provide for compensation to be paid from court funds and recovered subsequently from the offender. Official letters would be worded in such a way as to make both victims and offenders fully aware that compensation is an act of making amends by the offender to the victim. Some victims wish to pursue their claims in the civil courts; arrangements would be made to ensure that the name and address of the offender would be available to them and their legal representatives.

⁵ The People's Justice. Prison Reform Trust 1982.

SENTENCING REFORM

Sentencing reform is the key to establishing a rational system for dealing with those who break the law, and to reducing the prison population. Over-reliance on custodial sentencing is enormously wasteful both in human terms for the individuals and families of those unnecessarily imprisoned, and financially for the taxpayer. The prison budget stood at just over £1 billion in 1988-89⁶ and the average weekly cost of keeping a person in prison was £288⁷. Supervising the offender in the community, in contrast, costs an average £18 per week⁸. The government is also spending over £1 billion on new prisons. Too many people go to prison in this country. It is absurd for the government to pretend that it will reduce the prison population and, at the same time, increase the number of prison places through its present prison building programme. Our approach will mean that we will be able to close prisons and generate considerable savings as the proposed sentencing reforms begin to bite. Existing prisons will be refurbished to meet the minimum standards set out later in this document. Our proposals will lead to enhanced regimes for prisoners, an improved and more constructive prison system and an increased use of effective and positive non custodial sentences.

Labour's programme of sentencing reforms contains the following elements :-

a) Statutory restrictions on the use of imprisonment for adults.

Section 1(4) of the 1982 Criminal Justice Act introduced sentencing guidelines for those under 21. The guidelines stipulate that custody should only be imposed when it is necessary to protect the public from serious harm; when the offender is unable or unwilling to respond to custodial penalties, or when the offence was so serious that a non custodial penalty cannot be justified. When passing a custodial sentence on a young offender, judges and magistrates must specify on which criterion they are passing the sentence, and the reasons why they consider that the criterion is satisfied.

⁶ Annual Report on the work of the Prison Service 1988/89
CMND 835 HMSO 1989

⁷ Ibid.

⁸ Probation Statistics for England and Wales 1987 HO 1989

The criteria have played an increasing part in the reduction in the use of custody for juveniles which has occurred since 1981, without any increase in crime rates.

Similar guidelines should now be introduced to govern the sentencing of adult offenders.

b) The establishment of a Sentencing Council

The Labour Party will establish a Sentencing Council to produce sentencing guidelines for a range of cases in an inter-related structure.

At the present time, the Court of Appeal produces guideline judgments, but only in a limited number of areas. It generally deals with very serious cases and there is, therefore, a dearth of guidance on the more mundane cases which make up the workload of the lower courts. This contributes to great inconsistency in sentencing between Magistrates Courts. In 1987, for example, 16% of adult males sentenced by magistrates in St. Helens received prison sentences as opposed to 5% in the comparable area of Rotherham⁹. These variations, which occur throughout the country, are manifestly unjust and must be remedied.

A Sentencing Council would fill the gap in present practice and lead to both greater consistency between courts and a reduced use of imprisonment. It would produce a set of sentencing ceilings for different types and grades of offence (e.g. different types of burglary, different types of theft), together with principles for use in calculating the precise sentence beneath that ceiling, including principles governing the sentencing of persistent offenders and multiple offenders. These recommendations would be issued as practice directions.

Two models for the composition of a Sentencing Council have been put forward. The first proposes that the Sentencing Council should be established as part of the Court of Appeal. It would be a judicial body consisting solely of judges, who would have the power to co-opt advisers from the magistracy and agencies concerned with the organisation, implementation and supervision of penal sanctions. The second proposal is that the Council should be chaired by the Lord Chief Justice, but that its composition should not be limited to the judiciary and should include magistrates and such people as a prison governor, a probation officer and an academic penologist.

⁹ Criminal Statistics for England and Wales Supplementary Tables 1988 Volume 5 HO 1989

We would wish to discuss these two proposals and any other appropriate proposals with interested parties reaching a decision as to which is the most appropriate and effective model.

c) A Review of maximum penalties

The Advisory Council on the Penal System proposed in 1978 that there should be a reduction in maximum penalties. It is unclear how much impact reduction in maxima would have on sentence lengths since over 90% of cases are sentenced to less than the permitted maximum. However, reductions could well have a "knock-on" effect. We shall instigate a review of maximum penalties to ensure greater consistency between gravity of offence and relevant maximum sentence.

d) A response to the House of Lords Select Committee Report on murder and life imprisonment

We welcome the recent report which argues that the mandatory life sentence for murder should be abolished. Murders vary greatly from calculated killings for material gain or political ends to those committed under great emotional stress. Judges should be able to reflect these variations in their sentences, as they currently do with manslaughter, reserving life imprisonment for the most heinous cases. This change will not reduce the actual period served in prison by those convicted of murder. It will simply ensure that the period served in prison will be more closely related to the actual sentence passed.

e) Introducing a system of means-related fines

Since the mid 1970s the use of the fine has fallen dramatically with rising unemployment, from 51% of all sentences for indictable offences to 39% today¹⁰. This trend has particularly affected young adult offenders, and has resulted in some defendants being sentenced to custody who would previously have been fined.

Fine default results in a considerable amount of work both for courts and local prisons, who had to process 16,800 receptions for fine default in 1988¹¹. Evidence indicates that a considerable proportion of these fine defaulters have little or no prospect of paying their fines because of their limited financial circumstances.

¹⁰ Criminal Statistics 1988.

¹¹ Prison Statistics 1988.

In order to avoid the imposition of unrealistic fines on those with low incomes, we shall introduce a means-related fine system such as the 'day fine' system in operation in some European countries, which systematically relates the level of the fine to the ability to pay.

f) Ensuring fine default for non-imprisonable offences cannot result in imprisonment

When an offence is committed which Parliament has deemed insufficiently serious to render the offender liable to imprisonment, it is inappropriate for default to result in committal to prison. One of the other enforcement options should be pursued.

g) Requiring courts committing a fine defaulter to prison to give reasons for rejecting each of the other enforcement options.

Means related fines will result in less fine default. However, some offenders will still default, and we believe it would be a further valuable safeguard against unnecessary imprisonment for courts to be required to give reasons for rejecting each of the enforcement options before imprisoning a defaulter.

h) Ensuring community service is used as an alternative to custody

There has been considerable confusion about the position of community service in the sentencing tariff. A recent Home Office Circular has indicated that it should be used instead of a prison sentence. This principle should be enshrined in legislation.

i) Expanding the Probation Service

The Labour Party recognises the contribution of the Probation Service in providing effective and constructive alternatives to custody. We envisage an expanded Probation Service - expanding not at the expense of other alternatives to custody, which has so often been the case in the past, but taking an increasing percentage of those offenders who are now imprisoned. We support the Probation Service's traditional and positive role - providing assistance, advice and supervision - and reject attempts by this government to make its task increasingly one of surveillance and monitoring. If the Probation Service is to succeed in reducing the number of people sentenced to custody, it must adopt a more sophisticated approach to targeting those at risk, monitoring the outcome of social enquiry report recommendations and court disposals and evaluating the success of different forms of intervention with offenders. It needs to communicate more effectively with other agencies, and in particular, with those

who pass sentence if it is to win greater acceptance for its approach to tackling offending. Success in the juvenile field has owed a great deal to these techniques.

A sufficient range of flexible alternatives to custody already exists in this country. However, the availability of these sentencing options varies from area to area; for example some areas lack a senior attendance centre. The full range of non custodial sanctions should be available to all courts.

j) Reforming the Bail Process

One of the major causes of prison overcrowding has been the dramatic increase in the number of people on remand in custody. Over a decade the number has doubled from a daily average of 5,800 in 1978 to 11,400 in 1988. The proportion of remand prisoners in the prison population has risen from 13% in 1978 to 23% in 1988¹². The present system is characterised by inconsistency in granting bail and great variations between Magistrates Courts.

A wide range of measures is required to remedy the situation, including reforming the Bail Act itself. No defendant should be remanded in custody without being offered legal representation. The use of custodial remands for medical reports should be restricted. The provisions in the Act relating to "further offences" as an exception to the presumption in favour of bail should be tightened. Magistrates should no longer be able to remand in custody persons charged with a summary offence. Other measures to tackle the bail crisis should include:

The provision of more bail hostel accommodation;

the establishment of bail information schemes at Magistrates' Courts throughout the country;

the setting of statutory trial deadlines which is consistent throughout the country similar to the 110 day rule which applies in Scotland.

Ending 28 day custodial remands, introduced by the Government.

k) Ethnic monitoring of sentencing decisions

An average of 14% of the male prison population and nearly 25% of the female prison population is drawn from minority ethnic

¹² Prison Statistics 1988,

groups¹³. The Home Office Statistical bulletin "The ethnic origin of prisoners" published in June, 1986 showed that the proportion of male black offenders was about double those in comparable age groups in the population. The proportion was higher for black women. Black people were significantly less likely to receive bail, black prisoners had substantially fewer previous convictions than white prisoners and were serving on average longer sentences. Ethnic monitoring of sentencing decisions is a vital tool in tackling racism.

The number of black people working the criminal justice system is alarmingly small. Less than 1% of prison officers are from ethnic minorities and less than 2% of probation officers¹⁴. There are far too few black magistrates and only one black circuit judge. All agencies working in the criminal justice system should undertake specific initiatives to ensure the recruitment of more black staff. Training in racial equality should become an essential part of all qualifying training and in-service training.

1) Tackling discrimination against women offenders

Women account for less than 4% of the total prison population of England and Wales. Nevertheless, the likelihood of female offenders being sent to prison has nearly doubled during the last decade. Seven per cent of adult women coming before the Courts for indictable offences were imprisoned in 1988 compared with 4% in 1978. Home Office prison statistics also indicate that women are sent to prison at an earlier point in their criminal careers than men. In 1988 23% of adult female receptions, for whom information on previous convictions was available, had no previous convictions, and 15% had less than three previous convictions. In comparison, statistics on the male prison population shows that only 9% had no previous convictions and 10% had less than three¹⁵.

All agencies in the criminal justice system need to review their day to day service provision to ensure that discrimination against women is eradicated. Training in gender issues should be essential to qualification and in-service training. Furthermore, steps must be taken to ensure equal treatment for

¹³ Prison Statistics 1988.

¹⁴ Facts and Findings about Black people in the Criminal Justice System. NACRO 1989

¹⁵ The figures in this paragraph are taken from the Criminal Statistics 1988 and the Prison Statistics 1988.

women in both recruitment and promotion in every area of the criminal justice system, in order to eradicate the present gross under-representation.

m) Establishing a Courts Inspectorate

There are currently inspectorates for the police, the Probation Service, and the prison service, but not for the courts. This anomaly will be corrected and a Courts Inspectorate established to assess both Magistrates and Crown Courts in regard to their managerial and administrative policies. The inspectorate will provide courts with information on sentencing practice on a regular basis.

JUVENILE AND YOUNG ADULT OFFENDERS

There has been considerable progress in the treatment of juvenile offenders since the 1983 Intermediate Treatment Initiative which injected £15 million into the development of alternatives to custody schemes. The number of juveniles receiving custodial sentences has dropped from a peak of 7,900 in 1981 to 3,400 in 1988¹⁶. Whilst demographic change, the introduction of statutory restrictions on the use of imprisonment for young people, and other factors have played a part in this reduction intermediate treatment initiative schemes have had a significant role. However, whilst in some areas of the country developments have been impressive, in other areas there has been little change. Nor have schemes been so successful in diverting young black offenders and girls from custody.

It is very important to develop constructive policies for both juveniles and young adults. Until 1987 the peak group of offenders was 15 year old males. In 1988 the largest single group of offenders was 18 year old males¹⁷. Decisions affecting young offenders require very careful consideration since they have an important bearing on whether that young person persists in delinquency. Research evidence, for example, has indicated that prosecuting juveniles for minor offences can increase rather than reduce their chances of further delinquency. The damaging effects of prison department custody on young people is well documented. Younger inmates learn about committing crime from older, more experienced offenders. Two thirds of all young offenders leaving custody are re-convicted within two years and the reconviction rate for juveniles is particularly high at 70% to 80%¹⁸.

Labour's plans for juveniles and young adult offenders include the following elements:

- a) Ensuring that the achievements in the juvenile field are consolidated and extended
- b) Establishing multi-agency cautioning panels on a national basis

¹⁶ Criminal statistics 1988.

¹⁷ Criminal statistics 1988.

¹⁸ Prison statistics 1988.

The decision to caution or prosecute a young offender is one of the critical points in the system. There has been a welcome increase in the number of juveniles who are cautioned rather than being brought before the courts. Many areas have set up inter-agency cautioning panels to assist in the decision making process. However, progress has been uneven and there are considerable inconsistencies between and within police force areas. In 1987 the proportion of 14 to 16 year old male offenders who were cautioned ranged from 28% to 83% in different police force areas¹⁹.

A national network of cautioning panels would spread good practice and bring about greater consistency. We envisage that the panels would deal not only with juveniles, but with young adult offenders up to the age of 21. One of the most inequitable aspects of the present criminal justice system is the sharp distinction between the treatment of juveniles and young adults. Sixteen year olds for example are four times as likely to be cautioned as seventeen year olds.

c) Statutory criteria governing the use of prosecution

The criteria would operate in a similar way to statutory restrictions on the use of imprisonment. Prosecution would not take place unless the offence was a serious one or the juvenile had a history of previous cautions, and, following consultation with the inter agency panel, there appeared to be no other appropriate course of action.

d) Instigating a thorough review of the court system for juveniles and young adults

The review will consider whether the juvenile court is the most appropriate setting for dealing with juveniles or whether there should be a less formal, more participatory process such as exists in the Scottish Children's Panel system, or could take place within a family court structure. We take the issue of parental responsibility and parental involvement very seriously. But we are convinced by those experts in the study of juvenile crime who argue that any proposals to prosecute parents for the actions of their children are, at best, ineffectual and, at worst, likely to be counterproductive and increase the likelihood of family breakdown. The Scottish Children's Panel System requires parents to appear at hearings and to comply with proposals and directions. Its aim is to build a partnership between parent, child and the panel. It is interesting to note that the Panel System is universally supported in Scotland.

¹⁹ Criminal statistics 1988.

The review will also look at the appropriateness of the present arrangements for young adult offenders and discuss whether there is a need for a specialist court for this age group.

e) In the interim, increasing the maximum age of the juvenile court to 18

At the present time, twice as many 17 year olds as 16 year olds receive custodial sentences, although a similar number of 16 and 17 year olds commit offences each year²⁰. Raising the maximum age limit for the juvenile court would produce a more logical cut-off point in line with the age of majority; would bring 17 year olds within the more constructive sentencing tradition of the juvenile court; and would also bring this country into line with most other west European nations.

f) Ending the remanding of defendants under 17 to prison department establishments

The 1988 Report of the Chief Inspector of Prisons into B wing at Hull Prison, where juveniles are held on remand, highlights the total inappropriateness of such conditions for under 17 year olds. The report describes unhappy, listless and bored young people locked in their cells, which have no integral sanitation, for over 20 hours a day. Prison department establishments are completely unacceptable locations for youngsters on remand.

g) Ending the sentencing of offenders under 17 to prison department establishments

Nor are prison department establishments suitable for sentenced offenders under 17. They are a breeding ground for crime. The vast majority of juveniles can be dealt with in a far more constructive manner in the community. For the small number of serious offenders who are a danger to the community, secure child care detention facilities should be provided under the auspices of social service departments.

h) Reducing the number of young adult offenders remanded and sentenced to custody

This section has already touched on the inequitable discrepancies between the treatment of juveniles and young adult offenders. Far too little attention has been devoted to the 17-20 year old age group. The Labour Party believes, as does the government, that the Probation Service should target work on young adults. A far greater percentage of this age group should be removed from

²⁰ Criminal Statistics 1988 and Prison Statistics 1988.

the criminalising experience of prison and be dealt with, by way of constructive alternatives to imprisonment, in the community.

-PRISON REFORM

The 1952 Prisons Act, the primary legislation governing prisons, is now almost forty years old and in need of substantial revision. The Act places few clear responsibilities on prison authorities, and this has contributed to declining standards within the prison system.

The Labour Party's programme for reform contains the following elements :

a) Introducing a Code of Minimum Standards for Prisons

Many of our local prisons and remand centres suffer from severe physical dilapidation as well as serious overcrowding. Prisoners in these establishments have no access to integral sanitation while in their cells. These sanitary conditions necessitate the use of chamber pots in cells which may be shared by two or three people, followed by "slopping out", and constitute the single worst feature of prison life. Combined with an entitlement in such prisons to bathe or shower just once a week and to change underwear only twice a week, the resulting conditions fail to meet even the most elementary standards of human decency.

A minimum code would lay down standards relating to cell size, the amount of time a prisoner should be out of a cell, sanitation and personal hygiene. It is an essential first step towards a humane prison system.

b) Ending Crown Immunity for prisons

At the present time prison authorities cannot be prosecuted if prisons fail to meet the standards required under legislation concerning food hygiene and health and safety, since prisons are crown buildings. This is a totally unsatisfactory situation and must be ended. We are pleased to note that the government is proposing to remove immunity from prison kitchens in its Food Bill.

c) Providing a right of access to education, recreation and employment

Prisoners all too frequently have limited access to work and educational facilities, such as literacy classes. Many are locked in their cells for the majority of every 24 hour period. They should have the opportunity to work and be entitled to good quality educational provision whilst serving their sentence.

d) Improving visiting facilities

Visiting facilities in many prisons are totally inadequate. Families with children can wait inordinate lengths of time for a short visit in bleak conditions which severely inhibit normal social contact. Visiting conditions should be organised to ensure that the surroundings are more relaxed and that there are facilities for babies and small children. We will also consider ways of increasing entitlement to visits and making it easier for those visits to take place. If prisoners are to be rehabilitated after serving their sentence it is important to ensure that they remain in close contact with their family whilst still in prison.

e) Improving conditions for mothers and babies

We are concerned that mothers with young children are often sent to prison when they have not committed a sufficiently serious offence to warrant imprisonment, and where constructive alternatives in the community are available. However, where a prison sentence is necessary to protect the public conditions should be improved to ensure that prison routine and regime do not hinder the relationship between mother and child and to provide as stimulating an environment as possible for the child's development.

f) Abolishing the Prison Medical Service

For many years there has been concern about the Prison Medical Service's insufficient independence from the prison system. It is all too easy for a medical service which is part of the prison system to become unduly influenced by the institution's primary goal of containment and control. A degree of specialised training may, in some cases, be necessary for doctors who work in prisons. But, as a general principle, the Prison Medical Service should be incorporated into the National Health Service, and that prisoners should have the right to the same standards of medical advice and treatment as those outside prison walls.

g) Establishing a Prison Ombudsman

The present procedures for dealing with prisoners' complaints are unsatisfactory. Prisoners with a grievance can apply to the governor or the Board of Visitors, petition the Home Secretary or complain to an MP but each of these methods has limitations. Governors and the Home Office are insufficiently independent. Boards of Visitors can be regarded with suspicion because of their disciplinary function; they have no decision-making power and, like MPs, have only a limited investigative capacity. A new channel for prisoners' complaints is needed which is more effective thorough and accessible than the present procedures,

and is conspicuously independent of the Home Office. The most effective option would be the establishment of a Prison Ombudsman, who would be able to receive complaints direct from prisoners and from sources such as Boards of Visitors, to initiate investigations on his or her own initiative, and to investigate the merits of decisions not just maladministration. In other countries where prison ombudsmen exist, they exercise an important beneficial influence on prison administration.

h) Establishing a Prison Disciplinary Tribunal as recommended by the Prior Committee

Offences against prison discipline are currently dealt with either by the Governor or by the Prisons' Board of Visitors, the Board dealing with more serious offences. Boards can order loss of remission of up to 120 days for a single offence. They can also impose consecutive penalties.

The Prior Committee recommended that the adjudicatory functions of Boards of Visitors should be replaced by a body to be called the Prison Disciplinary Tribunal, which would consist of a legally qualified chairperson (a lawyer of at least seven years standing) and two lay members.

The Prior Report's proposals are welcome since it is undesirable that penalties involving substantial deprivation of liberty should be imposed by a non-judicial body. Secondly, there is a conflict between Boards of Visitors' disciplinary function, and their role in investigating complaints by prisoners. Thirdly, removing adjudicatory functions from Boards of Visitors would allow them to concentrate on the important task of developing their inspectorial duties and their function of investigating prisoners' grievances.

i) Parole Reforms on the lines of the Carlisle recommendations, but with some amendments to ensure that they reduce the prison population

The 1988 Carlisle Report on Parole recommended sweeping changes to the present cumbersome and complicated parole scheme. Its main proposals are that :

- prisoners sentenced to four years or less should automatically be released after serving half their sentence, subject to good behaviour;
- prisoners sentenced to more than four years should be eligible for parole after serving half of their sentence, subject to good behaviour;

- everyone sentenced to 12 months or more should be supervised by the probation service after release until they reach the three quarter point of their sentence;
- the parole decision-making process should be more open; and prisoners should be given meaningful reasons for refusal of parole except in exceptional cases.

The Labour Party welcomes the thrust of the Carlisle Report and the clarity of its thinking. We support the notion of automatic parole for those serving less than four years and of supervised release. However, as the Report itself makes clear, the Carlisle recommendations will increase the prison population, perhaps by as much as 4,000, unless accompanied by radical changes in sentencing practice. Our proposals on sentencing provide for such a change in the sentencing climate. Nevertheless, we remain concerned that changes in the parole system will begin to take effect more quickly than sentencing reform, and propose that Carlisle should be amended so that parole eligibility remains at the current one third of sentence. Those serving less than four years should be automatically released after serving one third of sentence, as is the case with many prisoners at the present time. Supervision would continue until the two thirds point of a sentence.

j) Reviewing the Rehabilitation of Offenders Act 1974

The 1974 Rehabilitation of Offenders Act was designed to give past offenders the opportunity to obtain jobs and to "go straight". However, there is evidence that the intentions of the Act have not been realised. There is widespread ignorance amongst both prison inmates and ex-offenders as to the existence and effect of the Act, and the majority of employers lack basic knowledge about its provision. There is concern that the current lengths of rehabilitation periods and the threshold for eligibility act to deter past offenders from "going straight". The whole area of exceptions under the Act needs re-examination. The Labour Party will undertake a review of the Act since without effective rehabilitation and resettlement of ex-offenders the problem of re-offending is exacerbated, thus fuelling rising crime.

MISCARRIAGE OF JUSTICE

The Guildford Four case has exposed the inadequacies of the present system of dealing with potential miscarriages of justice. Reform is urgently needed to minimize the risk of mistaken verdicts and to establish an effective mechanism for investigating alleged miscarriages of justice.

Confession Evidence

In England and Wales defendants can be convicted solely on the basis of confession evidence. Yet false confessions are sometimes made by defendants under the pressure of questioning. By contrast, in Scotland there has to be corroborating evidence to convict. This is an eminently sensible safeguard and we recommend that it is adopted for England and Wales so that a confession is inadmissible unless corroborated by additional evidence.

However, this change alone is insufficient. "Justice", in their recent report "Miscarriages of Justice" have suggested that corroboration is an inadequate safeguard and that the degree of corroboration required in Scotland is not high in some cases. We therefore believe that further consideration must be given to certain additional safeguards. The government intends to introduce national tape-recording of police interviews by 1991. We welcome this but are concerned that interviews with individuals held under the PTA will be exempted. We see no justification for this on grounds of national security and propose that all interviews be taped. The Police and Criminal Evidence Act (PACE) 1984 has improved the suspect's rights to obtain legal advice while in custody. However, recent research by the Lord Chancellor's Department showed that less than one in five people received solicitor's advice in a police station and indicates that the present arrangements are seriously flawed. Additional safeguards are required to ensure a suspect is legally represented in custody.

Rights to Silence

The Labour Party is determined to resist any attempt to weaken the present right to silence. It embodies the fundamental principle on which our system of law is based - that the defendant is innocent until proved guilty and must be proved guilty by the prosecution. Abolishing or weakening the right to silence is tantamount to reversing the burden of proof. We agree with the 1981 Report of the Royal Commission on Criminal Procedure which said that the right to silence is "an essential safeguard for the weak, the immature, the inadequate, since its removal could increase the risk of false confessions by those

unable to withstand police interrogation". We also believe that the rights of the defendant have been diminished by the changes in the right of peremptory challenge to jurors. We will restore the previous right of challenge.

An Independent Review Body to investigate suspected Miscarriages of Justice

In England and Wales appeal against conviction after trial goes to the Court of Appeal (Criminal Division). The leave of the Court is required for most appeals. Once the Appeal Court has dismissed an appeal or refused leave to appeal anyone who wishes to challenge their conviction must petition the Home Secretary. The Home Secretary can refer the case back to the Court of Appeal or recommend to the sovereign the granting of a free or conditional pardon, or the remission of all or part of the penalty. Petitions to the Home Secretary are investigated by Home Office officials. Both "Justice" and the Sixth Report of the Home Affairs Select Committee in 1982 have expressed grave concern about this form of investigation. Officials do not themselves investigate the cases, but usually ask the same police force which investigated the case to look at it again. Furthermore, as the Home Affairs Select Committee commented, officials are "hampered in carrying out this task both by the tradition of excessive secrecy within the Home Office and by the severe restrictions placed by convention rather than law, on the Home Secretary's power to intervene when the normal judicial process may have produced a wrong result". This last point is at the heart of the concern about the present system. It means that intervention by either the Home Secretary or the Court of Appeal to reverse a verdict is very rare.

The Labour Party is convinced, as is Justice and the Home Affairs Select Committee, that an Independent Review Body should be established to investigate suspected miscarriages of justice. We envisage that the Review Body would take over much of the role currently performed by the Court of Appeal and the Home Secretary. The Court of Appeal would be limited to hearing miscarriages relating to matters of law or procedure. All other prima facie cases of miscarriage of justice after trial on indictment would be referred to the Review Body, which would decide whether there was sufficient concern about a conviction to warrant a case being re-opened. Cases involving mistaken defence tactics as well as those involving fresh evidence should be referred to the Review Body. Having decided that a case warranted further investigation the Review Body would advise the Home Secretary as to whether there should be a retrial or an investigation of the whole case by the Review Body itself. In many cases a retrial would be the most appropriate form of action. The Review Body would deal with cases where, for

example, there had been a long gap since the original trial, where witnesses may well be dead or unobtainable and it would be difficult to hold a retrial.

In its investigative capacity the review body would be able to examine the petitioner, defence lawyers, the police, and the prosecution, as well as witnesses and transcripts, in an attempt to establish the truth of the case. It should have the powers of a Tribunal of Inquiry and a person summoned before it should be allowed legal representation. It should publish and report its findings and recommendations to the Home Secretary who should then report to Parliament what steps will then be taken. We shall be consulting widely on all these proposals, including the composition of the Review Body, in order to establish an effective body that can investigate miscarriages of justice with impartiality and independence.

file Gary

C:\home\penal

CAROLYN SINCLAIR

A SINGLE 'PENAL SERVICE'

The Prime Minister read your minute of 16 January with interest but is not inclined to pursue this point with the Home Secretary at this stage. She said that she is sceptical about the idea and feels that it is a little too sketchy. It might be worth returning with a fuller note in due course.

AS

CAROLINE SLOCOCK

29 January 1990

Q15

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file EAM

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

24 January 1990

Dear Peter,

CRIMINAL JUSTICE SYSTEM

The Prime Minister has had an opportunity to look at the draft White Paper on Criminal Justice and the draft Green Paper on supervision and punishment in the community which were discussed at 'H' Committee on 16 January. She has also seen the minutes of the discussion in 'H'.

The Prime Minister endorses the thrust of the arguments in these papers; but recognises that the success of the proposals will depend on a change of sentencing practice by the courts. To help achieve a shift in that practice as quickly as possible, she considers that an improved and sustained dialogue between the different parts of the criminal justice system will be particularly important. Until the number of custodial sentences is reduced, she is concerned that there is a danger that the proposals may actually increase the prison population. In view of this, she shares the Chief Secretary's view, expressed at 'H', that there should be some flexibility in the implementation of the Carlisle proposals which would allow action to be taken to counter an increase if necessary.

I am copying this letter to the Private Secretaries to members of 'H' Committee and to Sir Robin Butler.

Yours sincerely,

Caroline

CAROLINE SLOCOCK

Peter Storr Esq
Home Office

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

24 January 1990

Dear Peter,

CRIMINAL JUSTICE SYSTEM

Further to my letter of 24 January, the Prime Minister has heard of some interesting day centres run by the probation service in Northumbria which are designed to keep people with a history of crime out of prison. She believes that these are an example of positive change in the probation service, and are particularly interesting because they are in line with developments envisaged by the Green and White Papers on the Criminal Justice System. She has mentioned to me that she would like to visit one of these centres if possible, and I would be grateful for your advice on this, together with some background detail about them. Needless to say, any possibility of such a visit must be kept confidential for the usual security reasons.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Caroline'.

CAROLINE SLOCOCK

Peter Storr Esq
Home Office

A handwritten signature in cursive script, appearing to read 'Luo'.

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PRIME MINISTER ①

CRIMINAL JUSTICE SYSTEM

"H" has just considered a set of important proposals, which you may like to see and, perhaps, comment on.

I attach:

Flag A Two notes from Carolyn Sinclair, one commenting on the papers below and the other trailing the long term possibility of creating a single penal service;

4(90) 1
Flag B Draft White Paper on Criminal Justice - you may like to look at the first chapter, which sets out the main arguments and proposals very clearly;

4(90) 2
Flag C Draft Green Paper on Supervision and Punishment in the Community - Carolyn says you do not need to read this, but you might look at Annex A (though I have to say it's not all that illuminating);

4(90) 154
Flag D The minutes of the "H" which considered these. "H" agreed that they should be published, subject to a number of relatively minor changes;

Flag E Two examples of the Probation Service's Social Inquiry Report - the use of which would be extended by the White Paper proposals.

I think the key points in these papers are:

- presentation: there is a skilful balance between stiffer sentences in practice for serious offences with an increased use of non-custodial sentences for less serious offences. On

Pam Minister ①
Do you wish to
comment at all on
these proposals?

In any case, Carolyn
Sinclair would appreciate
a steer on ② below.

CBS 2/11

the latter, the emphasis will be on compensation of the victims and effective supervision. The Home Secretary does not feel the package will provoke public criticism (the earlier Green Paper did not do so). Carolyn agrees. However "H" did express some concern about the proposal to reduce sentences for burglaries: it was agreed that these proposals might be moderated in some way, particularly to distinguish between the generality of cases and especially serious ones;

- effect on the prison service: the proposals aim, amongst other things, to reduce prison overcrowding. But there is a danger that in the short-term they cause the reverse. This will depend on how far magistrates and Judges increase their use of non-custodial sentences. The proposals include various mechanisms to encourage them to do so, but there are worries about the time it will take and about whether in particular Judges will cooperate. To try and reduce the dangers of prison over-crowding, the Chief Secretary suggested at "H" that further consideration was needed for ways of encouraging Judges to alter their sentencing policy. He also thought flexibility should be introduced into the proposals for returning prisoners to jail who had broken their parole, so that any surge in prison population could be controlled. This was accepted by "H". Carolyn makes the point that liaison between the Home Office and Judges will be crucial;

- changes to probation service: the proposals give the probation service a new job - supervising serious offenders after they leave jail - and, generally, puts far greater emphasis on their role in supervising offenders and less on "social work." This would involve the creation of a national probation service; an increase in posts; a reemphasis and increase in training; and overall additional costs. But in the long term these costs would be offset by savings following from the reduction of the numbers in custody. This aspect of the changes is crucial - sentencing policy will depend on the confidence of

Judges, magistrates and the public on the power of the Probation service to supervise criminals. This will surely take some time to achieve.

-use of social inquiry reports: the proposals would require probation officers to prepare these for the courts before it gives a custodial sentence. At present they are only needed where a non-custodial sentence is being considered. Carolyn is concerned that this new requirement will prove to be "a bureaucratic hoop designed to deter prison sentences." She gives some examples. Given the need to build mechanisms in the system to encourage courts to give non-custodial sentences, this seems no bad thing to me - especially as the reports appear to be an opportunity for a probation officer to give a considered and rounded view on the best type of sentence for the offender;

- creation of single penal service: Carolyn suggests that in the long term this is the best way forward, although for now the important thing is to avoid doing anything which might cut across this. She suggests the idea might be mentioned to the Home Secretary.

Content, as Carolyn suggests:

- to endorse the thrust of the arguments of the Green and White Papers? _____

- to stress the need for better dialogue between the different parts of the criminal justice system to achieve a shift in sentencing practice quickly?

- to support the Chief Secretary in his wish to maintain some flexibility in the proposals for parole so that any increase in the prison population can be countered if necessary?

- that Carolyn should pursue with the Home Office the scope for moving toward a single penal service, and should stress the need to avoid cutting off

this option as the current proposals are implemented?

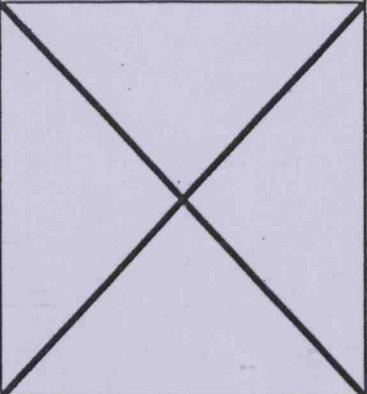
And are you content that:

- the use of Social Inquiry Reports should be extended, as proposed?

CBS

Caroline Slocock
19 January 1990

Y
W M

DEPARTMENT/SERIES <i>Prem 19</i>	Date and sign
PIECE/ITEM <i>3020</i> (one piece/item number)	
Extract details: <i>Flag E</i> <i>Attachment to Shrook to PM dated</i> <i>19 January 1990</i>	
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Instructions for completion of Dummy Card

Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.

This should be an indication of what the extract is,

eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.

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PRIME MINISTER

16 January 1990

Prime Minister ①

- ① I am sceptical
② This is too skeletal

Leave alone for time
being not

A SINGLE "PENAL SERVICE"

You have already
seen this amongst
other papers on the
criminal justice system -
but did not comment.

Would you like Cardyn
to pursue this point
or would
you prefer
her to
leave it?

The attached article by "Justinian" in the Financial Times is absolutely right. What we need is a single service to administer all forms of punishment meted out by the courts. Some countries do have this: the running of prisons and the supervision of punishment in the community are carried out by the same people.

MS

24/1

The proposed reorganisation of prison management, and the Green Paper on changes in the training and management of the Probation Service, do not address such a radical proposal. This is understandable. The changes in prison management and the Probation Service which are being proposed by the Home Office appear contentious enough to many of those inside these organisations.

The key thing at this stage is to ensure that a closer alignment between the Prison Service and the Probation Service is not made more difficult by the proposed changes. Some form of common training for prison and probation officers would be a first step. This would counteract the "social work" bias in probation officer training while giving prison officers wider vision.

Recommendation

It would be worth drawing the "Justinian" arguments to David Waddington's attention, asking him to ensure that scope for bringing the prison and probation services closer together is not lost in the changes proposed for both organisations. A core of common training might be one way forward.

CAROLYN SINCLAIR



One authority would crown penal reform²⁴

The management of some 130 penal institutions in England and Wales is about to be shaken up. At the same time, the Government is on the point of publishing its White Paper on legislative proposals for shifting the emphasis of criminal justice away from imprisonment and towards punishment in the community, to be administered largely by the Probation Service. Is there a case now for setting up a single public authority to oversee the whole penal system, custodial and non-custodial?

It is a quarter of a century since the Government dissolved the Prison Commission (established at the time of the nationalisation of prisons in 1878) and absorbed the prison administration into the Home Office. The move was heartily disliked by the penal reform lobby. The Prison Commissioners themselves were distinctly unenthusiastic about the change. And the prison service generally preferred to retain the direct link it had with a body of highly-respected and publicly identifiable commissioners who, while answerable to the Home Secretary, exhibited a high degree of independence from Whitehall.

The penal reform lobby argued then that the disappearance of the Prison Commission would remove those responsible for prisons from public view and scrutiny, allowing for less public interchange on penal affairs issues and consigning prison administration to the labyrinthine passages of an anonymous bureaucracy. Almost everything that has happened since in a parlous prison system has tended to confirm the opposition's prediction. Within the prison department of the Home Office the hierarchy of administration has become a gargantuan body largely incapable of providing an efficient organisation and management for running a modern penal system in a civilised society. Prison building programmes since 1959 have encountered difficulties in design and structure, so much so that the Department had to look to private architects and contractors to do the job. Prison industries have con-



JUSTINIAN

stantly run into difficulties. Staff management has been a worrisome problem, not helped by the Prison Officers Association, which has been a thorn in prison officials' flesh. It has been the kind of trade union that possessed and displayed an extraordinary capacity to frustrate the wishes of the employer. Even the "fresh start," sensibly introduced to rationalise the prison officers' pattern of work, has been only a qualified success.

Imprisonment for those sent inside by the court has improved, despite the continuing archaic sanitation in most prisons and overcrowding, particularly acute for the unconvicted prisoner remanded to the local prisons. The one bright spot has been the Prisons Inspectorate (the introduction of which was initially resisted by the Prison Service) vigorously led by the second Chief Inspector, Judge Stephen Tumim. Most of the liberal reforms of recent years - the abolition of censorship of prisoners' mail, the judicial supervision of prison disciplinary proceedings, and control over recall from parole - have been forced on the prison system by the European Commission and Court at Strasbourg.

There have of course been some advantages from the dissolution of the Prison Commission. Career civil servants responsible for prisons have worked with prison personnel who spend some of their time working at regional headquarters as well as in the Prison Department of the Home Office. The location of prison administration within the Home Office has certainly made it easier for Home Office Ministers to impress their poli-

cies upon the prison system. This has been a mixed blessing. The massive strengthening of security provisions following the escape in March, 1962 of George Blake, the double agent of both MI6 and the KGB, put the clock of penal progress back 20 years. The proposal by Lord Mountbatten following the Blake escape for a special maximum security prison to accommodate all Category A inmates was rejected in favour of the dispersal of these prisoners into four separate institutions. The policy has not been successful, if only because it imposed a higher degree of security for the bulk of Category B prisoners who were not high escape risks.

Talk about privatisation of prisons is fading as it becomes clear that this would not be commercially profitable. But the Home Secretary is indicating that the new structure of local management of prisons might take a leaf out of the book of the NHS by introducing general managers. But the detachment of prison administration from the non-custodial segment of the penal system persists.

One distinct advantage of the absorption of the prison administration into the Home Office has been the close working relationship between prison administrators and those responsible for overseeing the Probation Service which functions outside of Government. It has thus been possible for Minister to formulate a cohesive penal policy and implement it legislatively.

Every consideration dictates that the time is ripe for the establishment of a Criminal Justice Executive, a government agency statutorily created to manage the criminal justice system. It will be responsible for all convicted prisoners, and unconvicted prisoners including those kept in police stations as well as local prisons. It would administer the non-custodial and semi-custodial penalties and disabilities. It will be responsible for mentally disordered offenders. And it could provide a valuable structural back-up for the myriad of voluntary organisations active in after-care and community service.

A

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PRIME MINISTER

12 January 1990

H COMMITTEE: CRIMINAL JUSTICE SYSTEM

David Waddington has circulated two papers for discussion in H Committee on 16 January:

- (a) a draft White Paper on sentencing policy;
- (b) a draft Green paper on the future organisation and training of the Probation Service.

attached

The two papers set out the arguments for sending fewer people to prison for less serious offences, punishing them instead in the community. The background is:

- the widespread view among practitioners - including many judges - that prison seldom reforms and often confirms people's criminal tendencies;
- the overcrowding which exacerbates the negative aspects of prison life by reducing the opportunities for work and training (enforced idleness is the most depressing feature of many British prisons);
- the cost of imprisonment (around £15,800 a year per prisoner).

The White Paper follows a consultation exercise launched eighteen months' ago. It makes specific proposals for legislative changes designed to influence sentencing, as well as adopting most of the Carlisle Committee's recommendations on parole. Certain changes in the present options for punishment in the community are proposed. There are also proposals designed

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to emphasise the responsibility of parents of juvenile criminals, and for raising the cut-off age for juvenile proceedings from 17 to 18.

The Green Paper discusses the changes in the Probation Service which will be necessary if it is to play the enhanced role proposed for it in the White Paper.

WHITE PAPER ON CRIMINAL JUSTICE

This will be a major statement of the Government's views on sentencing. It needs to be considered from two angles:

- (i) political/presentational impact
- (ii) likely impact on sentencing practice.

(i) Political/presentational impact

The first chapter - which is crucial - has been carefully crafted and bears David Waddington's own stamp. It is worth reading. The tone is sensible and down to earth. The proposals to reduce the number of prison sentences for less serious offences are presented in the context of:

- the Government's continued commitment to long sentences for serious crimes of violence (the White Paper proposes even longer sentences for people who are a serious threat to society);
- adoption of most of the Carlisle proposals on parole, which will mean that actual sentences served will be longer than now;
- the Government's efforts to help victims of crime. These will be boosted by a "victims' charter" to be published in February in conjunction with the White and Green Papers;

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- the Government's various initiatives to prevent crime, such as the encouragement of Neighbourhood Watch.

The first chapter puts crime statistics in perspective. There is a common sense connection between the amount of theft and burglary on the one hand, and the degree of prosperity and property insurance on the other. The rise in the number of recorded violent crimes cannot easily be disentangled from greater willingness to report rape, wife and child beating, and child molesting. As paragraph 1.3 says:

"Today people are quite rightly much less tolerant of violence than they were and they expect violent crime to be punished severely."

Such a shift in attitude is a mark of civilisation.

The thrust of the first chapter is designed to satisfy a number of constituencies, and should succeed in doing so. The preceding Green Paper did not provoke criticism on the grounds of being too lenient.

(ii) Likely impact on sentencing practice

This is more problematical. David Waddington wants to use legislation to make it more difficult for judges and magistrates to send people to prison for less serious offences. But he stops short of ruling out prison sentences for certain types of crime.

The key proposals are:

- a statutory obligation on judges and magistrates to give reasons in open court for sending someone to prison;

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- greater flexibility in the use of the present non-custodial options for punishment (eg allowing a probation order to be combined with community service).

Since 1988 judges and magistrates have been required to give reasons in open court when they send someone under 21 to prison. The Home Office see a connection between this and the drop in the number of people under 21 now being sent to prison. It is not easy to be certain of this. Demographic factors clearly play a part in explaining the lower figures. But there are reasonable empirical grounds for believing that the requirement to give reasons may have influenced magistrates in particular (since they have the added difficulty of having to agree the reasons among themselves).

In 1988 19,000 out of a total of 67,000 people sent to prison were sentenced by magistrates' courts. So a measure likely to deter magistrates from sending people to prison could have a measurable impact on the prison population. The Magistrates' Association have already come out publicly in favour of fewer prison sentences in response to the Green Paper.

It is more difficult to predict the reaction of judges. The Home Office have been doing their best to have some kind of dialogue with the judiciary on sentencing, but this has not been easy given the rigid attitude of Lord Lane. Ideally David Waddington would like some kind of understanding with Lord Lane that in return for implementing Carlisle - which the judges want, and which will tend to increase the prison population - the judiciary should reduce prison sentences to reflect the fact that more time will actually be spent in gaol.

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The Lord Chancellor's officials doubt if Lord Lane will give such a commitment. Even if he does, he may not be able to deliver. Individual sentences are a matter for individual judges.

So there is a risk at the heart of the Waddington package. At best it will take time for 420 circuit judges and 27,000 magistrates to shift their sentencing practice in response to the White Paper, legislation and subsequent Court of Appeal guidelines. But the Carlisle changes on parole will take effect as soon as the legislation has been passed. If those who re-offend while on parole are all recommitted to prison for the full length of their sentence, the prison population could go up - by 1400 if 20 per cent re-offend, for example.

One way of avoiding the worst scenario - in which the prison population actually increases - would be for the legislation to allow some flexibility in the length of sentence served by those who re-offend while on parole. John Major is likely to argue for this at H Committee. It would be a sensible safeguard.

The other factor which will bear on whether judges and magistrates send fewer people to prison for less serious offences is the credibility of the other forms of punishment available - notably probation orders, attendance at day centres, community service orders and curfew restrictions enforced through electronic tagging (the last would be new). Some judges and magistrates believe that new and tougher non-custodial penalties are needed if some of those currently sent to prison are to be punished in the community instead. But there is no consensus as to what these should be.

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There is an aspect of David Waddington's proposals which would add to costs, would lead to further delays in court, and threatens to be a waste of time. This is the requirement that the Probation Service should be asked to produce a social inquiry report before a court gives a custodial sentence for offences triable summarily or either way. (At present such reports are required where a non-custodial sentence is being considered).

Examples of Social Inquiry reports are attached at Annex A. Each costs £200 on average to produce. The White Paper proposals would mean perhaps 12,500 additional reports at a cost of around £2.5 million a year.

Such reports can be of some use where the court is deciding what type of punishment in the community to prescribe. But it is much less clear that they would be useful where the courts are minded to give a prison sentence. And they will introduce delay: the court would have to be adjourned for days, or perhaps weeks, while the report is written. Frankly, the proposal looks like a bureaucratic hoop to deter prison sentences. It would require more probation officers (see below).

GREEN PAPER ON PROBATION SERVICE

The Green Paper is long, but well-drafted. There is no need to read it, but you may find it helpful to look at Annex A, which describes the current organisation and work of the Probation Service. From this it is easy to deduce the problems which the Green Paper addresses.

The Probation Service is responsible for administering all non-custodial forms of punishment (other than fines and

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compensation payments) on behalf of the courts. It is organised locally, but largely funded by central government. Both the National Audit Office and the Audit Commission have pointed to the resulting diversity of practice and the lack of financial accountability.

Diversity of practice is probably the main reason for the judiciary's lack of confidence in the Probation Service's ability and willingness to run credible forms of punishment in the community.

The Home Office are convinced that what is now needed is a national service wholly funded by central government. They believe that this is essential to bring about quickly the changes in attitude which are needed throughout the Probation Service if they are to win the confidence of the judiciary and the public as agents of the criminal justice system, not champions of the rights of convicted people against the system.

Changes in the training of probation officers are also needed. There needs to be less social science theory and more training in law and responsibility to the courts.

Attitudes have already changed in some probation areas. Sir Frederick Lawton, in the past a trenchant critic of the mealy-mouthed attitudes of many probation officers, has commented favourably on the down to earth approach of the Probation Service in Northumbria. He was impressed by the day centres which they are running to keep people with a history of crime out of prison.

The White Paper proposals will require perhaps 500 additional probation officers over a 5 year period. Extra staff will be needed if more people are punished in the community (there should eventually be offsetting staff savings in prisons). Extra probation officers will also be needed to implement

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the Carlisle proposal that all prisoners serving more than 1 year should be supervised for a period after their release.

Conclusions

David Waddington's approach is right, and should be endorsed. There is a strong case for reducing the numbers sent to prison for lesser, non-violent offences. There is also a strong case for implementing most of the Carlisle Report on parole (the only area where the White Paper diverges from Carlisle is in retaining the Home Secretary's discretion over parole in the case of those sentenced for 4 years or more).

The balance of the Government's policies on crime is such that the package is unlikely to be open to serious criticism from the law and order lobby.

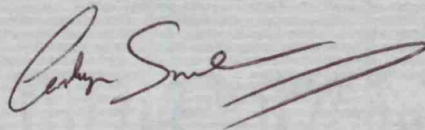
The real problem is that it may not work. It is heavily dependent on changes of attitude by individuals in highly individualistic professions - the judiciary on the one hand and the Probation Service on the other. The legislative changes, and changes in the organisation of the Probation Service, will need to be supplemented by sustained efforts by the Home Office to improve the dialogue between different parts of the criminal justice system. At present this is very patchy.

Douglas Hurd and John Patten put a lot of effort in trying to improve communication between the Home Office, the judiciary, the Probation Service, the police, the Crown Prosecution Service and the Prison Service. A regular series of seminars has now been established. David Waddington proposes to build on this.

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Recommendations

- Endorse the thrust of the arguments in the draft White and Green Papers;
- Stress the need for improved and sustained dialogue between the different parts of the criminal justice system if a shift in sentencing practice is to be achieved quickly;
- Support flexibility in the legislation to allow the tendency of the Carlisle proposals to increase the prison population to be countered if necessary.



CAROLYN SINCLAIR

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