PART 5

MT.

CONFIDENTIAL FILING

Capital Punishment

Sentencing Policy

Criminal Justice Bill

[Unattached folder: Home Office Digest of Information as to Criminal Justice System]

HOME AFFAIRS

PT1: July 1979

PT5: November 1990

PREM 19/3788

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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11.5.92							

PART 5

ENDS

PART 5 ends:-

SS/SCOE to CST 19.5.92

PART 6 begins:-

PS/Lord Chan to WEC 2.7.92

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.

A Digest of Information on the CRIMINAL JUSTICE SYSTEM:
Crime and Justice in England and Wales
Home Office, Research and Statistics Department, March 1991

Signed J. Gray Date 30/8/2017

PREM Records Team

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Right Hon Michael Portillo MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

19 May 1992

Dear Michael,

THE CRIMINAL JUSTICE SYSTEM: VALUE FOR MONEY

Thank you for copying to me your letter of 27 April to the Home Secretary. I have seen his reply and those of James Mackay, Nicholas Lyell and David Hunt. I have now had an opportunity to take Alan Rodger's mind on this challenging topic and this letter reflects our joint view.

We agree that it would be useful to examine what we are getting for our expenditure on the criminal justice system but we are also clear that this examination must be carried out within a properly defined policy framework agreed at political level.

It is for the Government to set the objectives of the criminal justice system and one key objective - as Kenneth Clarke says - is to make it an efficient and high quality public service. It must not be forgotten, however, that the criminal justice system is demand led. If one of our objectives - as indeed it is - is to reduce criminality, then an examination of the effectiveness of the criminal justice system in isolation would be of limited value. We would need to examine much wider social and economic factors.

Having said that, it is clearly crucial for the component parts of the system (police, prosecution, courts, prisons, offender services) to develop in harmony with each other strategies for delivering the overall objectives of the system. It is necessary to try to set an appropriate level of resources across the board and then to ensure that all the component parts pay attention to each other's needs. This is something Alan Rodger and I will be looking at particularly keenly in this current exercise.

I am grateful to Kenneth Clarke for offering to keep us informed of progress in preparing the paper which he suggests, particularly as certain basic issues are common to both jurisdictions. For example, in recent months there have been obvious signs, both in England and Wales and in Scotland, of a tension between the policy aim of reducing the prison population and the policy aim of dealing with the problem of re-offending on bail. Whatever the precise solution may be, the basic

policy should be comparable in both jurisdictions. Any discussion of these basic objectives would, therefore, be best carried out at a political level on a United Kingdom basis. When it comes to the development of strategy, however, that is bound to be affected by the fundamental differences between Scottish and English law. That would require separate practical considerations for the two jurisdictions.

The criminal justice system will be judged, among other things, on its ability to respond to the demands placed upon it. While that response must be flexible and aimed at dealing with cases at a level which will achieve an appropriate result with the most economic use of resources, it cannot be assumed that increasing demands placed upon the system can be endlessly absorbed without increases in resources. Expectations raised by the Citizen's Charter initiatives, for example, will make the public more intolerant of the poor conditions they face at Court and more demanding of police services. I agree with the Attorney General when he identifies the need to improve quality and points out that this cannot always be achieved without additional funding.

Alan Rodger and I are willing to participate in further consideration of these matters and my officials are ready to contribute to the discussion. If an official group is to be established, I would wish The Scottish Office to be represented on it.

I am copying this letter to the Prime Minister, Kenneth Clarke, James Mackay, Nick Lyell, Alan Rodger, David Hunt and Sir Robin Butler.

Yours ever,

Ian

IAN LANG

HOME AFFAIRS: SOVIET UNION POLICY PTS

cst.ps/docs/2.12.5

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

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

13 May 1992

Dear Kenneth

THE CRIMINAL JUSTICE SYSTEM: VALUE FOR MONEY

I am grateful to you, James Mackay, Nick Lyell and David Hunt for your very helpful responses to my letter of 27 April. I am more than content to proceed as you propose, with a Ministerial meeting in about a month's time to establish at a political level what our goals and objectives really are and how they might best be achieved.

2. I am also grateful for the suggestion that your officials should prepare a paper on the issues, including key background information, in consultation with officials in my Department and in the Lord Chancellor's and Law Officers' Departments. I hope that the factual part of this paper can have a fairly clear focus on the question of inputs and outputs. While I quite take your point about the wide nature of our objectives in this area, and the fairly intangible nature of some of them, I still believe it is necessary to ask how far additional expenditure could take us towards their better achievement, or, conversely, how far their achievement would be put at risk if less was spent.

3. I look forward to our discussion in due course.

4. I am copying this letter to the Prime Minister, James Mackay, Nick Lyell, Alan Rodger, Ian Lang and David Hunt and Sir Robin Butler.

Yours ever

Michael.

MICHAEL PORTILLO

H. AFF: Sentencing PSI prs

RESTRICTED

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Oddi wrth Ysgrifennydd Gwladol Cymru

The Rt Hon David Hunt MBE MP

WELSH OFFICE
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From The Secretary of State for Wales

11th May 1992

Dear Michael

Thank you for you copying to me your letter of 27 April to Kenneth Clarke. I agree with his cogent arguments in his letter to you of 5 May that the issues are best analysed by means of policy discussions which take place on the basis of information which has first been agreed between the Departments to which Kenneth refers, who are most concerned with this problem.

I am copying this letter to the recipients of Kenneth's letter.

Yours ever

David

The Rt Hon Michael Portillo MP
Chief Secretary to the Treasury
HM Treasury
Parliament Street
LONDON
SW1P 3AG

RESTRICTED

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Guardian
8 May 92

nator John Seymour talk to grocery store manager Derek Carr (right) during their visit,
PHOTOGRAPH: MARCY NIGHSWANDER

of Los Angeles. Report, page 11

Clarke faces spending squeeze

John Carvel and Will Hutton

THE Treasury has served notice on Kenneth Clarke, the Home Secretary, that the party is over for expenditure on law and order. This follows 13 years of exceptionally generous real term growth, which failed to halt the relentless increase in crime.

Michael Portillo, the Chief Secretary, has sent a stiff memorandum warning that he will no longer tolerate pouring billions of pounds into police, prisons and other parts of the criminal justice system without proper testing of whether the cash is well spent.

Senior Home Office officials said they had no reason to believe their department had been singled out for fierce treatment in the forthcoming public spending round. But other sources described the 1½-page document as "dynamite" and one of the most astringent texts ever circulated in Whitehall.

The memorandum, which reached Mr Clarke towards the end of April, is understood to have been the latest in a series of exchanges about improving value for money. But the tone signals a Treasury onslaught on the Home Office when the public expenditure round formally begins later this month.

In the Commons yesterday, Mr Portillo warned Whitehall ministries and local authorities that painful efficiency savings would be expected from them all.

"This chief secretary is not against public spending. What I am against is excessive public spending, poor value for money and public spending on the wrong things," he said.

In the memorandum, he threw back at the Home Office the statistics which its ministers used in the general election to persuade voters that the Conservatives were acting seriously against rising crime. They pointed to an 87 per cent real term increase in law and order spending since 1979 — an average covering the entire ex-

Turn to page 22, column 3

Portillo's axe, page 13

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Notebook, page 14

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erican troops. But on ge in Berlin she took 18 tain calls from a packed use. Willy Brandt, then yor, stood up to applaud r, while others shouted 'raitor".

Today many Germans still ve mixed feelings about eir greatest star. The mass rculation Bild Zeitung said e sought success in Amer- a at Germany's expense.

The daily Morgenpost said he had never forgotten her oots. "There was nothing he liked better than a *Christ-tollen* (Christmas cake) from Germany, strong German heese, Frankfurter sausages or Berlin bread rolls. When she received food parcels from Germany for Christmas she was as happy as a little girl."

When Germany was unified in 1990 Dietrich said: "Anything that brings people together and encourages peace always makes me happy."

It was perhaps then that Dietrich went back on her resolve 30 years earlier when she declared: "When I die, I'd like to be buried in Paris. But I'd also like to leave my heart in England, and in Germany — nothing."

Basic Instinct director Paul Verhoeven hugs Sharon Stone

Residents at bay . . . for some in the festival town, life cont

Treasury threatens Clarke spending

continued from page 1

penditure by the police, prisons, probation service, Crown Prosecution Service, Serious Fraud Office, the courts and the Lord Chancellor's Department's legal aid budget, which is also under Treasury fire.

He contrasted this burgeoning expenditure with figures used by Labour showing how recorded crime doubled over the period.

The Home Office would have to establish much clearer objectives for its services, against which funding could be measured to establish cost effectiveness.

The initiative is likely to set alarm bells ringing at the Police Federation and Prison Officers' Association, which fear Mr Clarke's reputation for upsetting the furniture at each of his previous Cabinet posts, where he roughed up the doctors and teachers.

Alan Eastwood, Police Federation chairman, said it had received repeated statements from successive Home Secretaries that they were committed to the Edmund Davies pay formula, which links officers' pay to the increase in average earnings.

"We would regard any departure as a major betrayal of the police service and I can't see Mr Clarke going down that road. Other issues of police accountability are open for debate."

Harry Fletcher, assistant general secretary of the National Association of Probation Officers, said: "Mr Portillo should start by subjecting some of the ideas which emanated from the Home Office during the last administration to a thorough cost-effectiveness study. He could begin with curfews, electronic tagging, private prisons, at-risk registers for five-year-olds and perhaps the role of Special Branch in the escape of prisoners from Brixton."

Mr Clarke has kept a low profile since his appointment to the Home Office. His aides have said he is reviewing every area of policy from scratch and none of his predecessors' decisions are regarded as sacrosanct. His speech to the Police Federation on May 20 may give some indication whether he is batting with the Treasury or against it.

The Treasury's iconoclasm towards the law and order budget is expected to be carried across the range of spending departments, although Mr Portillo describes health and education as "priority" areas and so their planned increases may remain largely unscathed.

However, the road building programme may be facing up to £1 billion of cuts in the next financial year and there could be deferrals in defence procurement of another billion.

But the Treasury, with strong backing from the Prime Minister, is aiming to make sure the Competing For Quality document launched by the Treasury last autumn, which involves a huge extension of privatisation and contracting out of central government, is fully carried out across all departments. The aim will be to make sure that there are no further slippages from next year's spending totals, and that efficiency gains progressively build up over the life of this Parliament.

A Guardian for the weekend

In the Outlook section

"We had to be confrontational in the beginning to secure a high profile. Luckily we were offered confrontation on a plate by the media." – Walter Schwarz dissects Kalim Saddiqui's strategy with the Muslim Parliament.

SAS coup: Five years ago this week eight IRA members were shot dead while attacking a police station in Loughgall. Mark Urban examines how the SAS were able to circumvent army rules.

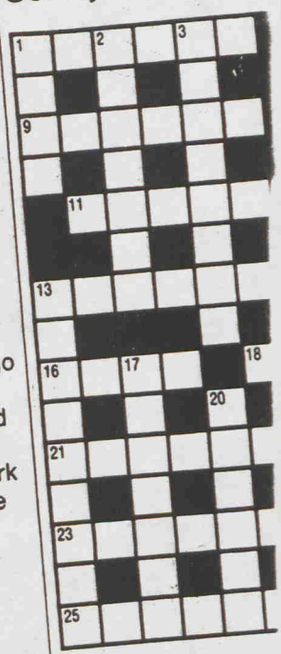
Plus Posy, David Marquand, Martin Woollacott and Smallweed.

And in the Weekend tabloid

When Magritte was a boy of 13, his mother drowned herself. Did this underlie the strange transformations which dominate his art? Waldemar Januszczak journeyed from that gloomy bridge at Châtelet, to a chess-players' bar in Brussels, to the slag heaps of Charleroi to unravel the conundrum.

Guardian Cross

Set by Custos



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ATTORNEY GENERAL

9 BUCKINGHAM GATE

LONDON SW1E 6JP

071-828 1884

The Right Honourable Michael Portillo MP,
Chief Secretary to the Treasury,
Treasury Chambers,
Parliament Street,
London, SW1P 3AG

7 May 1992

Dear Chief Secretary,

Thank you for copying to me your letter to the Home Secretary of 27 April. I agree with you that it is a good idea to take stock of our expenditure on the criminal justice system and would welcome such an exercise; but I also agree with James Mackay that what we really need to identify is our political goals and practical objectives and how they may be achieved. I believe the principal criminal justice agencies already have the required factual information available.

In summary our objective is a more orderly and law abiding society. As James again emphasises much of our criminal justice system produces value for money only in an indirect sense. Prosecution and punishment are important means to that end but by no means the only ones. We ought therefore to be addressing the issue on two levels. First, is the use that we make of the criminal law appropriate? Are we too ready to criminalise conduct or too reluctant to use straightforward fixed penalties with the frequent result that the enforcement procedures become disproportionately cumbersome and expensive in relation to the mischief? Secondly, we should be seeking to ensure that the criminal justice system as a whole is structured and managed so as to produce maximum effectiveness and efficiency both within individual organisations in the way that their aims are co-ordinated.

Although there is further to go, I do believe that the last three or four years have seen much progress in improving the overall co-ordination of the criminal justice system. Many current initiatives illustrate the priority which is already given to value for money.

The recommendations of the multi-disciplinary Working Group on Pre-Trial Issues (WGPTI), National Operational Practice, and the work which is being done on legal aid funding, rights of audience, shortening long trials, Victims Charter, and the Courts Charter, are all examples. However, value for money does not necessarily mean spending less; for example, implementation of the WGPTI's recommendations will improve quality and achieve

greater value for money. While many of those recommendations are cost-neutral, some will require additional funding. The recommendations must be seen as a package with quality an important ingredient in the restoration and maintenance of confidence.

The Criminal Justice Consultative Council is recognition of the need for common goals and objectives within the criminal justice system and should contribute to improved co-ordination. But we can only go so far without a clear idea of what is expected and required of us, in the context of what we can afford. Our consideration should focus on longer term objectives and definition of the values of the system for which we all pay.

The sort of review suggested by the Lord Chancellor could assist current efforts to improve efficiency by clarifying the direction and desired outcome of the criminal justice system. Although there is also scope for argument as to the precise interpretation of statistics the general pattern is undoubtedly one of rising crime rates and that is as much an indictment of our approach to crime prevention as it is of the criminal justice system. Deterrence is important but so too is encouraging persons to protect their own property, whether it be houses, shops or motor vehicles, and so also is the education of the young in acceptable standards of behaviour. Practitioners in the criminal justice field are conscious of the very high proportion of crime attributable to a small proportion of mainly young offenders. In treating young offenders we should perhaps focus our resources more sharply on these groups.

I also think that our evaluation should look at our expenditure on law and order in the round and not simply in the context of the rate at which it has been growing in recent years. We know for example that until we came to power in 1979 the funding of the police had been seriously deficient almost throughout the previous Parliament and prison building had been neglected for more than half a century.

I am sure you are right in inviting us to question whether we get the best value for what we spend and my constituents would agree with this but I bear in mind that this is not an area in which they are urging us to reduce our spending.

I am copying this letter to the Prime Minister, James Mackay, Kenneth Clark, Alan Roger, Ian Lang, David Hunt, and Sir Robin Butler.

Yours sincerely

Stephen Wood

Approved by the Attorney General and signed in his absence.

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

RESTRICTED

30th April 1992

The Right Honourable
Michael Portillo MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

Dear Michael,

Thank you for copying to me your letter to the Home Secretary of 27 April. I entirely agree that we need to look at the goals of the criminal justice system as a whole. I find it hard, however, to agree that this can be a detailed and basically factual exercise. The facts are readily available and could be quickly assembled. You refer to some of the salient facts in the earlier paragraphs of your letter. What I believe is required is an analysis at a political level of what our goals are.

There can be no question that we do not get from the criminal justice system value for money in the sense that for the money we spend on it we can point to value, measurable in money terms, received in return. In any prosecution for a serious offence which is contested there will be costs for the prosecution and for the defence. In the vast majority of cases the defendant will be impecunious, unemployed and in receipt of state benefit. If the prosecution fails all that money is wasted; if the prosecution succeeds the likely result is a substantial term of imprisonment at considerable costs as you indicated. I cannot see that a factual study is likely to throw any light on this question.

RESTRICTED

I have been anxious for some time that cases should be taken at as low a level as possible in the criminal justice system and, for example, I personally cannot see why small thefts should not be triable only in the magistrates' court. When Douglas Hurd was Home Secretary we discussed this and I agreed to float the matter in a speech. I did this but the judgment was that such a change would not be likely to attract the support of the House of Commons. A further aspect of this matter relates to the sentencing powers of the court. Judges are often subject to criticism either for being too lenient or being excessively severe in particular cases. This is because Parliament has left open a wide range of discretion to the judges in sentencing. If we are to achieve any substantial change in the prison population I believe Parliament has to take the responsibility of indicating that prison will not be acceptable except in a much smaller range of cases than it is at present. Some distance in this direction has been travelled in the most recent Criminal Justice Act.

I should add that I know from talks with judges that they feel considerable difficulty in being certain what the goals of sentencing policy are.

I am ready to participate in any kind of study which is thought to be useful in this area but I do feel that fundamental political thinking is required rather than further factual studies.

I am copying this letter to the Prime Minister, the Home Secretary, the Attorney General, the Lord Advocate, the Secretary of State for Scotland, the Secretary of State for Wales and Sir Robin Butler.

Yours ever,

James.

HOME AFFAIRS · Capital Punishment

PTS

cst.ps/dr/4mp27.4

RESTRICTED

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

The Rt Hon Kenneth Clarke QC MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1

27 April 1992

Dear Home Secretary,

THE CRIMINAL JUSTICE SYSTEM: VALUE FOR MONEY

I believe the time has come for a critical look at what we are actually getting for annual public expenditure of more than £10 billion on the criminal justice system.

2. Expenditure on this system has been growing more rapidly than virtually any other area of public spending, reflecting the consistently high priority we have given to law and order. Over the past decade, spending on the police has increased by an average 4 per cent a year in real terms; on the court system by 7.6 per cent; on criminal legal aid by nearly 10 per cent; current expenditure on prisons by 6 per cent. A billion pounds has been spent on prison building.

3. Despite this, we often hear reports of loss of public confidence in the system even apart from recent high profile examples of miscarriages of justice. Recorded crime has continued to grow by an average of 5 per cent a year, with a quite dramatic increase of 17 per cent in 1989-90. Less than 1 crime in 10 is cleared up, and only 5 per cent result in a successful prosecution. Despite an agreed policy of diversion from custody, the prison population is again on a rising trend. The proportion of our population in prison is still the highest in Western Europe. For the past two years, the prison system has been running above capacity, with 1800 or more held in police cells at a cost of £95 million last year. The total cost to the public purse of sending, say, a convicted burglar to prison is £20,000. Yet, more than 1 in 4 of those released from prison will be convicted again within a year, and getting on for half within 2 years.

RESTRICTED

4. I fully appreciate that these figures do not tell the whole story; that the criminal statistics are a minefield for the unwary; that there is room for a good deal of argument that things would have been even worse had we spent less. But, despite all these cautions, we must question what value for money we have got from the additional funding. It would be wrong to commit further resources without addressing this question squarely.

5. What I should like to propose is a hard look at the goals of the criminal justice system *as a whole*, at what we spend on it and particularly at what we get in return. This would complement the variety of studies currently under way into specific aspects of the system. I would see this as a fairly detailed and basically factual exercise, though those doing the work would not be precluded from suggesting possible changes which could improve value for money. In my view the appropriate vehicle would be an official committee - preferably under Cabinet Office chairmanship, and with membership drawn from all the Departments with responsibility in this area. Since this work would form the starting point for consideration of the relevant programmes in this year's Survey, I would be looking for a report before the summer.

6. I appreciate that the criminal justice system is currently the subject of a Royal Commission, and that major change in advance of their report would not be sensible. But I do not consider that this removes the need for the sort of study I have suggested. The focus of the work would be very different and the timescale much shorter, to enable us to address the unavoidable questions of funding in the interim period. I very much hope, therefore, that you and copy recipients will join me in carrying this forward.

7. I am copying this letter to the Prime Minister, James Mackay, Sir Nicholas Lyell, Alan Rodger, Ian Lang, David Hunt and Sir Robin Butler.

Yours sincerely
Michael Portillo

MICHAEL PORTILLO

[approved by the Chief Secretary and signed in his absence]

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
071-276 3000

My ref:

Your ref:

16 MAR 1992

The Rt Hon Kenneth Baker MP
The Home Secretary
Home Office
50 Queen Anne's Gate
LONDON SW1

CRIMINAL JUSTICE ACT: CURFEW ORDERS

Thank you for your letter of 25 February to the Lord Chancellor, on which you sought urgent comments.

In the circumstances I am content for the consultation paper to be issued. I understand the reasons why the paper is reticent on the subject of resources; and I acknowledge that you have taken some steps, through the appointment of consultants, to obtain better information on the resources that may be required.

But it is a pity that these proposals, which in at least some versions will impose significant extra costs on local authorities, have not previously been considered under the New Burdens procedures. At a time when we are doing everything possible to hold down local government expenditure, we should not be increasing the burdens on authorities without a clear view of the financial implications.

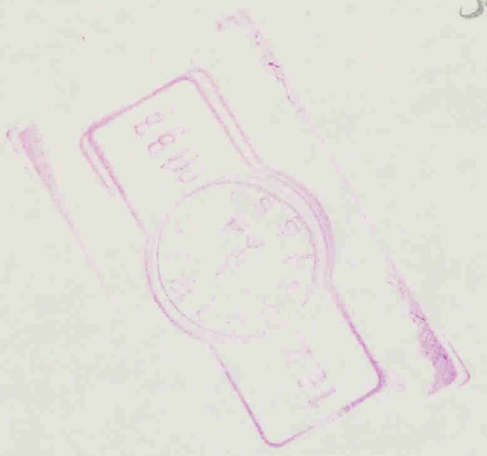
I shall therefore be grateful if you will arrange for estimates of the costs to local authorities of the various options to be provided to my Department as soon as possible. Presumably there will be overall cost saving from this alternative sentencing option. My assumption would be that any extra local authority costs should take effect from these. Any decision to involve authorities in new arrangements to take effect in 1993/94 must then be made in good time for the costs to be taken into account in the local government finance settlement for the year. That means by early June at the latest. You will need to bear this in mind in bringing forward your proposals following consultation.

I am copying this letter to the recipients of yours.

Yours ever

MICHAEL HESELTINE

Home Address:
Sentencing Bldg 6-5



With the Compliments of
the Attorney-General

The Legal Secretariat to the Law Officers
Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP

071-828 1884

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1884

The Rt. Hon. Kenneth Baker MP,
Secretary of State for the Home Department,
Home Office,
Queen Anne's Gate,
London, SW1H 9AT

5 March 1992

Dear Kenneth.

PARTNERSHIP IN DEALING WITH OFFENDERS IN THE COMMUNITY:

A DECISION DOCUMENT

Thank you for copying to me your letter of the 2 March 1992 to David Waddington seeking clearance for publication of a policy document setting out proposals for implementation of Community sentences provided for by the Criminal Justice Act 1991.

I have no comments to offer and am content that you should proceed as suggested.

Copies of this letter go to the Prime Minister, David Waddington, colleagues in HS, the Minister for Agriculture and to Sir Robin Butler.

Yours

CCA

ATTORNEY GENERAL

9 BUCKINGHAM GATE

LONDON SW1E 6JP

071-828 1884

The Rt. Hon. Kenneth Baker MP,
Secretary of State for the Home Department,
Home Office,
50 Queen Anne's Gate,
London, SW1H 9AT

2 March 1992

Dear Kenneth,

CRIMINAL JUSTICE ACT: CURFEW ORDERS

Thank you for copying to me your letter of 25 February 1992 together with its enclosures. I note that paragraph 40 of the consultation paper suggests that the handling of breaches of curfew orders etc. would be undertaken by those responsible for the supervision of the offender unless the breach were accompanied by another offence. I am content that you should proceed as envisaged in your letter.

Copies of this letter to to the Prime Minister, HS colleagues, the Minister of Agriculture, the Lord Chancellor, the Lord Advocate and Sir Robin Butler.

Yours ever,

Paul

cst.ps/dr/2dm27.2

UNCLASSIFIED

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

File Parnell

The Rt Hon Kenneth Baker MP
Secretary of State for Home Affairs
Home Office
Queen Anne's Gate
London
SW1H 9AT

2 March 1992

MAXIMUM PENALTY FOR ASSAULTING A POLICE OFFICER

Thank you for copying to me your letter of 10 February to James Mackay. I have also seen a copy of Paddy Mayhew's reply.

2. I note that your intention in announcing an increase in the maximum penalty for assaulting a police constable would be to demonstrate the Government's support for the police. However, it appears that there would be a number of severe drawbacks associated with such a change. These have been brought out in Paddy Mayhew's letter, but I should perhaps underline my concern about the financial implications, which I note are thought by the Crown Prosecution Service to exceed the estimates contained in your letter. You may conclude that we should not pursue this proposal in any case, either for this reason or because of more general concerns, but if you decided to proceed with an announcement I would of course expect you to meet all the resulting costs from existing provision.

3. I am copying this letter to the Prime Minister, James Mackay, Peter Fraser, Malcolm Rifkind, John McGregor and Sir Robin Butler.

DAVID MELLOR

Home Affairs:
Sentencing Policy
Pt 5

CONFIDENTIAL

File

DAS.

bc: PU

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

2 March 1992

Dear Colin,

CRIMINAL JUSTICE ACT: CURFEW ORDERS

The Prime Minister has seen the Home Secretary's minute of 25 February to the Lord Chancellor.

He agrees with the Home Secretary that it is right for the Government to consult before implementing those elements of the Criminal Justice Act relating to curfew orders. However, he sees no advantage in rushing to publish a consultation document within the next few weeks, and has therefore asked if publication can be delayed until later this year.

I am copying this letter to the Private Secretaries to members of HS Committee, Nick Armitage (Ministry of Agriculture, Fisheries and Food), Juliet Wheldon (Law Officers' Department), Alan Maxwell (Lord Advocate's Department) and to Sonia Phippard (Cabinet Office).

Yours

Mark

MARK ADAMS

Colin Walters, Esq.
Home Office

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DSG

cst.ps/let/17dm28.2

cc PM

CONFIDENTIAL

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

The Rt Hon Kenneth Baker MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

2 March 1992

CRIMINAL JUSTICE ACT: CURFEW ORDERS

WITH MA.

Thank you for copying to me your letter of 25 February to James Mackay.

2. I agree that final decisions on the implementation of the curfew measures in the Criminal Justice Act will ultimately depend on costs and on the availability of resources. On the basis that this is made clear in the paper, I am content for you to issue the proposed consultation document. You will need to tone down the reference in the paper to early implementation unless you are prepared to back them with your resources.

3. As you say, we will have to discuss any bid you make for additional resources for implementation in the coming Survey. Should you make a bid I will naturally take into account the fact that this work has not been accorded priority within your existing programme, and I shall be looking for evidence of the cost-effectiveness of these measures in the form of cashable savings on the prisons programme.

4. Before we take any final decisions about the implementation of these measures, we will need to look at the resource implications if electronic monitoring, about which I understand there are some doubts, did not prove practicable.

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5. I am copying this letter to the Prime Minister, James Mackay, HS colleagues, John Gummer, Patrick Meyhew, Peter Fraser and Sir Robin Butler.

DAVID MELLOR

HOUSE OF LORDS,
LONDON SW1A 0PW

28th February 1992

Dear Kenneth,

CRIMINAL JUSTICE ACT: CURFEW ORDERS

Thank you for your letter of 25 February and the attached draft consultation paper.

I note what you say about the need for further consultation and am content that you carry through the process as you lay it out in your letter.

I must, however, register concern about the resource implications for my Department of the prosecution of breaches of curfew orders which fall to be dealt with by the Crown Court. I should be grateful to know the nature and projected size of the potential for breaches. On receipt of that information, my officials will be happy to assist yours with the provision of court and legal aid costs data to be fed into the exercise to be carried out by Coopers and Lybrand.

Copies of this go, as did your letter, to the Prime Minister, HS colleagues, the Minister of Agriculture, the Attorney General, the Lord Advocate and Sir Robin Butler.

Yours ever

James.

The Right Honourable
Kenneth Baker MP
The Home Secretary
The Home Office
Queen Anne's Gate
LONDON SW1H 9AT

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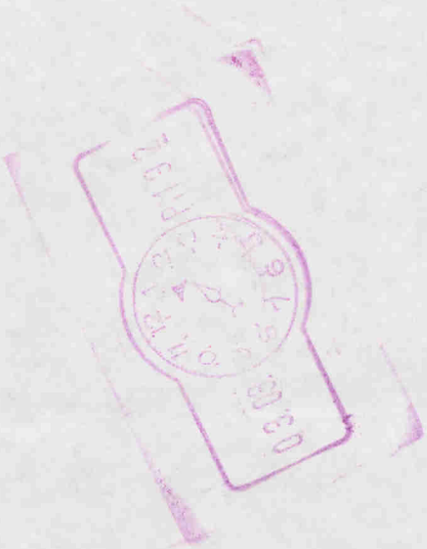

Prime Minister

Content to proceed as Carolyn suggests?

28/2

Yes

PRIME MINISTER **28th February 1992**

CRIMINAL JUSTICE ACT: CURFEW ORDERS

Kenneth Baker seeks agreement from you and colleagues to publish a consultation document early in March on ways of implementing curfew orders.

Curfew orders, and the possibility of using electronic tagging to enforce them, are both provided for in the Criminal Justice Act 1991. But the tagging experiments have proved a shambles (people tore the tags off). If they prove unworkable, the cost of getting the Probation Service to enforce curfew orders could be quite high. And they may be less than enthusiastic about the whole idea.

It is certainly right that the Government should consult before trying to put this bit of the Criminal Justice Act into effect. But there is no need to consult now. Kenneth Baker is looking increasingly frenetic as he dashes about launching proposals designed to be tough on crime. The Government gets criticised for being half-baked, or illiberal. The public are bemused, nothing ever being as tough, on close inspection, as some people might want.

Conclusion

The consultation document should not be published this side of the Election.

Carolyn Sinclair

CAROLYN SINCLAIR

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CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SW1H 9AT

25 February 1992

Dear Thurso,

CRIMINAL JUSTICE ACT: CURFEW ORDERS

Section 12 of the Criminal Justice Act 1991 provides for the introduction of curfew orders for use by the courts as a new community disposal for sentenced offenders, while Section 13 enables such orders to be enforced through electronic monitoring. Curfew orders must be introduced by means of a commencement order and would thus be available to courts throughout England and Wales; enforcement of such orders by electronic monitoring may be, but need not be, introduced on an area by area basis.

Colleagues will know that this new disposal forms an integral part of our strategy to broaden and strengthen the range of community penalties available to sentencers, in order to increase the courts' confidence in, and use of, non-custodial disposals. During the passage of the Act through Parliament, we made it clear that further work on practical arrangements for introducing and enforcing curfew orders would be needed. This initial work has now been completed, and we wish now to consult more widely across the criminal justice system about our proposals before moving forward to implementation. Because of the number of issues still to be decided, and the need to secure additional resources for implementation in this year's PES round, we have decided not to bring forward Sections 12 and 13 with the other parts of the sentencing package, due to come into force either in April or October this year. It remains our intention, though, to implement these important provisions as soon as possible, and to this end, we are anxious to begin the consultation process as early as we can.

The attached draft consultation paper sets out our proposals for implementation, but without any specific timescale. The paper seeks views particularly from the various criminal justice agencies involved, and also comments and expressions of interest from the private sector. The chief issue is that of enforcement: the paper canvasses the three main options - the police, the Probation Service and the private sector - and steers in favour of the Probation Service, although leaving open other options as possibilities.

The Rt Hon The Lord Mackay of Clashfern
House of Lords
London SW1A OPW

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The paper does not set out the likely resource requirements of implementation. This is partly because of the difficulty of assessing likely resources in advance of consultation: costs will depend very heavily upon the final decisions on the monitoring agency or agencies. We would, in any case, be very reluctant at this stage to include estimates of resource requirements which might influence the bidding in the tendering process. In fact, the recommended option - that of probation ancillaries -, is also very likely to be the most cost-effective, and the extent of private sector involvement is indicated very clearly as being dependent upon costs. The paper makes clear, also, that final decisions over implementation will depend ultimately upon costs and available resources, and recognises that discussions with local authorities may also be needed in respect of the new burdens which may be placed upon them if the Probation Service or police became the primary monitoring agency.

We shall, of course, be pursuing the question of resources for implementing curfew orders, including some electronic monitoring, in this year's PES round. Our initial estimates of annual costs, based upon a figure of some 5000-7000 curfew orders a year, are likely to be of the order of £10m for non-electronic monitoring enforcement of curfew orders, and £4m for the establishment of five electronic monitoring pilot projects in the first year. We accept, of course, that we shall need to sustain and justify resource requirements in the normal way during the PES process. To this end, we plan that further work on likely costs should be carried out for us by Coopers and Lybrand, and this work, when coupled with the results of the consultation exercise, will provide a firmer basis for discussing resource requirements.

I should be grateful, therefore, for colleagues' agreement to the publication of this paper, which we would aim to publish as early as practicable in March. In view of this timescale, I would ask for responses by Monday 3 March.

Copies of this letter also go to the Prime Minister, HS colleagues, the Minister of Agriculture, Attorney General, Lord Advocate and Sir Robin Butler.

CONFIDENTIAL

Draft: 17 February 1992

CURFEW ORDERS AND ELECTRONIC MONITORING

PROPOSALS FOR IMPLEMENTING SECTIONS 12 AND 13 OF THE CRIMINAL JUSTICE ACT 1991

INTRODUCTION

1. The White Paper, **Crime, Justice and Protecting the Public**, published in 1990, set out the Government's proposals for introducing a new community disposal for sentenced offenders in the form of a curfew order. These proposals became law in Sections 12 and 13 of the **Criminal Justice Act 1991. Section 12** of the Act provides for the introduction of curfew orders as a community penalty for use on convicted offenders of or over 16 years of age. **Section 13** enables a curfew order to be monitored electronically where such arrangements are available to a court.

2. **The Goverment believes that curfew orders will be a useful addition at the more restrictive end of the range of community disposals available to the courts. Such orders will punish the offender by restricting his or her liberty, requiring him or her to stay at home (or another suitable place) at certain times of day. The particular advantage of curfew orders is that, as well as being a punishment in their own right, they can be used to target the offending behaviour for which the offender was sentenced, by keeping him or her away from the very situations where further offences might take place. Otherwise, the offender will be able to continue with his or her life - at home, at work or in education - in the normal way. Curfew orders will offer a sensible and meaningful way of curbing habitual types of offending, such as pub brawling, drink-driving, car crime and other types of public order offence, keeping offenders away from places like pubs and shopping centres at the times when such offences are most likely to occur.**

3. During the passage of the Act through Parliament, the Government signalled its intention to bring forward more detailed proposals for the implementation of curfew orders, and for their enforcement by means of electronic and/or other forms of monitoring. **This document sets out the Government's proposals for the implementation of these provisions.**

ADDRESS FOR COMMENTS

4. Comments and observations on these proposals should be sent to Mr T Flesher, C6 Division, Home Office, 50 Queen Anne's Gate, London SW1H 9AT before [30 April 1992].

STRUCTURE OF THIS PAPER

5. This paper is organised as follows:

I: SUMMARY OF PROPOSALS

6. The main proposals set out in this paper are:

(i) curfew orders will come into force as a community sentence available to all courts throughout England and Wales on a given date, to be decided in the light of this consultation;

(ii) electronic monitoring arrangements, contracted out to the private sector, will be made available in selected areas from the same date;

(iii) in areas where electronic monitoring is not available, alternative monitoring arrangements ('personal monitoring'), based on physical checks through telephone calls and visits, will be provided by specialised ancillary staff. Contracting out of this work on a small scale may take place on a pilot basis, so that the long term future of contracted-out personal monitoring, in relation to electronic monitoring, may be assessed. Other than such pilots, however, the Government believes that in the initial years following the introduction of curfew orders ancillary monitoring staff would best be attached to an existing service, for preference the Probation Service, in view of its present responsibilities for other forms of community disposal.

(iv) the Government's long term aim, if electronic monitoring proves cost-effective, will be gradually to extend the availability of electronic monitoring arrangements to most main centres of population, largely replacing personal monitoring. Where a continuing need for personal monitoring remains, this may also be contracted out to the private sector.

II: PROVISIONS OF THE CRIMINAL JUSTICE ACT 1991

7. Section 12 of the Criminal Justice Act 1991 provides for the introduction of curfew orders for use on convicted offenders of or over sixteen years of age. A curfew order would require the offender to remain at a specified place (or places) for periods set out in the order, and may be imposed by the court for any offence for which the penalty is not fixed by law, either on its own or in combination with a fine and/or other community sentence. Orders may be imposed for between two and twelve hours in any one day (for any number or combination of days in a week, with no weekly minimum period), and for up to a maximum period of six months. The offender must agree to observe the requirements of the order before it can be imposed.

8. A curfew order must provide for someone to take on responsibility

for monitoring the offender's whereabouts during the curfew periods specified in the order, and such persons must be of a description specified in an order made by the Secretary of State under section 12(4) of the Act. Section 13 of the Act enables such monitoring to be carried out by electronic means where satisfactory arrangements for this are in place.

Introduction of Sections 12 and 13

9. **Section 12 (curfew orders)** must be brought into force across England and Wales by means of a commencement order under Section 102(2) of the Act. This order will be accompanied by a further order made by the Secretary of State under Section 12(4) and describing the categories of persons who may have responsibility for monitoring curfew orders. The Secretary of State may also make rules under Section 15(1) for regulating the functions of the persons responsible for monitoring offenders' whereabouts and the way in which monitoring is to be carried out.

10. **Section 13 (electronic monitoring)** will come into force at the same time as Section 12. Section 13 allows electronic monitoring arrangements to be introduced on an area by area basis as a means of enforcing curfew orders. A court may make a curfew order involving electronic monitoring once it has been notified by the Secretary of State of the availability of satisfactory arrangements in the relevant area.

11. The Government intends that Sections 12 and 13 should come into force **at the earliest practicable date following consultation.** Comprehensive monitoring arrangements, either by electronic or other means, will be available across England and Wales from that date. How monitoring should take place, and by whom, in different areas is discussed further below **(Sections IV-V).**

III: USE OF CURFEW ORDERS

12. The Act requires a court to consider the general criteria for imposing any kind of community sentence, set out in Section 6(1) and 6(2) **(see paragraph 20 below)**, but does not specify the type or seriousness of offences for which a curfew order would be a suitable penalty. Although Parliament clearly envisaged curfew orders as a sentence placing a relatively severe restraint upon liberty, it was also made clear that curfew orders are meant to be considered as part of the new range of **community penalties.** Nevertheless, as a more restrictive addition to the expanding range of community disposals, it is expected that curfew orders will contribute to increasing the overall number of diversions from custody.

13. The severity of a curfew order as a sentence will evidently depend upon the terms of the order: an order imposing a curfew for the

statutory maximum of 12 hours a day, seven days a week would impose a severe restraint upon liberty; one for three hours on specified days once or twice a week - for example, to prevent an offender attending a particular sports event or hanging round a shopping centre on a Saturday afternoon - would be a much lesser penalty. Combination of a curfew order with another penalty, such as a probation order, would clearly increase the severity of the overall sentence.

14. It is, of course, ultimately for the courts to determine the use of curfew orders in individual cases. At the same time, the Criminal Justice Act makes clear that, as with all community penalties, the degree to which the order restricts the offender's liberty should be warranted by the seriousness of the offence. As this is a new type of sentence, however, the Government intends to establish comprehensive arrangements to provide feedback on the use of curfew orders and to scrutinize their use closely in the initial years.

15. As for any new disposal, how curfew orders will be used in practice - in what numbers, for how many hours a week, for example - is difficult to predict with certainty. Patterns of use of other community disposals suggest a figure in the region of 5000 orders a year in the first few years, perhaps increasing later to as much as double that number as electronic monitoring arrangements became more widespread. These factors will, of course, affect likely resource requirements for monitoring work. Initially, arrangements will aim so far as possible to be sufficiently flexible to accommodate variable levels of take-up. **It will, however, assist the estimating process to have practitioners' views upon the likely numbers of curfew orders and their patterns of use, both in the short and the long term, as well as on:**

- **the typical length of an order (see paragraph 7 above);**
- **the typical number, length and timing of curfew periods during a week (see paragraphs 36-39 below);**
- **the type of offender (see paragraphs 16-19 below)**

Suitability of offender

16. The White Paper, **Crime, Justice and Protecting the Public*,** suggested that curfew orders, with or without electronic monitoring, might be a suitable and useful penalty to impose upon habitual offenders in order to keep them away from places where the offences in question usually take place, such as pubs or shopping centres. Several specific types of offender were cited during the passage of the Bill through Parliament as being particularly suitable:

- persistent brawlers, for example those convicted of drink-related offences of actual bodily harm (the aim being to keep

them at home in the evenings or weekends, away from pubs, clubs and so on);

- those convicted of public disorder offences, to keep them off the streets at night, away from shopping centres etc;

- vehicle takers and other types of car crime offenders;

- football offenders, to keep them away, not just from matches (as with a football exclusion order) but also away from the surrounding area before and afterwards.

Other possibilities might be:

- those convicted of minor sexual offences, such as indecent exposure (to keep away from schools, youth groups etc)

- addictive gamblers (to keep at home, away from habitual gambling spots)

- drunk drivers (a category of offender singled out in one American study as particularly successful subjects for curfew orders, as measured by breach rates and by subsequent rates of reoffending).*

17. The most obvious successes with curfew orders are likely to be where an offender has a life that is ordered in some way already - for example, by employment or family responsibilities - and the order offers a way of curbing a particular habit which tends to lead to offending behaviour, while allowing the offender to continue the rest of his life. Such offenders would probably be most suitable for imposition of a curfew order used in isolation or with a fine. Drunk drivers, for instance, may offer a suitable group here, not least because of the perceived stigma of such a sentence, which they may feel more keenly than other offenders. Individuals with a relatively ordered lifestyle are also, arguably, those with most to lose if a more restrictive sentence were imposed, and for this reason may also be more likely to conform to the terms of a curfew order.

18. Nevertheless, experience of this type of sentence in the USA has shown that offenders with generally disordered, undisciplined lives, or whose offending is compulsive, may also respond positively to curfew orders. Indeed, the very fact that a curfew order is difficult to adhere to, because of the greater discipline it imposes, may mean that the punitive effect of the order is felt more keenly, as well as providing the offender with a chance to 'dry out' from his or her offending behaviour. Close monitoring may, however, be needed in such cases if the offender is to be able to complete the order successfully. Such offenders may also be more suitable for curfew orders combined with another kind of community sentence - a probation order, drug or drink rehabilitation programme, for example - which

will provide greater structure and more support. If such an offender agrees to a curfew order as part of a positive programme to help prevent reoffending, the likelihood of successful completion of the order will be much higher.

19. The American experience, confirmed by the bail trials of electronic monitoring here, shows that even very close monitoring will not prevent some offenders from breaching the order.* In a smaller number of cases some of these offenders will reoffend. This, of course, is a fact of life for community penalties generally, and must be measured against that yardstick. As with any order, the likelihood of successful completion, and the seriousness of possible reoffending will be factors taken into account by the court in deciding whether an offender is suitable for a curfew order. Where a court judges that an offender's lifestyle is so disordered, or that a compulsion is so strong, that an order is unlikely to be completed successfully, this will doubtless argue against the imposition of a curfew order.

Procedures for assessing suitability

20. In deciding whether to impose a curfew order, a court is subject to several requirements. The court must consider the general criteria for imposing any kind of community sentence set out in Section 6 of the Act, namely:

- that the offence (or the offence and one other associated offence) is serious enough to warrant such a sentence;

- that the restriction of liberty imposed is commensurate with the seriousness of the offence;

- that the order or orders comprising the sentence are the most suitable for the offender.

In addition, in the case of a curfew order, the court must:

- obtain and consider information about the place proposed to be specified in the order, including information as to the attitude of anyone else likely to be affected by the enforced presence of the offender there (Section 12(6));

- avoid, as far as practicable, any conflict between the requirements of the curfew order and the offender's religious beliefs, the requirements of any other community order to which he is subject, and any interference with times at which he normally works or attends school or other educational establishment (Section 12(3));

- explain to the offender the effect of the order, the

consequences if he fails to comply with it, and that the court can review the order at the request of either the offender or of the supervising officer (Section 12(5));

- secure from the offender an expression of willingness to comply with the order's requirements (Section 12(5)).

21. The requirement to avoid conflict with other commitments (Subsection 12(3)) will often be able to be fulfilled by direct questioning of the offender. The requirement to obtain information about the proposed place for monitoring and others affected by it (subsection 12(6)), however, may arguably only be fulfilled reliably from information provided by a third party - a Probation Officer, Police Officer and/or another person responsible for monitoring curfew orders (for example, where electronic monitoring is a possibility, and the technical feasibility of doing so will also need to be assessed).

22. **The most obvious route for gaining such information will be by means of a pre-sentence report (PSR) prepared by the Probation Service.** PSRs are not obligatory where a court is considering making a curfew order. Nevertheless, where a PSR is being prepared, a curfew order will be among the range of options available for consideration by the Probation Officer and may therefore be put forward if it is considered an appropriate penalty. A court may also wish to request specific information on the suitability of a curfew order for an offender in the light of his or her home circumstances, either in the context of a PSR or as a separate report prepared by the Probation Service or another person responsible for monitoring.

23. An offender's suitability for a curfew order must also depend upon whether or not it is practicable to make suitable arrangements for the order to be monitored. If enforcement appears impracticable, difficult or indeed potentially dangerous for the supervisor, this information will clearly be relevant and should be made available to the court.

24. **Home Office guidance on curfew orders and different types of monitoring, for use in report writing and more generally, will be drawn up, in consultation with the relevant agencies of the criminal justice system.**

IV: ENFORCEMENT

25. An effective system of enforcing curfew orders is essential if such orders are to play an accepted and useful role as part of the range of community sentences. A curfew order must be credible as a penalty to the offender if it is to be observed: he or she must perceive that observance of the order is being checked, that breaches will be detected and that action will be taken if they are.

26. Some breaches may be easier to detect than others: an offender

whose offences habitually occur in a specific place - particular pubs or clubs, or outside a school, for example - stands a reasonable chance of being spotted by the police or reported to them if the curfew order is known about. But a curfew order is designed to ensure that an offender stays in a particular place, rather than be excluded from one. This therefore presupposes a proactive form of enforcement, whereby checks are made to ensure that the offender is where he or she should be between the periods of time specified in the order, and that some form of action is available to the monitor if the order is breached.

27. **There are effectively two ways of enforcing curfew orders for these purposes: through the use of electronic technology, as used in the original bail trials; and through a personalized form of monitoring, based on physical checks such as telephone calls and visits.** Each offers advantages and disadvantages, but also a number of basic similarities; and the aim would be to have as much consistency as possible in the handling of offenders subject to monitoring of either type.

Enforcement with electronic monitoring

28. Electronic monitoring offers, arguably, the most **continuously effective** way of monitoring the whereabouts of an offender and detecting breaches as they occur. Guidance published by the US Department of Justice suggests that this type of monitoring can be particularly helpful with certain classes of higher risk offenders.* The use of technology means that routine checks may be carried out with much greater ease and frequency than checks dependant on human contact, and are much less intrusive. The system might be expected to be much less resource-intensive, although this depends to some extent on the equipment's capacity for centralising monitoring operations, and hence potentially much more cost-effective, particularly in the longer term when the technology is well-established. Although reservations have sometimes been expressed about the depersonalized nature of the system, this is softened in practice by contact with staff at the monitoring centre, who can respond to questions, concerns and indeed, requests for urgent 'leave of absence' where necessary.

29. The Government's plans for enforcing curfew orders with electronic monitoring equipment will depend very heavily upon the nature of the technology now available. In the original bail trials, defendants wore a small anklet fitted to a low powered radio transmitter which transmitted a signal to a unit based in the home to a computer in the central monitoring station. This enabled any unauthorised absence to be detected almost as it happened: if the defendant moved out of range, there would be a break in the signals which registered a violation at the monitoring centre. If checks for faults on the equipment proved negative, attempts were then made to reestablish contact with the defendant - by phone or by visit - as soon as possible. Although there were a number of teething troubles with the equipment in the early stages, these decreased significantly during

the course of the trials, and the equipment proved effective in detecting breaches.

30. It seems likely that a home-based system, based on the use of signals to a central unit, as used in the original bail trials, would provide a satisfactory way of monitoring curfew orders. There will also no doubt have been advances in this area since the bail pilots. The Government will clearly wish to take advantage of developments where these offer advantages of cost or efficiency, or are more generally suitable for the task in hand.

Enforcement with personal monitoring

31. If electronic monitoring is to be phased in, alternative arrangements for monitoring curfew orders will need to be available in areas where electronic monitoring has not yet been introduced. Without electronic technology, the only ways of monitoring the observance of curfew orders are effectively visits and telephone calls. **Visits** offer a reliable check, but are relatively timeconsuming and therefore expensive in resource terms. **Telephone calls** are much quicker and cheaper, but are a less reliable check: to be certain beyond doubt that the voice on the other end was the offender, the monitor would need to know the offender's voice, or rely either on the introduction of some kind of voice recognition facility (which need not be too sophisticated - a taperecording of the offender's voice might well be enough), or close and careful questioning.

32. **The best model for enforcement must be a combination of visits and telephone calls.** Both sorts of check would need to be **frequent** (the basic assumption to establish in the offender's mind must be that there will be at least one check per period monitored, but possibly more). They must also be **random**, and very obviously so. Failure of an offender to respond to a telephone call would generally be followed up as soon as possible by a visit. There may be advantage in making more frequent checks early in the order's life, and reducing the frequency if no problems arise. Similarly, if breaches of the order are suspected, or where it is believed that an offender may have difficulty in complying with an order, an increased level of monitoring may be appropriate.

33. Telephone checks do, however, presuppose the presence of a phone at the address to be monitored: figures gathered during the original bail trials for electronic monitoring suggested that 20% of offenders considered potentially suitable had no phone, and it seems likely that this would also be the case for sentenced offenders. Monitoring offenders without telephones through visits alone would inevitably be much more resource intensive than monitoring through a combination of visits and calls. During the bail experiments, restricted telephone lines were installed at the address to be monitored to enable electronic monitoring (which relied on telephone technology) to take place. Whether this will need also to be the case for electronic monitoring here will depend upon the type of technology which the

successful contractor can provide. Where electronic monitoring is not available, however, installation of a telephone - perhaps with restricted dialling or limited to incoming calls - for the duration of the order, to enable physical monitoring, would in most cases be more cost-effective than relying on visits alone.

34. A basic model for personal monitoring might be as follows:

Monitoring of offenders with telephone

1-2 telephone calls/day (allowing 10 minutes per call, including associated work)
1-2 visits/week (allowing 1 hour per visit, including associated work)

Monitoring offenders without telephone

1-2 visits/day (allowing 1 hour per visit, including associated work)

35. This follows roughly the kind of pattern used in personal monitoring schemes in the United States of America, which formed that basis for a comparative study with electronic forms of monitoring on different types of offender (although the study also indicates that monitoring contacts can be relatively low - perhaps only every other day - and still be effective).* Although personal monitoring of this type is generally expected to be less effective than electronic monitoring, the study demonstrated that this was not necessarily the case: personal monitoring, particularly where a constructive relationship developed between the monitor and subject, proved just as effective, if not more so in certain cases. The study makes the point, however, that the success of the different types of monitoring depended to some extent on the type of offender: the more disordered, higher tariff offenders appeared more suitable for, and demonstrated fewer breaches with, electronic monitoring.

Monitoring hours

36. In principle, a curfew order may specify any time of day or night, and arrangements for monitoring, both electronic and personal, will therefore need to reflect this. The most likely times for curfew periods will be evenings (carrying on through the night for certain offenders), and weekends; and this will inevitably be reflected in terms of the costs of employing monitoring staff, particularly where personal checks, in the form of visits and telephone calls, are required.

37. The monitoring of offenders through the night raises a number of questions. A particular advantage of electronic monitoring is that it

permits continuous and non-intrusive monitoring during the night hours. At such times physical checks through telephone calls and visits will be perceived as more intrusive, and staff are also likely to feel vulnerable in making visits. Also for consideration is how far it is reasonable to wake an offender and possibly other occupants of the house to answer the phone or the door in the middle of the night.

38. We would anticipate that where electronic monitoring is not used, the terms of a curfew order would require an offender to make himself or herself available to a supervisor, but that this would generally only be **at reasonable times of day**. Routine checks would only be carried out between the hours of, say, 6.a.m. and 11.30 p.m, and enforcement of curfew periods extending beyond those hours would need to be limited to flagrant breaches (i.e. those detected outside the house) or cases where, for example, there were serious grounds to suspect involvement with another offence. Such a model would nevertheless require a 24-hour contact point of some sort, perhaps in the form of an 'on-call' system.

39. This model poses a particular problem for the monitoring of offenders with disordered or unstructured lifestyles, especially those who are unemployed and convicted of offences taking place at night - such as brawling in clubs or burglary, particularly given the greater probability of breach and of reoffending for such individuals. Such individuals would clearly be candidates for electronic monitoring where this is available. Otherwise, the case for imposing a curfew order which carries on through the night hours will need to be considered carefully by the court. If close monitoring of an offender is considered necessary throughout the night hours, and electronic monitoring is not available, then this may well argue against the suitability of the offender for a curfew order.

Handling of breaches

40. Handling of curfew order breaches would be along the same lines as for other kinds of community sentence, as set out in Schedule 2 to the Act: where there was evidence of a breach, the offender would be taken back to court for an appropriate course of action to be decided upon. Proving a breach would be relatively straightforward where an offender was observed outside the bounds of his or her curfew order and there were witnesses to that effect. To this end we would anticipate that the local police would be provided with a list of offenders subject to curfew orders in their area. An individual suspected of another offence, or thought to be subject to a curfew order and in breach of it could be checked against the list at the officer's discretion. Breaches discovered by the police in this way would be reported to the monitoring centre for appropriate action. Where an offender's offending is habitually associated with a particular place, for example a pub, club, shopping centre or school, for example, the responsible person there could be alerted to the fact that the individual concerned was subject to a curfew order, and could contact the monitoring centre or the police if they noted a breach.

41. Procedures will be drawn up for the action to be taken by monitors in handling breaches. Similar breach procedures for electronic and personal monitoring will be used as far as possble. A suspected breach would be followed up a closer check: an unanswered telephone call by a personal monitor would be followed up by a visit shortly afterwards; an electronic breach signal would result, firstly in a initial check of the equipment for technical failure, then in a telephone call to try to re-establish contact with the offender, and then, if necessary, in a visit.

42. If an offender did not make him or herself available when the monitor visited, the presumption would be that a breach would be recorded by the monitor; renewed attempts to contact the offender would be made, and if the absence could not be explained satisfactorily, further action would be taken. **A graded system of action might be drawn up: an initial breach might attract an oral warning, the next a written warning. Court action would be taken if the breach was repeated or was considered serious in its own right.** Where a breach was suspected but could not be proved - for example, where the offender argued that he or she had not heard the doorbell - a more intensive - and hence more intrusive - level of checking would be introduced, for example telephone calls or visits at much more frequent intervals. This might, in itself, dissuade the offender from further breaches. A repeated inability on the part of the offender to make himself or herself available at reasonable times of day could be held to breach the requirements of the order, and would be considered to provide grounds for taking breach action.

43. It is not intended that monitors should have additional powers, for example to gain entry to the monitored address. There might, however, sometimes be a need to monitor certain individuals very closely, making subsidiary enquiries or even observing premises at certain times, to gain proof of a breach. The aim would be, though, to keep such activities to a minimum. Where a further offence was suspected, the usual police procedures would be followed.

44. **The intention is that the handling of court actions for breach of a curfew order would be in line as far as possible with that of procedures for breach of any other community penalty.** Where breach action alone was taken, it would seem sensible for the monitoring agency to take the offender back to court and to give evidence. **In the case of private sector monitoring, however, it is for consideration how far monitoring staff should be involved in taking forward actions for breach.** In principle, there would be nothing to prevent such staff taking such actions forward, and indeed, it seems reasonable that they should give evidence where they have observed breaches of a curfew order. In practice, however, decisions to prosecute for breach in such cases might be expected to involve consultation with other criminal justice agencies, for example the police or Probation Service; and it may be preferable for the final decision on whether to prosecute or, indeed, responsibility for taking forward the action itself to rest with one of these rather than with the private sector monitoring agency. As with other community disposals, where the breach was accompanied by a further offence, the action would be taken forward

by the Crown Prosecution Service.

National standards and training

45. In order to promote good practice, fairness and consistency in the handling of offenders made subject to curfew orders, the Government intends that national standards will be drawn up for the agency or agencies responsible for monitoring, as has been done for other community disposals following the Criminal Justice Act. Where monitoring is contracted out to the private sector, such standards will be expected to form part of the contractual obligations of the organisation concerned, and arrangements will be established to keep under review the contractor's performance in meeting those obligations. Arrangements will also need to be made for training, according to the precise needs of the monitoring agency or agencies involved.

V: ENFORCEMENT AGENCIES

Electronic monitoring

46. The Government considers that, as with the original bail trials, the private sector is likely to be best placed to provide electronic monitoring facilities, and intends, therefore, to contract out arrangements for electronic monitoring. It is envisaged that the initial contracts will be let out by the Home Office, although this would not rule out subsequent contracts being let out locally, for example if a single agency became responsible for the overall monitoring of curfew orders. The timetable for introducing these arrangements will depend upon the kind of technology chosen, its capacity for centralisation, likely cost and the availability of resources.

47. Arrangements for electronic monitoring will be introduced on an area by area basis. It is intended, depending on costs and resources, that the first phase of the programme will involve the introduction of electronic monitoring facilities in between three and five areas, and will be intended to allow the monitoring of up to 1500 individuals.

48. Decisions on extending the programme will be taken in the light of the first phase of schemes and the use of curfew orders generally. The cost-effectiveness of electronic monitoring, as compared with personal monitoring, will be a major factor. If electronic monitoring is considered to represent an efficient way of monitoring curfew orders, the intention would be to extend its availability gradually to main centres of population (and to other areas where a particular need became apparent) in successive phases. A second phase, beginning perhaps a year later, might extend arrangements to five or six new

areas, with a third phase perhaps introducing a further nine or ten schemes the following year, depending on resources and demand. **How far electronic monitoring arrangements should, in due course, be made available across England and Wales; and how far alternative monitoring arrangements should be retained is a matter for further consideration.**

49. **Also for discussion (see paragraph 62) is the precise nature of the relationship between the electronic monitoring contractors, the personal monitoring agency and other parts of the criminal justice system.** At present, it is envisaged that the initial electronic monitoring contracts will be let out by central government. Such contracts would, however, place certain obligations on the contractor in terms of working within the overall framework of the criminal justice system and, in particular, would be likely to require the contractor to be responsible to a specific agency for the way in which monitoring is carried out, and in conjunction with whom breach action might be taken forward **(see paragraph 44)**. It is for consideration whether this agency should be the Home Office, or one of the agencies more closely involved - the Probation Service or the police (depending on where primary responsibility for personal monitoring lies, for instance) or the courts themselves. **This also raises the question of whether contracting out should in fact take place at a local level, for example by the personal monitoring agency, which might then take on overall responsibility for monitoring and for taking forward breach action.**

50. It is envisaged that contracts for the provision of facilities, including the necessary technical equipment and staff, for the first phase will be put out to tender once decisions over the introduction of curfew orders have been taken following consultation. **To this end, the Government will welcome initial expressions of interest, without obligation, from organisations who wish to consider tendering for this work. These should be sent to the address set out in paragraph 4 of this document by [30 April 1992].**

Personal monitoring

51. The number of curfew orders monitored electronically will depend upon the available facilities and will therefore be predictable within certain limits. Requirements for personal monitoring as an alternative to electronic monitoring will, however, be much less easy to predict, as this will depend entirely upon the number of curfew orders made. Because of the potential variation in the numbers of curfew orders over the initial years, it seems likely that a pre-existing service or network may be best placed to cater for variable numbers of curfew orders, particularly if it was able to carry out personal monitoring duties more or less on demand alongside other activities. **The Government considers that there are effectively three possibilities: namely, the Police, the Probation Service or a national private sector company. Each of these is discussed in more detail below.**

(i) The private sector

52. Private sector involvement in enforcing curfew orders is already anticipated in terms of the electronic monitoring provisions of the Act. **The Government feels that private sector involvement in personal monitoring may also offer potential advantages in terms of cost and efficiency, and would therefore intend to explore this possibility further.** In the long term, it may be that the establishment of a specialist national agency to monitor curfew orders, perhaps encompassing both electronic and non-electronic monitoring, if this is retained, may offer the most cost-effective form of enforcement; and the Government will therefore wish to keep this possibility in mind.

53. However, because of the possible variation in levels of use of curfew orders, and the unknown extent to which electronic monitoring arrangements may become available across the country, the Government feels it may be difficult to contract out personal monitoring on a national basis at this stage. It would, however, wish to assess the potential for extending private sector involvement in personal monitoring, if this is retained, at a later stage in the light of experience of curfew orders in the initial years of their use. **In order to provide firmer information for decisions on the future of electronic and personal forms of monitoring, the Government may consider contracting out personal monitoring work to the private sector on a small scale in the initial years, possibly alongside electronic monitoring within the selected pilot areas.** Such schemes might be expected to enable direct comparison between the relative costs and effectiveness of both electronic and personal monitoring, and of the cost-effectiveness of services offered by the private and public sector. **Accordingly, the Government would also welcome expressions of interest, without obligation, from organisations who might wish to consider tendering for such work. These should, again, be sent to the address set out in paragraph 4 of this document by [30 April 1992].**

(ii) The Police

54. The police would offer two specific advantages as an enforcement agency, in that they are a national, locally-based service, and that police officers are used to carrying out door-to-door enquiries and other 'checking'-type activities. Visits, for example, might prove less of a problem than for other services because of their training to handle potentially difficult situations if these arise. Low numbers of curfew orders might be absorbed to some extent into day-to-day routines, but would inevitably be subject to other, and often more pressing priorities; where a larger numbers of orders were in force, a temporary or longer term increase in staff would be necessary.

55. In terms of value for money, however, a post primarily concerned with routine monitoring tasks is unlikely to be a cost-effective use

of a trained officer's time. A preferable option might be the use of ancillary staff, recruited on a part- or full-time basis depending on demand, and attached to a police force or unit. Ancillary staff could not, however, be expected to handle difficult situations in the same way as a police officer, and the main police force would no doubt still be needed to provide additional support in such cases.

56. Moreover, it has been the Department's policy over the past few years to decrease police involvement in services which can be undertaken by other agencies, for example by encouraging the appointment of court security officers and fine enforcement by civilian and local staff; and involvement in routine monitoring of curfew orders would go very much against the grain of that development. In addition, long-established policy has also been to avoid giving the police any kind of sentencing function, and this principle would also be jeopardised, whether through the use of police officers or ancillaries.

57. For these reasons, the Government is doubtful of the benefits of assigning primary responsibility for monitoring curfew orders to the police. As in the examples given in the paragraph above, the police would be expected to provide a supportive role, for instance by challenging the offender and informing the monitoring agency where a breach of a curfew order is observed or suspected, and by providing any necessary backup, particularly in assisting the monitor on a difficult visit - as indeed, is the police's current practice for other community disposals. Nor would the Government wish to rule out the establishment of local arrangements with police forces over some parts of enforcement work, such as home visits in difficult areas, where police involvement was felt to be helpful and where the local police were willing to take this on.

(iii) The Probation Service

58. In this context, the Probation Service would offer the practical advantages of a national, locally-based service with considerable experience in the handling of other kinds of community sentence. Indeed, the Service may already have been involved with a particular offender because of previous offences or the need to prepare a PSR. They might also have a continuing involvement if, for example, a curfew order has been made alongside another community penalty such as a probation order. Probation staff would be particularly well placed to offer the kind of personalised support and encouragement which an offender may need in order to complete a curfew order successfully. They would also be less likely to arouse the kind of antagonism that police checks might. By the same token, however, probation staff might feel more vulnerable in exposed situations, such as evening home visits; and potentially difficult situations would either require additional staff, police back-up or avoidance.

59. It seems unlikely, however, that routine monitoring work would be a cost-effective use of a Probation Officer's time and training. As

is currently the practice with community service orders, the use of specialist ancillary staff, trained in monitoring work, and attached to the Probation Service would offer a much more cost-effective solution. Such posts could be recruited on a short or long term basis, depending on levels of demand (as currently with community service orders); they would lend themselves particularly to part-time working arrangements, although full time monitoring work would doubtless also be available where the number of curfew orders rose above minumum levels. The existence of ancillaries within the system already employed on other kinds of work would also allow greater flexibility, particularly in terms of absorbing low numbers of curfew orders. Attachment of such ancillaries to the Probation Service, as opposed to another agency, would also facilitate liaison over recommendation of curfew orders in PSRs, and where curfew orders were combined with another community disposal supervised by the Probation Service.

60. The Government's preliminary view is that the option of using ancillary staff attached to the Probation Service might offer the greatest advantages in practical terms, and in terms of the way personal monitoring might develop in future. Nevertheless, it recognises that some members of the Probation Service have anxieties over how the monitoring of curfew orders will accord with their traditional function of working with the offender in the community to prevent reoffending behaviour. Such concerns are understandable where a new type of disposal of this nature is introduced. The Government believes, however, that curfew orders provide a positive way of preventing reoffending behaviour, by providing the offender with a firm incentive to avoid those situations habitually associated with their offending behaviour, and in the longer term, helping possibly to break those habits and associations.

61. For some offenders, the incentive of a curfew order alone, supervised by ancillary monitoring staff will be enough; and the work of specialist monitoring staff could, in principle, be carried out quite separately from the work carried out by Probation Officers. For some offenders, there will also be a need to work closely with Probation Officers because of the additional imposition of a Probation Order or other kind of programme by the court. In such cases - or indeed in others at the discretion of the Service - closer involvement by an offender's Probation Officer in supervising the offender's overall programme may well produce positive results. That closely co-ordinated supervision of this kind can be very effective is clearly demonstrated by the success of the intensive probation schemes run over the last few years by the West Yorkshire Probation Service, among others, where a probation programme tailored to the specific needs of the offender is combined with close supervision of the offender's movements at other times, based on regular contacts with specialist ancillary staff. **How far the Probation Service would wish to develop this kind of work through the opportunities for close supervision offered by curfew orders is a matter for discussion in the light of this paper.**

62. Also for consideration would be how far the Probation Service would wish to consider ancillary monitoring staff as a separate part

of the Service or interchangeable with other ancillary staff; and how far Probation Officers might wish to retain overall responsibility where there was no other probation involvement in a sentence, either in cases where it was felt that an individual needed greater support to complete an order successfully, or more generally. The Government believes that the retention of overall responsibility for offenders sentenced to this type of disposal would accord well with the Probation Service's responsibilities to the courts for the oversight of community disposals generally, providing a central point for the co-ordination of work with such offenders and for consultation over individual cases, for example where breach proceedings are being considered (see paragraph 44). At the same time, however, this need not necessarily argue against the establishment of a specialist group of ancillary staff who would have day-to-day responsibility for offenders subject to curfew orders. Nor would the Government wish to rule out the scope for contracting out by the Probation Service on a local basis for part or all of the practical monitoring work, including electronic monitoring. **The Service's views on all of these issues would be very welcome.**

VI: RESOURCES

63. The resources required for implementing curfew orders and electronic monitoring will clearly depend upon the kind of enforcement chosen, as well as on the number of curfew orders imposed by the courts. The Government has appointed consultants to study the costs of the various options for enforcement; and the Government's best estimates of cost will be announced in due course. It is recognised that involvement of the Probation Service or police will place certain new burdens upon local authorities, and further discussions will take place in the light of this consultation and subsequent estimates of resource requirements. Final decisions over implementation will depend upon the availability of resources.

VII: PROPOSALS AND TIMETABLE FOR IMPLEMENTATION

64. The Government will welcome views on the proposals set out in this paper, particularly from practitioners in the criminal justice field. In the light of this consultation, final proposals will be drawn up and announced, with a view to bringing curfew orders and associated monitoring arrangements into force as quickly as possible.

65. It is also envisaged that invitations to tender for the provision of electronic monitoring facilities and for any contracted-out personal monitoring services will be issued later in the year, again with a view to the introduction of arrangements from the date curfew orders come into force. The necessary commencement and other orders setting out monitoring arrangements will also be brought forward as soon as possible. National standards and guidance will subsequently be drawn up in consultation with the relevant parts of the criminal

justice system, and recruitment and training taken forward, so that monitoring facilities will be available across England and Wales from the date that curfew orders come into force.

TO BE CHECKED AGAINST DELIVERY

FINAL C

cc WCC & Political Press

OFFENDING ON BAIL

HOME SECRETARY'S STATEMENT:

24 FEBRUARY 1992

WITH PERMISSION, MR SPEAKER, I SHOULD LIKE TO MAKE A STATEMENT.

THE NUMBER OF THOSE WHO COMMIT AN OFFENCE WHILE ON BAIL HAS RISEN. WE ESTIMATE THAT OF THE NEARLY HALF A MILLION PEOPLE GRANTED COURT BAIL LAST YEAR AROUND 50,000 WERE CONVICTED OF AN OFFENCE COMMITTED WHILE ON BAIL. FIVE YEARS AGO THE FIGURE WAS AROUND 35,000. THIS REPRESENTS A SERIOUS PROBLEM PARTICULARLY FOR THE POLICE.

THE OFFENDER WHO COMMITS AN OFFENCE WHILE ON BAIL IS LIKELY TO BE A MALE AGED BETWEEN 17 AND 20 AND CHARGED WITH PROPERTY CRIME, ESPECIALLY CAR CRIME AND BURGLARY. WE MUST CRACK DOWN ON THESE BAIL BANDITS.

/THE GOVERNMENT IS

THE GOVERNMENT IS DETERMINED THAT THE COURTS AND THE POLICE SHOULD HAVE THE POWERS THEY NEED. I AM, THEREFORE, ANNOUNCING A PACKAGE OF SIX MEASURES TODAY.

WE INTEND TO CHANGE THE LAW IN TWO WAYS.

FIRST, IT IS RIGHT THAT A PERSON WHO COMMITS AN OFFENCE WHILE ON BAIL SHOULD NORMALLY RECEIVE A MORE SEVERE PENALTY. WE WILL BRING IN LEGISLATION TO REQUIRE COURTS TO CONSIDER OFFENDING ON BAIL AS AN AGGRAVATING FACTOR WHEN PASSING SENTENCE.

SECONDLY, THE POLICE NEED CLEAR STATUTORY POWER TO ARREST PEOPLE IMMEDIATELY WHO BREACH POLICE BAIL. WE WILL INTRODUCE LEGISLATION TO SECURE THIS.

THESE MEASURES TAKEN TOGETHER REPRESENT A CONSIDERABLE TOUGHENING OF THE EXISTING LAW. BUT WE INTEND TO GO FURTHER TO DEAL WITH THE HARD CORE WHO PERSISTENTLY RE-OFFEND.

/THIRDLY, PEOPLE WHO

THEREFORE, OUR THIRD MEASURE IS TO ENSURE THAT PEOPLE WHO ARE GRANTED BAIL ARE LEFT IN NO DOUBT OF THE RISKS THEY RUN IF THEY BREAK THEIR BAIL CONDITIONS OR OFFEND WHILE ON BAIL. WE ARE ASKING ALL MAGISTRATES' COURTS TO ENSURE THAT THE BAIL NOTICES ISSUED TO ALL DEFENDANTS MAKE IT CRYSTAL CLEAR THAT IF THEY FAIL TO ANSWER BAIL, OR FAIL TO COMPLY WITH THE CONDITIONS IMPOSED, OR IF THEY COMMIT AN OFFENCE, THEY RISK BEING REMANDED IN CUSTODY. THE COURTS DO HAVE EXTENSIVE POWERS TO IMPOSE STRINGENT CONDITIONS ON BAIL. I AM CONFIDENT THEY WILL MAKE FULL USE OF THEM AND TIGHTEN UP THE ARRANGEMENTS FOR SUPERVISION.

FOURTHLY, WE NEED TO ENSURE THAT THE COURTS HAVE THE FULLEST INFORMATION WHEN THEY DECIDE WHETHER TO GRANT BAIL SO THAT THEY CAN PICK OUT MORE ACCURATELY THE BAD RISKS. WE THEREFORE INTEND THIS YEAR TO SET UP IN SELECTED LOCAL AREAS -INCLUDING THE INNER CITIES - BAIL INFORMATION PROJECTS WHICH WILL ENSURE INFORMATION FROM THE POLICE,

CROWN PROSECUTION SERVICE AND PROBATION SERVICE IS COLLATED AND AVAILABLE TO THE COURTS. THIS BUILDS ON THE BAIL INFORMATION SCHEMES THAT WE HAVE IN 113 COURTS AND 13 PRISONS, AND IN DUE COURSE WILL BE BACKED UP BY A NEW COMPUTERISED CRIMINAL RECORD SYSTEM.

FIFTHLY, MAGISTRATES HAVE THE DIFFICULT TASK OF TAKING DECISIONS EACH DAY OF THE WEEK IN THIS COMPLEX AREA OF RISK ASSESSMENT. THE JUDICIAL STUDIES BOARD HAS THEREFORE AGREED TO REVIEW THE TRAINING OF MAGISTRATES IN THE CRITERIA SET OUT IN THE BAIL ACT 1976.

SIXTHLY, EXPERIENCE SHOWS THAT SOME DEFENDANTS WILL BEHAVE ON BAIL IF, AND ONLY IF, THEY ARE PROPERLY SUPERVISED. WE WILL PROVIDE 8 MILLION OVER THE NEXT THREE YEARS FOR BAIL ACCOMMODATION AND SUPPORT.

WELL RUN BAIL HOSTELS REDUCE THE RISK OF OFFENDING. THERE ARE 29 SUCH HOSTELS WITH 600 PLACES, AND A FURTHER 82 APPROVED

PROBATION/BAIL HOSTELS PROVIDING 1,800 PLACES. AN ADDITIONAL 800 PLACES WILL BE PROVIDED BY APRIL 1995. THIS PROGRAMME WILL ALSO INCLUDE INNOVATIVE SCHEMES AIMED AT KEEPING DEFENDANTS OUT OF CRIME.

I AM GRATEFUL FOR THE EFFORTS POLICE FORCES HAVE MADE TO BRING INFORMATION TO BEAR ON THIS SUBJECT. WE SHALL WORK CLOSELY WITH THEM TO PROVIDE REGULAR AND RELIABLE INFORMATION ABOUT OFFENDING ON BAIL.

I AM ASKING MY OFFICIALS AS A MATTER OF URGENCY TO CONSULT FULLY WITH THE POLICE, THE CROWN PROSECUTION SERVICE, THE MAGISTRATES' COURTS' SERVICE, THE SOCIAL SERVICES DEPARTMENTS AND THE PROBATION SERVICE TO IMPLEMENT THE STEPS I HAVE ANNOUNCED THIS AFTERNOON. TOGETHER THEY WILL MAKE A DIRECT IMPACT ON THE PROBLEM OF OFFENDING WHILE ON BAIL.

1.20pm: 25 February 1992

OFFENDING ON BAIL: NOTES FOR SUPPLEMENTARIES

Why not amend the Bail Act?

The Bail Act 1976 already provides for remand in custody if a court is satisfied that the defendant would, if released on bail, commit an offence while on bail. It is difficult to see how the criteria in the Act could be improved upon. To reduce offending on bail, what we need to do is to increase the chance of courts identifying those cases where there is a bad risk that the defendant will offend if released on bail.

How many people are given court bail each year? How many are given police bail?

- In 1991, 480,000 people were granted court bail.
- 52,000 were remanded in custody by the courts.
- 610,000 were granted police bail.

How much offending on bail is there?
Has it increased?
Were police surveys accurate?

The studies suggest that about 10 per cent of those granted bail are convicted of an offence committed while on bail. That proportion was about the same in 1978. But more people are granted bail now, so the number of offences committed on bail will have gone up - our researchers estimate by about 25,000 offences between 1985 and 1990. The police studies, which we welcomed, varied in their methodology: that is why we undertook the comparative review. The work done confirms that more needs to be done to monitor this problem, and that is one of the steps we are taking.

How much crime are bail offenders responsible for? (eg 1 in 15 crimes?

We and the police believe that the answer is "too much". The Northumbria study found that 40 per cent of **detected** crime in one Division was attributable to people on bail, but we do not have an equivalent figure for the whole country. We are taking steps to improve the information we have, and also, more importantly, to reduce the problem.

The police say the Home Office research is flawed and minimises the problem?

The Home Office study was intended to do no more than collate all the evidence from the recent studies by the police and others, to establish an overall picture. The Government does not in any sense underestimate the extent of police and public concern over this problem. That is why we asked officials to consult the police about the most effective way we can tackle the problem. That is the right way forward, rather than arguing about the precise interpretation of figures.

Why was the Home Office research published weeks before this announcement?

I **had** intended to announce my plans for tackling the problem at the same time as publishing the research, but earlier publication has provided an opportunity for hon. Members and others to consider the findings, and so to inform debate.

Why no new offence

I have considered very carefully whether a new offence of offending on bail would help. It is not self-evident that the existence of such an offence would deter those who are not deterred by the fact that the conduct - stealing a car, or

burgling - is in itself an offence, with a substantial penalty. The provision I am proposing will ensure that offenders do not get away with offending on bail.

But offending on bail is an offence in Scotland? Why not adopt the Scottish provision?

Systems of bail in the two countries are similar but not identical. The position in Scotland could not be replicated in legislation for England and Wales.

What proportion of offending on bail is represented by offending on police bail?

None of the studies identified this precisely, but such evidence as there is suggests that the rate of offending on police bail is rather less than the rate of offending while on court bail.

What is police bail and what does the new power of arrest mean?

After arrest, the police may if they do not give a defendant bail to appear before a court may give him bail to return to a police station on a given date, after which he may be dealt with by charge, by formal caution, or there may be no further action taken. If he fails to return to the police station, it is an offence, but the police have no power to arrest him for it. We propose to bring in legislation so that the police have such a power.

What about police concern about the criteria for police bail?

We are setting up a joint working group with ACPO to look into the criteria contained in Section 38 of the Police and Criminal Evidence Act, so that the police powers may be made clearer.

What is the timescale for the new proposals?

Work is already in hand. A steering group, including representation from the police, CPS, probation service and courts, is being set up to oversee it. The new bail projects should get underway this summer. The Department is discussing with ACPO already the issues affecting police bail.

Should the courts attach more conditions to bail?

The courts already have the power to attach **tough conditions to bail** where these are appropriate. They can and do require defendants to keep off the streets at certain times, to keep away from certain places, and to keep away from certain people.

Will electronic tagging be used on people on bail to deter offending?

- Power exists in law for electronic tagging to be used by the courts for bailees if they consider it appropriate.

- We will be looking at every possibility, in consultation with the courts, in due course and we would not rule out the use of tagging in particular cases. However we do not consider at present that a general use of tagging for this purpose would be necessary or productive.

What about the pressure on prison places? Will the new proposals mean more people in custody?

- It is not our intention that bail should be refused in the generality of cases. The emphasis of the package of measures I have announced today is on **targeting**, to improve the chances that those who are most likely to offend on bail will be identified by the courts, but also to increase the likelihood of identifying some, currently remanded in custody, who could safely be released on bail. The evidence suggests the majority of defendants on bail do not offend while on bail: locking them up would serve no purpose.

- An additional 4500 new prison places are due to be delivered between now and March 1993.

Are the proposals aimed at immediate jail for those who re-offend on bail? Can't this happen already?

- The Bail Act 1976 already provides for bail to be refused if a court is satisfied that the defendant would, if released on bail, commit an offence while on bail. A defendant released on bail who then appears again charged with another offence provides the court thereby with grounds for believing that granting further bail entails risk of further offences.

- Some previous research suggests that 2/3 of defendants on bail brought before a court charged with another offence will then be remanded in custody.

- The new local bail projects will provide an opportunity to test further what happens in practice, and to probe the decision - making process, to identify better what weight is given to which factors, and to allow any necessary changes to be made.

- A judgement still has to be made, taking account of the gravity of the offences and other factors.

Should money be spent on bail hostels, given the risk of re-offending by residents?

Hostels admission policy is being reviewed as part of the development of National Standards for the Management of Approved Hostels, which should be implemented later this year. This should ensure that clear and consistent good practice is applied throughout England and Wales.

Persistent offenders should be punished more severely?

We are all concerned about persistent offenders. Locking them up may bring short-term relief, but can only be in proportion to the seriousness of the offence and the threat to the public. It does little to help in the longer term, for there is no evidence that custody deters persistent offenders. Custody of itself cannot inculcate a sense of responsibility into persistent offenders, and the detrimental effects of prison on inhibitors of offending such as close family ties are well documented.

What does the Government intend to do about persistent offenders?

Studies consistently show that a relatively small number of young male offenders are responsible for a disproportionately large amount of crime. Some persistent offenders seem to have become either careless of the consequences of their actions, or disregarding of them. That is why we are looking at ways of tackling offending at its roots, by influencing individual attitudes and behaviour, particularly amongst the young. We hope shortly to be able to make our thinking on this known.

Stronger powers to deal with remanded juveniles?

The Criminal Justice Act 1991 reforms the juvenile remand arrangements. It gives courts a new power to attach conditions when juveniles are remanded in local authority accommodation; and it places the decision to remand 15 and 16 year old boys in prison squarely with the courts.

More secure accommodation needed?

The 1991 Act provides for the abolition of prison remands for 15 and 16 year old boys. Instead, courts will be able to remand 15 and 16 year olds direct to local authority secure accommodation. The change will take place only when enough secure accommodation is available. More is needed. This will take time. The Government has set up a National Steering Group to plan and take forward this work.

What is the Government doing to reduce delays in proceedings in magistrates' courts?

We are tackling the complex problem of delays in a variety of ways involving the co-operation of all criminal justice agencies. Amongst the measures recently taken or now in hand to bring about reduction in delays are

- the introduction of powers to enable magistrates' courts to remand for up to 28 days, which should reduce unnecessary court hearings and encourage effective case management;

- a major programme of training, arranged by the Home Office in conjunction with the magistrates' courts service, directed to helping court clerks to develop practical clerking skills and a proactive approach to the management of court business;

- the issue in July 1991 of best practice guidance on listing of cases, supplementing earlier guidance on the best use of court clerk time;

- the encouragement and monitoring of pre-trial reviews on an experimental basis in selected magistrates' courts;

- action to follow up the report of the Working Group on Pre-Trial Issues, as announced by my rt hon and learned Friend the Attorney General on 11 November, in which the magistrates' courts service will be asked to play its full part;

- the start of direct data exchange between magistrates' courts and the Driver and Vehicle Licensing Agency, to be extended in due course to all magistrates' courts, which should reduce the time needed to obtain licensing information as well as reducing handling costs;

- the development of national targets for improvements in performance, as part of the development of the magistrates' courts management information system.

These are all important initiatives which we hope will contribute to speedier and more effective local justice.

From: THE PRIVATE SECRETARY

cc WEC
Q
Press
Political
Policy

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

25 February 1992

File with final final version!?

Dear Mark,

OFFENDING ON BAIL

I attach a copy of the statement the Home Secretary proposes to make in the House of Commons this afternoon, announcing the package of measures for dealing with offending on bail which the Home Secretary has agreed with his colleagues.

I am copying this letter to the Private Secretaries to members of HS and LG Committees and to Sir Robin Butler.

Yours,

MISS H J WILKINSON

Mark Adams, Esq.
No 10 Downing Street
LONDON, S.W.1.

~~DRAFT 6~~
FINAL

OFFENDING ON BAIL
HOME SECRETARY'S STATEMENT:
24 FEBRUARY 1992

WITH PERMISSION, MR SPEAKER, I SHOULD LIKE TO MAKE A STATEMENT.

THE NUMBER OF THOSE WHO COMMIT AN OFFENCE WHILE ON BAIL HAS RISEN. AT THE MOMENT WE ESTIMATE THAT OF THE NEARLY HALF A MILLION PEOPLE GRANTED COURT BAIL LAST YEAR AROUND 50,000 ARE CONVICTED OF A FURTHER OFFENCE COMMITTED WHILE ON BAIL. FIVE YEARS AGO THE FIGURE WAS AROUND 35,000. THIS REPRESENTS A SERIOUS PROBLEM PARTICULARLY FOR THE POLICE.

THE OFFENDER WHO COMMITS AN OFFENCE WHILE ON BAIL IS LIKELY TO BE A MALE AGED BETWEEN 17 AND 20 AND CHARGED WITH PROPERTY CRIME, ESPECIALLY CAR CRIME AND BURGLARY. WE MUST CRACK DOWN ON THESE BAIL BANDITS.

/THE GOVERNMENT IS

THE GOVERNMENT IS DETERMINED THAT THE COURTS AND THE POLICE SHOULD HAVE THE POWERS THEY NEED. I AM, THEREFORE, ANNOUNCING A PACKAGE OF SIX MEASURES TODAY.

WE INTEND TO CHANGE THE LAW IN TWO WAYS.

FIRST, IT IS RIGHT THAT A PERSON WHO COMMITS AN OFFENCE WHILE ON BAIL SHOULD NORMALLY RECEIVE A MORE SEVERE PENALTY. WE WILL BRING IN LEGISLATION TO REQUIRE COURTS TO CONSIDER OFFENDING ON BAIL AS AN AGGRAVATING FACTOR WHEN PASSING SENTENCE.

SECONDLY, THE POLICE NEED CLEAR STATUTORY POWER TO ARREST PEOPLE IMMEDIATELY WHO BREACH POLICE BAIL. WE WILL INTRODUCE LEGISLATION TO SECURE THIS.

THESE MEASURES TAKEN TOGETHER REPRESENT A CONSIDERABLE TOUGHENING OF THE EXISTING LAW. BUT WE INTEND TO GO FURTHER TO DEAL WITH THE HARD CORE WHO PERSISTENTLY RE-OFFEND.

/THIRDLY, PEOPLE WHO

THIRDLY, PEOPLE WHO ARE GRANTED BAIL MUST BE LEFT IN NO DOUBT OF THE RISKS THEY RUN IF THEY BREAK THEIR BAIL CONDITIONS OR OFFEND WHILE ON BAIL. WE ARE ASKING ALL MAGISTRATES' COURTS TO ENSURE THAT THE BAIL NOTICES ISSUED TO ALL DEFENDANTS MAKE IT CRYSTAL CLEAR THAT IF THEY FAIL TO ANSWER BAIL, OR FAIL TO COMPLY WITH THE CONDITIONS IMPOSED, OR IF THEY COMMIT AN OFFENCE, THEY RISK BEING REMANDED IN CUSTODY. THE COURTS DO HAVE EXTENSIVE POWERS TO IMPOSE STRINGENT CONDITIONS ON BAIL. I AM CONFIDENT THEY WILL MAKE FULL USE OF THEM AND TIGHTEN UP THE ARRANGEMENTS FOR SUPERVISION.

FOURTHLY, WE NEED TO ENSURE THAT THE COURTS HAVE THE FULLEST INFORMATION WHEN THEY DECIDE WHETHER TO GRANT BAIL SO THAT THEY CAN PICK OUT MORE ACCURATELY THE BAD RISKS. WE THEREFORE INTEND THIS YEAR TO SET UP IN SELECTED LOCAL AREAS -INCLUDING THE INNER CITIES - BAIL INFORMATION PROJECTS WHICH WILL ENSURE INFORMATION FROM THE POLICE,

CROWN PROSECUTION SERVICE AND PROBATION SERVICE IS COLLATED AND AVAILABLE TO THE COURTS. THIS BUILDS ON THE BAIL INFORMATION SCHEMES THAT WE HAVE IN 113 COURTS AND 13 PRISONS, AND IN DUE COURSE WILL BE BACKED UP BY A NEW COMPUTERISED CRIMINAL RECORD SYSTEM. THIS WILL GIVE BETTER ACCESS TO INFORMATION ABOUT A DEFENDANT'S RECORD, INCLUDING WHETHER OR NOT PREVIOUS OFFENCES WERE COMMITTED ON BAIL.

FIFTHLY, MAGISTRATES HAVE THE DIFFICULT TASK OF TAKING DECISIONS EACH DAY OF THE WEEK IN THIS COMPLEX AREA OF RISK ASSESSMENT. THE JUDICIAL STUDIES BOARD HAS THEREFORE AGREED TO REVIEW THE TRAINING OF MAGISTRATES IN THE CRITERIA SET OUT IN THE BAIL ACT 1976.

SIXTHLY, EXPERIENCE SHOWS THAT SOME DEFENDANTS WILL BEHAVE ON BAIL IF, AND ONLY IF, THEY ARE PROPERLY SUPERVISED. WE WILL PROVIDE 8 MILLION OVER THE NEXT THREE YEARS FOR BAIL ACCOMMODATION AND SUPPORT.

/WELL RUN BAIL HOSTELS

WELL RUN BAIL HOSTELS REDUCE THE RISK OF OFFENDING. THERE ARE 29 SUCH HOSTELS WITH 600 PLACES, AND A FURTHER 82 APPROVED PROBATION/BAIL HOSTELS PROVIDING 1,800 PLACES. AN ADDITIONAL 800 PLACES WILL BE PROVIDED BY APRIL 1995.

I AM GRATEFUL FOR THE EFFORTS POLICE FORCES HAVE MADE TO BRING INFORMATION TO BEAR ON THIS SUBJECT. WE SHALL WORK CLOSELY WITH THEM TO PROVIDE REGULAR AND RELIABLE INFORMATION ABOUT OFFENDING ON BAIL.

I AM ASKING MY OFFICIALS AS A MATTER OF URGENCY TO CONSULT FULLY WITH THE POLICE, THE CROWN PROSECUTION SERVICE, THE MAGISTRATES' COURTS' SERVICE AND THE PROBATION SERVICE TO IMPLEMENT THE STEPS I HAVE ANNOUNCED THIS AFTERNOON. TOGETHER THEY WILL MAKE A DIRECT IMPACT ON THE PROBLEM OF OFFENDING WHILE ON BAIL.

cst.ps/dr/17dm21.2

CONFIDENTIAL

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

The Rt Hon Kenneth Baker MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

24 February 1992

Dear Ken.

OFFENDING ON BAIL

Thank you for your letter of 17 February, which we discussed on the telephone, and your further letter of 20 February.

2. As you know, I was concerned about the impact of your proposals on the framework of sentencing set out in the Criminal Justice Act. I am grateful for your assurances that you share these concerns and also the need to try to secure savings as part of the implementation of the Act.

3. The guidance you issue will have an important influence on how well the Act works in ensuring that alternatives to custody are fully considered when offenders are sentenced. I look to you to ensure there is no doubt left in the minds of those involved as to the purpose of the Act. I will also look to you to examine whether the probation service is using its very considerable resources to best effect. I would be grateful if you could put work in hand to ensure we can discuss this during our Survey bilaterals. I think we need to agree sentencing targets for the service.

4. I am grateful for your offer to absorb the costs of this initiative from within existing provision in 1992-93 and 1993-94. This will require careful monitoring, which you have offered to put in hand. That will be difficult given the many factors influencing the prison population. But I would expect a clear evaluation of the impact of these measures at the time of the 1993

Survey discussions. That will enable us to consider fully the costs and benefits of the new regime and, in doing so, form a view on whether it should be continued or altered.

5. Subject to these understandings, I am content for you to proceed as you propose.

6. I am copying this letter to the Prime Minister and the Lord President.

DAVID MELLOR

HOME AFF: Send Pol PS

CONFIDENTIAL

FILE
KIC

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

24 February 1992

Dear Heather,

OFFENDING ON BAIL

The Prime Minister has seen your Home Secretary's minute of 12 February, and the subsequent correspondence from the Attorney-General, the Lord Chancellor, and the Chief Secretary.

The Prime Minister has commented that he would prefer to keep the announcement of the intention to introduce a new statutory provision on offending on bail for a later document. However, he recognises that the Home Secretary has already generated a degree of expectation for the announcement, and on that basis is content for an announcement tomorrow.

I am copying this letter to the Jennie Rowe (Lord Chancellor's Office), Juliet Wheldon (Law Officers' Department), Mrs. C. McDivitt (Solicitor General for Scotland's Office), members of the HS Committee, Murdo Maclean (Chief Whip's Office), Tim Sutton (Lord President's Office) and Sonia Phippard (Cabinet Office).

Yours
Mark

(MARK ADAMS)

cc DEP WPSO DH Sol. Gen. (Scot)
DOE CST SO AG
NIO WO Trans LCO
CWO DM DN
G/Arms DT WPO
CO CAB DSS

Ms. Heather Wilkinson,
Home Office.

CONFIDENTIAL

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

20 February 1992

Dear David,

OFFENDING ON BAIL

Further to my letter of 17 February and to our subsequent conversation, I do want to reassure you that I am as concerned as you to ensure that we get value for money out of the very substantial resources which are deployed in our criminal justice system. In particular, we must try to secure savings as a result of the implementation of the 1991 Criminal Justice Act and I have asked my officials to ensure that nothing impedes the implementation of this Act, which will have the effect of ensuring that those who are sentenced for less serious crimes will be punished within the community. There are substantial cost savings and next week I will be issuing further guidance as to how the Act will be implemented from October of this year. I have asked my officials to ensure that these savings do come about. I can promise you there will be no relaxation in this.

That said, you will know we have a particular problem with a relatively small number of young offenders who re-offend persistently while on bail. I think we have to give a clear signal to them that their re-offending is not a light offence and that they will be subject to a higher sentence when they are eventually convicted. It is difficult at this time to predict when this offence will actually be on the statute book - probably not until the end of the year. I think it is unlikely to have effect on the prison population until early 1993. We will, of course, monitor this very carefully indeed. I hope it will have a deterrent effect and that, of course, would result in further savings. In any case, I am willing to offer a commitment that any additional costs incurred this year and in 1993 will be absorbed within existing provision. The cost implications will be clear by the time of next year's PES round, and I would hope to look at the arrangements then in the light of experience.

Since I first wrote on this subject, the Chief Constables have responded publicly to the Home Office research on offending on bail. They have sought to question our findings and to point to wider and deeper problems which, they claim, are the root cause of re-offending on bail. I am, therefore, anxious to press ahead with firm and decisive action to avoid any more serious and unwelcome criticism from that quarter. The proposed aggravated offence will be an essential part of my response.

I am copying this letter to the Prime Minister and to the Lord President, but no further since the timing of future legislation is involved.

Yours ever,

Kenneth

The Rt Hon David Mellor, QC., MP.
Chief Secretary
Treasury Chambers
Parliament Street, S.W.1.

CCPH

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL LONDON SW1A 2AU

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

20 February 1992

Dear Kenneth,

OFFENDING ON BAIL

Thank you for copying to me your letter of 12 February to the Prime Minister about the revised terms of your announcement on offending on bail.

I am content for my interests with the terms of your statement. The different legislative approach you propose to announce may draw attention to the Scottish position and I agree that we need to minimise the risk of potentially difficult questioning. I understand that officials are in touch over how best to present the differences if the issue is raised.

I am copying this letter to the Prime Minister, James Mackay, Patrick Mayhew, Peter Fraser, Alan Rodger, members of HS Committee, Richard Ryder, John MacGregor and Sir Robin Butler.

Yours ever,

Ian

IAN LANG

JRE00612.022

I'd prefer to keep for Manifesto – but can live with next week!

PRIME MINISTER

OFFENDING ON BAIL

You recently saw papers concerning a package of measures on offending on bail, which the Home Secretary proposed to announce. You gave approval.

The Lord Chancellor and the Scottish Office pointed out that Scotland does have legislation which makes offending on bail an offence, an option which the Home Secretary had been advised by his officials not to introduce in England and Wales. The Home Secretary therefore took advice again, and wrote round recommending such a new offence in England and Wales. His minute is at Flag A.

The Attorney General (Flag B) pointed out several potential difficulties, such as the presentational difficulties of announcing an amendment to the Criminal Justice Act 1991 before it has even come into force.

The Lord Chancellor (Flag C) also mentioned possible judicial resistance. Both the Attorney General and the Lord Chancellor, however, would go along with the Home Secretary's suggestion, particularly if special caution was taken over the presentational problems.

Finally, the Chief Secretary to the Treasury (Flag D) expressed reservations about the resource implications of making offending on bail a specific offence.

However, the Home Secretary and the Chief Secretary spoke over the weekend, and the Chief Secretary now accepts the political case for an announcement.

There therefore do not seem to be any problems of principle with the announcement, and unless you disagree, the only remaining decision concerns the timing of the announcement. Mr. Baker

would particularly like to announce this next Tuesday, during the week in which law and order issues are being emphasised. Indeed, I understand Mr. Baker has been rather indiscreetly promoting his intention to make such a statement. However, an alternative might be to hold such an announcement back for the Manifesto.

Content for the Home Secretary to announce next Tuesday or wait?

MA

19 February 1992

a:\home\offending.jd

cc PO

file for now

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1884

The Rt. Hon. Kenneth Baker MP.,
Secretary of State for the Home Department,
Home Office,
50 Queen Anne's Gate,
London, SW1

18 February 1992

Dear Kenneth:

MAXIMUM PENALTY FOR ASSAULTING A POLICE OFFICER

Thank you for copying to me your letter of the 10 February 1992 to the Lord Chancellor seeking the views of colleagues on a proposal to increase the maximum penalty for assaulting a police constable from 6 months to 2 years. I have also seen a copy of the survey report on sentencing for such offences.

Although I share your wish that the Government should be seen to be supportive of the police service in what is for them a very difficult climate, I am strongly opposed to the proposal.

Three things stand out from the survey. First there is already a higher use of custody in cases involving assaults on police officers than there is across the whole range of assault cases. This accords with the guidelines provided by the Court of Appeal (eg R. v. Rhodes 1990 Criminal Review 274). Secondly, the average sentence is well within the existing maximum. Even if more substantial custodial sentences are considered desirable, there is no need to increase the maximum penalty. Thirdly, in those categories of case where the custodial sentences imposed seem to be lower than for assaults on all victims, it seems to reflect the higher use of custody for assaults on the police where otherwise a non-custodial sentence would have been imposed.

These findings suggest that the only, modest, advantage of an increased penalty would be as a signal in favour of even greater use of custody. Yet it would result in really substantial disadvantages, because assault on police would become an either way offence. A high proportion of defendants - the Crown Prosecu-

tion Service believes it likely to be much greater than your estimate of 20% - would elect trial by jury. They would do so because the main element of the defence in these cases often involves criticism of the police and allegations of police misconduct or violence. The public perception of the police at present affords such defences a much greater chance of success before a jury than before magistrates. I confidently predict that making the offence indictable will result in more acquittals.

Further consequences of making the offence indictable will be increased delay and expenditure. The extra delay will be doubly disadvantageous: first, it will reduce the ability of magistrates to respond to the prevalence of assaults on police locally by imposing firm sentences much sooner after the offence than can be achieved by the Crown Court; secondly, the additional case load in the Crown Court will inevitably cause some delay across the whole range of its casework.

The view of the Crown Prosecution Service is that the effectiveness of the offence of assaulting a constable as a weapon in the armoury of the prosecution will be greatly reduced if it ceases to be summary only. It is at present invoked in many relatively minor cases where the mischief is not the degree of force or injury but the fact that the conduct is directed at a police officer. It would, for example, be difficult to justify taking for trial at the Crown Court the excited individual who has become carried away and prodded aggressively at the chest of a police officer to make a point. What will a jury make of it nine months later, and why should we make it possible for such a jury to be troubled with the matter?

You have very fairly acknowledged that there will be significant resource implications. The preliminary view of the Crown Prosecution Service is that they are likely to exceed your own estimates. I have asked the CPS to provide as a matter of urgency their own assessment of the likely costs. There is certainly no scope for the increased expenditure to be absorbed within the CPS's existing budget, and I would have to insist that, despite your own difficulties, any increased expenditure for the CPS is met by a PES transfer.

ATTORNEY GENERAL

Finally, I think the announcement you propose would be likely to create the perception of confusion. We would sacrifice the credibility of the 1991 sentencing reforms for no real advantage; compromise our commitment to fight delay in the courts, and run the risk of increasing police discontent if the number of acquittals should rise. If the Chief Secretary is able to find additional resources, I would prefer to see the Road Transport Act implemented before embarking on this proposal.

Copies of this letter go to the Prime Minister, James Mackay, Peter Fraser, David Mellor, Malcolm Rifkind, John McGregor and Sir Robin Butler.

Yours ever,
Paddy.

NB Road Traffic Act Includes proposals such as
- stiffer penalties for reckless driving, & deaths through drunk driving
- retesting ~~ban~~ after banned

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

17 February 1992

Dear David,

OFFENDING ON BAIL

Thank you for your letter of 13 February, expressing reservations about the resource implications of my proposal for legislative provision to make offending on bail an aggravating factor for the purposes of sentencing. I am grateful also to James Mackay and Patrick Mayhew for copying to me their respective minutes of 14 February to the Prime Minister on the same subject.

I appreciate that you are concerned about the potential costs of the new provision; and that you and James are concerned also about the extent to which this kind of provision might, unintentionally, undermine the effects of the sentencing framework of the Criminal Justice Act 1991.

But, as we discussed, there are other considerations which you agreed override these concerns. In particular, I know you appreciate and share my assessment of the extent of police and public concern about the problem of offending on bail, which led me to conclude that, because of the legal provision which there is in Scotland, our position would be untenable if we were to announce the package without commitment to legislative provision here.

I am grateful to Patrick for recognising this, notwithstanding his concerns about the substance of the proposal. I shall ensure that my officials take the work forward in very close consultation with his, to minimise the risks to which he refers.

Subject to the Prime Minister's views, therefore, we agreed that I should go ahead with an announcement, including a commitment to introduce legislation, at the earliest convenient opportunity. I should be very grateful if James would, as he proposes, alert the senior judiciary in advance. My present intention is that the announcement be made as an oral statement on 25 February.

I am copying this to the Prime Minister, James Mackay, Patrick Mayhew, Peter Fraser, Alan Rodger, members of HS Committee, John MacGregor, Richard Ryder and Sir Robin Butler.

Yours ever,

Kenneth

The Rt Hon David Mellor, QC., MP.
Chief Secretary
Treasury Chambers
PARLIAMENT STREET, S.W.1.

B

ATTORNEY GENERAL

PRIME MINISTER

I have seen the Home Secretary's Minute of the 12th February seeking the agreement of colleagues to the announcement of a package of measures to reduce offending on bail. As part of that package he suggests the inclusion of a statutory provision that offending on bail should be an aggravating factor for the purposes of sentencing. I have also seen the Lord Chancellor's comments.

My only concern arises from the proposal for the new statutory provision. It avoids the legal difficulties which would have arisen with an offence of offending whilst on bail. It does, however, have its own disadvantages.

The proposed provision will have limited effect until such time as our criminal records system can offer a wholly reliable means of identifying persons who are already on bail. In the short term there are likely to be variations in the amount of information available to the courts, with results which some may perceive as unfair.

The proposal also has the potential to create anomalies. A person of good character who is charged with a criminal offence and then commits a further offence whilst on bail for the first offence would, in the absence of special provisions to the

contrary, appear liable to have that fact treated as an aggravating factor notwithstanding the fact that he may later be acquitted in respect of the original offence. Yet a person who has previous convictions but is not on bail at the time of a further offence will, in all probability, find his previous misconduct disregarded. Section 29(2) of the Criminal Justice Act 1991 indicates that the mere fact that an offender has a previous record, or has re-offended after receiving previous community sentences, does not make the current offence more serious and should not by itself lead to a heavier penalty.

I am afraid all this can only give the impression of a rather hasty job, and one which is likely to need early running repairs. This impression will not be diminished when we announce our intention to amend the Criminal Justice Act 1991 before it has even come into force. Nevertheless, if needs in Kenneth's judgement must, then I am in agreement.

I am copying to Kenneth Baker, James Mackay, Peter Fraser, Alan Roger, Members of HS Committee, Richard Ryder, John MacGregor and Sir Robin Butler.

14th February 1992

HOUSE OF LORDS,
SW1A 0PW

14TH February 1992

Prime Minister

Offending on Bail

1. I have seen the Home Secretary's minute of 12th February to you proposing an amendment to the Criminal Justice Act 1991 introducing a new statutory provision that offending on bail should be an aggravating factor for the purposes of sentencing.

2. I understand the reasons behind the Home Secretary's wish to make an early announcement but I think it right to mention two slight concerns about what he presently proposes. Firstly, as he himself concedes, I think there may be some judicial resistance to what may be seen as an unusual statutory fetter on their sentencing discretion and, secondly, I have some residual doubts about whether it is wise to seek to amend the sentencing framework of the Criminal Justice Act 1991 so soon after its introduction and, potentially, before it actually comes into operation.

3. Nevertheless I recognise of course that the latter consideration is a matter for the Home Secretary's judgment and in relation to the potential judicial reaction I would propose, subject to the views of others, to alert the Lord Chief Justice to what is proposed before a public announcement is made, with the hope thereby of diminishing judicial concern.

4. I am copying to Kenneth Baker, Patrick Mayhew, Peter Fraser, Alan Roger, Members of HS Committee, Richard Ryder, John MacGregor and Sir Robin Butler.

MJC

Hom Aff: Capital Punishment

Pt 4

SCPU

D

Treasury Chambers Parliament Street
071-270 3000
Fax 071-270 5456

The Rt Hon Kenneth Baker MP
Secretary of State for Home Affairs
Home Office
Queen Anne's Gate
London
SW1H 9AT

13 February 1992

Dear Ken.

OFFENDING ON BAIL

Thank you for copying to me your minutes of 6 and 12 February to the Prime Minister. Although my immediate concern is with the financial implications, which could be significant, I have wider reasons for seeing some difficulty with this latest proposal.

2. As you know, I was content with your earlier proposals as set out in your Private Secretary's letter of 21 January and its enclosures. The proposed package of measures seemed to represent a measured response to concerns about offending on bail, while not over-reacting - the latter particularly important in the light of the findings in the research paper enclosed with your letter. It was my understanding from your earlier proposals that deterrent action would have little effect, and that senior police officers were content.

3. What you now propose reflects what is already permitted but left to judicial discretion. Past experience leaves room for doubt about the effectiveness of new legislation in such a case. Conversely, if legislation will have a real effect, we must be very clear about the potential resource implications before making any public commitment.

4. I do not need to stress to you the very real current pressures on the prison system, nor the very substantial costs of trying to accommodate them. The whole thrust of our policy in recent years has been to find ways of containing these pressures and to develop alternatives to custody. It seems to me that your

latest proposal is just one of a number of recent initiatives from your Department that are taking us in the opposite direction by inventing new offences or encouraging stiffer sentencing.

5. I accept that the costs of the prison system cannot be the sole determinant of policy on crime. I nonetheless think it essential that the inevitable costs of a tougher approach are properly assessed and are given due weight before we shift policy in a new direction.

6. In short, I see a real possibility here of substantially increased costs not matched by any apparent benefits. It would not be sensible to add to the already substantial pressures on our prisons and legal aid system without a proper and considered assessment of the risks. For these reasons, I have significant reservations about this addition to your original proposals which seem quite adequate by themselves.

7. I am copying this to the Prime Minister, James Mackay, Patrick Mayhew, Peter Fraser, Alan Rodger, members of HS, Richard Ryder, John MacGregor and Sir Robin Butler.

DAVID MELLOR

PRIME MINISTER

OFFENDING ON BAIL

Further to my minute of ~~6~~ has February, I am writing to seek the agreement of colleagues to including in my forthcoming announcement about measures to reduce offending on bail a commitment to introduce a new statutory provision that offending on bail should be an aggravating factor for the purposes of sentencing.

Colleagues have already indicated their support for the proposed package of measures, circulated under cover of my private secretary's letter of 21 January, which is intended to improve bail decisions; to enhance police powers in relation to police bail; to expand supervision of bailees in the community; and to introduce improved monitoring of offending on bail. The new proposal is intended to be in addition to those measures, to strengthen the package. I hope that colleagues will be able to give agreement to it in principle quickly.

My officials will, of course, consult other Departments as they work up the details of the new provision, which would probably be implemented by means of an amendment to the Criminal Justice Act 1991. I would envisage introducing legislation in the new Parliament. Statutory provision as I propose would meet concerns which have been expressed by the police, and by the senior judiciary. Although some judges may not welcome this further prescription of their approach to sentencing, I do not think that should deter us from taking action that would signal to the general public the Government's determination to ensure that those who continue to offend when they are on bail, showing blatant disregard for the courts and the forces of law and order, will be punished more severely. In effect, it would reflect what we understand is already permitted in law but left to judicial discretion. The resource implications, which would principally hit the prison population, might not, therefore, be very great, although they are not easy to predict.

Recent discussions with senior police officers suggest that more severe sentences where offences have been committed on bail is viewed by them as of more importance than the introduction of a new offence. Moreover, on the basis of advice from the Law Officers in Scotland and England and Wales, I am forced to the conclusion that, while decisions of the Scottish Courts mean that conviction of the principal offence and of the Bail Act offence are not held in Scotland to breach any rule against double jeopardy, it does not follow that courts in England and Wales would take the same view. The

Scottish position relies on the courts' interpretation of the Bail Etc (Scotland) Act provisions which require the courts to impose conditions when granting bail. The Scottish courts have held that such conditions can include that the accused shall not commit an offence while on bail; and that, if an accused does commit an offence while on bail, he can be prosecuted for the offence and for breach of the bail condition that he shall not offend. My legal advice is that to achieve a position in England and Wales where there was no doubt that both offences could be prosecuted would require legislation specifically to that effect, which would raise the issue of double jeopardy even more clearly. As the Attorney General has indicated, the legislation could expressly over-ride the double jeopardy law. But not only would that attract opposition in Parliament as being inconsistent with a fundamental principle of our law. It would also fail to overcome the problem that, on the Attorney General's advice, we would probably be breaching our obligations under the UN Covenant on Civil and Political Rights.

There may be some awkwardness in undertaking to introduce legislation in England and Wales which does not follow the model which has been the practice in Scotland for the last ten years. It is important that we should, as far as possible, minimise the risk of potentially difficult questioning about the position both in England and Wales and in Scotland. If such questions were raised, I should propose to rely on the general distinctions between Scottish and English and Welsh law and practice, stating that it would not be a straightforward matter to translate the Scottish practice into law in England and Wales; and to reiterate the merits of the new proposal.

I am anxious to make an early announcement. There are risks associated with any further delay, of adverse comment from the police, who now have the results of the Home Office study in this area; and of any controversial case of offending on bail hitting the headlines giving rise to criticism that we are being slow to act. There is considerable Parliamentary interest in this topic, particularly from our own side. Subject, therefore, to colleagues' agreement to the proposed addition to the package, I propose to make the announcement next week. There are already two Parliamentary Questions tabled for next week, one for written answer on Wednesday, 19 February, from Peter Thurnham and one, reachable, for oral answer on Thursday, 20 February from Richard Page. Either could be the vehicle for the announcement: on the grounds that it would be better to have the proposals on the record as soon as possible, and that the balanced nature of package is better appreciated over time, I would favour the written answer on Wednesday, and I attach a draft written answer for colleagues' approval.

/cont....

If I have not heard to the contrary by Friday, 14 February, I shall take it that colleagues are content for me both to announce that it has been decided in principle that there should be statutory provision for offending on bail to be an aggravating factor for sentencing purposes; and to put in hand the detailed work on the legislation. We can settle the details of the date and medium of the announcement early next week.

I am copying this to James Mackay, Patrick Mayhew, Peter Fraser, Alan Rodger, members of the HS Committee, Richard Ryder, John MacGregor and Sir Robin Butler.

12 February 1992

(Attachment 5
Home Sec to PM 12.2.92
(in Parliament 19/2))

OFFENDING ON BAIL

DRAFT [ARRANGED] QUESTION AND ANSWER

[QUESTION: To ask the Secretary of State for the Home Department, what conclusions he has reached following his Department's research into offending on bail; and if he will make a statement.]

[or: one of those which has been tabled already]

DRAFT REPLY BY THE HOME SECRETARY

Research and Planning Unit Paper 65 "Offending while on bail - a survey of recent studies" was published on 6 February. A copy is in the Library of the House.

The paper reviews recent studies of offending on bail by Northumbria Police, Avon and Somerset Constabulary, Greater Manchester Police, the Metropolitan Police Directorate of Management Services and the Home Office Research and Planning Unit. The studies are compared with the results of research relating to 1978 which was carried out by the Home Office.

The work done confirms that the level of offending on bail is cause for concern. The proportion of defendants on bail who offend is - at about 10 per cent - much the same as it was in 1978, although the number of offences committed on bail has gone up - by, it is estimated, some 22,000 - 26,500 between 1985 and 1990. Offending on bail is most common among defendants aged 17-20, and among those charged with property crime, especially car crime and burglary.

JOB743.JM

I am grateful to the police forces who have carried out research in this important area, and drawn attention to some deeply worrying results.

The Government is determined that the courts and the police should have the powers they need, and that those who offend on bail should not believe they can do so with impunity. We
*1 intend, therefore, to bring in legislation to make it statutory that offending on bail should be an aggravating factor for the purposes of sentencing.

In addition, the police have told us that difficulties are
*2 caused for them by the existing arrangements in relation to **police** bail. We have decided, together with the police, that they need a **power of arrest** for breach of police bail. We will bring forward legislation in due course. I have agreed also to set up a joint Home Office/ACPO Working Party to review the clarity of the statutory criteria in the Police and Criminal Evidence Act 1984 for police bail.

But legislation alone is not the answer. We intend to take vigorous and wide-ranging practical action to tackle the problem of the hard core minority of offenders who persistently re-offend on bail. The following measures, on which I am proposing to consult widely and urgently, are designed to target this group in the most effective way we can devise.

*3 We are asking all magistrates' courts to ensure that the Bail Notices issued to all defendants make it crystal clear that if they fail to answer bail, or fail to comply with the conditions imposed, or if they commit an offence, they risk being remanded in custody. The Bail Act 1976 already enables bail to be refused to a defendant charged with an imprisonable offence if there are substantial grounds for believing that a defendant will offend on bail. The courts must of course take a very critical look at whether anyone accused of offending on

bail should be allowed to continue to enjoy their liberty if they use it to prey on their fellow citizens.

The courts can and do impose stringent conditions on bail including requiring defendants to keep off the streets at certain times, to keep away from certain places, and to keep away from certain people. I hope they will not hesitate to make full use of these provisions in appropriate cases.

To reduce offending by people on bail, we have above all to increase the chances of courts identifying those who are likely to offend. This does not mean restricting the grant of bail in the generality of cases, for the vast majority of defendants granted bail do not offend, and to lock them up would serve no purpose. Steps must be taken to identify more accurately the bad risks, and to tighten up the arrangements for supervising those whom the courts consider can be released on bail subject to certain safeguards.

Improving bail decision taking

*4 A number of new bail projects will be set up this year in selected local areas - including the inner cities - in which the courts, police, Crown Prosecution Service and probation service will work together to ensure that those who are likely to offend on bail, despite any conditions attached, are not given bail. The projects will test how arrangements for the collection and presentation to the courts of relevant information can be improved.

This will include information about whether the defendant is already on bail for another offence; or if he has previously offended on bail. The Government will be providing over the next few years a new computerised criminal record system which, when operational, will give better access to information about a defendant's record, including whether or not previous offences were committed on bail. Courts will be

told the results of their bail decisions. We are reviewing the effectiveness of the existing bail information schemes in 103 courts and 13 prisons.

*5 **Training**

The assistance of the Judicial Studies Board will be sought in reviewing the adequacy of training of magistrates in the criteria in the Bail Act 1976.

*6 **Supervision in the community**

There are some defendants who will behave on bail, if, and only if, they are properly supervised. The Government is providing £8m over the next three years on bail accommodation and support, including the development of innovative projects working with defendants in the community to address their offending behaviour. These schemes will be carefully evaluated.

Well-run bail hostels aim to reduce the risk of offending on bail or non-compliance with bail conditions. There are 29 approved bail hostels with 614 places and a further 82 approved probation/bail hostels providing 1,803 places. An additional 800 places will be provided at approved hostels by April 1995. This expansion will be accompanied by efforts to bring all hostels to the highest standards of supervision. The Home Office will soon issue National Standards for the Management of Probation and Bail Hostels.

*7 **Monitoring**

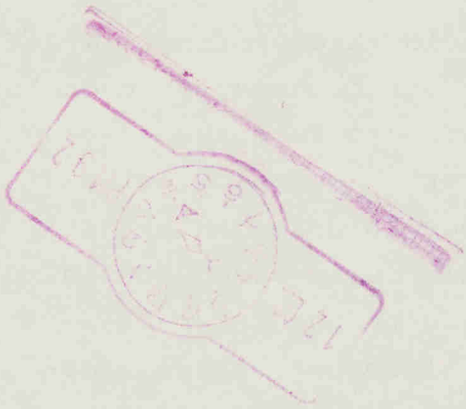
The studies by the police of offending on bail show a need for improved information. In consultation with the police, we are starting to collect information regularly, as part of the normal crime statistics, on the proportion of detected crime committed by defendants on bail. We shall ensure that this information is monitored closely and made generally available.

Conclusion

These measures, taken as a whole, should make a direct impact on the problem of offending on bail. But too many defendants spend far too long on bail before having to face the consequences of their offending in court. Reducing delays in getting cases to trial would bring home to defendants that they cannot offend with impunity. That is an added reason to welcome the progress that has been made by the inter-disciplinary Working Group on Pre-Trial Issues, whose wide-ranging recommendations are currently being implemented; and to continue to emphasis the importance of measures to reduce delay. All magistrates' courts now have a target of reducing delays by 5%.

I am asking my officials as a matter of urgency to consult fully with the police, Crown Prosecution Service, the magistrates' courts' service and probation service in working up the detail of the specific measures I have announced here to tackle offending on bail.

HONG AFFAIRS: Sentencing Policy PS



FILE
KW

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

11 February 1992

Dear Heather,

OFFENDING ON BAIL

The Prime Minister has seen the correspondence on the above.

The Prime Minister is content for the package of measures proposed in Paul Pugh's letter to William Chapman of 21 January to be announced as soon as possible. He has also noted that it may be possible after all to create a new offence of offending on bail. He believes this could be a useful addition to the package, and would welcome colleagues' views.

I am copying this letter to the Private Secretaries to the Lord Chancellor, the Attorney-General, members of HS, the Chief Whip, the Lord President and Sir Robin Butler.

Yours

Mark

MARK ADAMS

Ms Heather Wilkinson
Home Office

cc WO DTp NIO CST
DM DN CWO NIO
DT LPO G/Arms
CDL DSS CO
DH DEJ ACO
30 DSE LPSO

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

File for now

10 February 1992

Dear Chancellor,

MAXIMUM PENALTY FOR ASSAULTING A POLICE OFFICER

There is growing concern about the number of attacks on police officers, coupled with a belief that those who assault the police are not being adequately punished. I want to demonstrate our support for the police, whose difficult job makes them particularly vulnerable to violence. The purpose of this letter is to seek yours' and colleagues' views on announcing our intention to increase the maximum penalty for assaulting a police constable from six months to two years.

There were about 17,500 attacks on police officers in England and Wales in 1990. About 10% were serious. The number of police officers is 127,000. They are clearly under considerable risk of assault, although we do not know to what extent the police perception of an increasing number of attacks is right.

We know that the Court of Appeal has repeatedly made it clear that a deliberate attack on a police officer which inflicts harm should be dealt with severely, immediate custody being justified even if the injury is not serious. To find out what the courts do in practice , we conducted a six month survey of sentencing during the period to the end of December 1991. About 2,500 offenders were sentenced for an assault on a police officer during that period. That means that compared with the 17,500 assaults which occur each year, 5,000 offenders are actually sentenced, some for more than one assault. We don't know how the other cases divide up: offender not traced; evidence not considered sufficient to prosecute; deliberate police decision to caution or not to proceed. Only that the majority, about 70%, of the offenders covered by the survey were sentenced for the summary offence of assaulting a constable. The use of custody for assaults on police in the survey was consistently higher than for assaults on all victims. It was nearly twice as high for grievous bodily harm, three times as high for actual bodily harm and five times for common assault. Average sentence lengths were slightly lower for assaults on the police than on all victims, probably reflecting the much greater use of custody. About 230, or 13%, of the 1,800 who were sentenced during the survey for assault on a constable received custody, and the average sentence length was $2\frac{1}{2}$ months.

The offence of assaulting a constable does not require personal harm to have been caused. Any serious assault on a police officer, e.g. causing bruising or bleeding, would be prosecutable under the more serious offence of assault causing actual bodily

The Rt Hon The Lord Mackay of Clashfern
Lord Chancellor
House of Lords, S.W.1.

/cont....

harm which carries a maximum penalty of five years or of assault with intent to resist arrest which has a maximum penalty of two years. But aggressive behaviour, such as spitting, shoving or pushing, could escalate into more serious violence. I would like to underline the gravity with which we regard even the most minor assault on a police officer. We have put that message clearly in speeches. But the impact on the courts can only be indirect. To increase the maximum penalty for assaulting a police constable from six months' to two years' would send a clear and unambiguous signal to the courts that we expect an assault against a police officer to be treated more severely. I see attractions in making that announcement when I publish the results of the survey.

The inevitable effect would be to make the offence triable either way. This was in fact the position until the Criminal Law Act 1977 reclassified the offence. Prior to 1977 the defendant did not have the right to elect to be tried by jury. It would be very difficult to defend a return to the earlier penalty without giving defendants that right. A substantial number would doubtless opt for Crown Court trial in the hope that they would be more likely to be acquitted. This could increase prosecution costs, legal aid costs and Crown Court workload. The effect could be some increase in acquittals, but those convicted would be more likely to receive a custodial sentence and likely to receive a longer term than now.

Our estimate of the cost implications can only be speculative. Based on a committal rate of 20%, we estimate that about 1,000 defendants might be tried at the Crown Court. That compares with the Aggravated Vehicle-Taking Bill, where we made a PES transfer of £6.45 million to the Crown Prosecution Service and your Department, although I cannot believe that the costs would all be new. Assuming a similar pattern to those convicted of actual bodily harm against a police officer, the use of custody might rise to about 30% and the average sentence length to just under six months. About 1,000 offenders could be sentenced to custody annually, producing an average prison population of 230 against the current 45 for this offence. Assuming the extra prisoners could be kept in prison establishments, without increasing the number in police cells, the overall cost to the Prison Service would be around an extra £3½ million, although the actual additional costs might be less. I could not absorb these extra costs within my existing budget.

We know that the Law Commission will publish next month a consultation paper on non-fatal offences of violence. That paper will make recommendations about the whole range of assault offences. They will recommend useful clarification but not radical change. On assault on a constable they will express doubts as to whether logically there is a need for a separate offence at all, but conclude that abolishing it would be liable to be misunderstood. I am in no doubt that, whatever the Law Commission say, we should retain a separate offence and propose to say so when the time comes. Some will argue that announcing an increase in one penalty of a range which the Law Commission are producing proposals on so soon would look odd, and will look even odder when it emerges that that is the offence about which the Law Commission are most doubtful.

/cont...

Some will argue that increased penalties and emphasis on custody seems inconsistent with our policies emphasising community penalties for all but the worst offences. In my view it is consistent with the policy to signal clearly to the courts that attacking police officers should be treated more seriously.

There is some suggestion that we should extend the protection for constables to others who are particularly vulnerable because of their job. Ian Taylor has tabled a Ten Minute Rule Bill to provide increased penalties for assaults on members of the emergency services. There are a range of public servants whose jobs place them in a vulnerable position. It could be argued that a constable - which may cover non-police personnel with the powers of the constable, such as prison officers - is a special case because his duties necessarily involve putting himself at risk of assault. To that extent he may be distinguished from other vulnerable classes of public officials who have no duty imposed on them by the State to intervene to stop crime. However, it could be said that emergency service personnel, such as firemen and ambulance men, can and have been equally at risk of assault. But extending the special protection for a constable to other vulnerable groups raises problems of where to draw the line and may reinforce the legal arguments for abolishing the offence altogether. I should welcome colleagues' views.

I am copying this to the Prime Minister, Peter Fraser, Paddy Mayhew, David Mellor, Malcolm Rifkind, John McGregor and Sir Robin Butler.

CCPD

HOME SECRETARY

Bu Man with file

PRIME MINISTER

OFFENDING ON BAIL

I am most grateful to colleagues who commented in support of the package of proposals which was put forward in my Private Secretary's letter of 21 January.

In the light of comments from the Lord Chancellor and the Scottish Office about the position in Scotland, I do not think it is tenable to make an announcement which does not include legislative provision which signals to potential offenders that they can not get away with offending on bail. Such a change in the law would, I believe, significantly strengthen the package and would be widely welcomed, both by our supporters and the public at large. John Patten and I have met several groups of backbenchers in the last few weeks and they certainly expect us to come up with what they can see and can sell as an effective deterrent.

I have therefore instructed my officials to put forward policy proposals for such a provision for my week-end box. In doing so they will take account of the relevant Scottish legislation - which has, I understand, been referred to the Lord Advocate this week in the light of our recent exchanges - and of the resource implications. The principal options would appear to be making it an offence here also, as it is in Scotland, to fail to comply with the conditions of bail; or provision to make it clear in statute that the fact that an offence was committed on bail should be an aggravating factor for sentencing purposes. My intention would be to introduce legislation later this year.

The Home Office research paper assessing the results of the various police studies, to which I referred in my earlier letter, has now been published. There is everything to be said, therefore, for announcing our policy proposals without further delay. I will be seeking colleagues' views on the additional proposal, urgently, on Monday.

I am copying this to James Mackay, Patrick Mayhew, members of HS Committee, Richard Ryder, John MacGregor and Sir Robin Butler.

KB.

6 February 1992

File

MR ADAMS 7th February 1992

OFFENDING ON BAIL

Following the Lord Chancellor's comment that there is an offence of offending on bail in Scotland, Kenneth Baker has instructed Home Office officials to put forward policy options for this urgently. He is, as you can imagine, annoyed with his advisers.

I have no reason to argue against this new offence, though I note that the Lord Chancellor is fairly neutral about its value in England. Kenneth Baker would appreciate a letter from No 10 expressing enthusiasm. I suggested that you might want to write saying:

- that the Prime Minister is content for the 'bail package' set out in the Home Office's letter of 21st January to be announced as soon as possible;

- that he notes that it should after all be possible to create a new offence of offending on bail. Subject to colleagues' views, this could be a helpful addition to the package.

CAROLYN SINCLAIR

271.cs

A

PRIME MINISTER

5th February 1992

OFFENDING ON BAIL

Kenneth Baker proposes:

- to publish a Home Office research paper showing that the proportion of people offending while on bail has not increased significantly in the last decade;

- but at the same time to introduce a 'spiky' package to deal with the significant minority who do offend while on bail.

The 'spiky' package would consist of:

- up-to-date information for Courts on whether a defendant has previously offended while on bail;

- training of magistrates in the criteria of the Bail Act 1976;

- more money for bail support schemes, including accommodation (£8m over next 3 years);

- examination of criteria for police bail, and possible power of arrest for breach of police bail;

- better statistics on crime committed by people on bail;

- clearer warning to defendants on the consequences of offending while on bail.

News of the package has been trailed in the press. Kenneth

Baker would like to announce it in the House very soon. Other colleagues are generally content.

Conclusion

Do you want the package announced now? You saw some attractions in holding it back for a later occasion. If it is held back, the research paper should not be published at this juncture.

- Are you content for Kenneth Baker to publish the research paper and make his announcement in the next few days?

or

- would you like the research paper to be shelved and the package kept back for another document?

CAROLYN SINCLAIR

265.cs

File

PRIME MINISTER

Proceed

OFFENDING ON BAIL

Mr Baker proposes to publish a research paper on offending on bail, and to announce a package of measures to deal with those who do offend on bail.

Carolyn Sinclair's note at **FLAG A** summarises the position, to which there is nothing I can add. As you will see, colleagues are content with the proposals, but you will need to decide whether to publish them now. A difficulty with not doing so is the fact that news of the package has been trailed in the press. At **FLAG B** is the details of the package, and a draft of the research paper.

At **FLAG C** are the responses from colleagues.

Do you wish publication to proceed, or to hold back?

MARK ADAMS
5 February 1992
c\home\bail (kw)

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FROM THE PRIVATE SECRETARY

18/4/15

Copy

HOUSE OF LORDS.
SW1A 0PW

3 February 1992

Paul Pugh
Private Secretary to the
Home Secretary
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

Dear Paul,

OFFENDING ON BAIL

Thank you for the copy of your letter of 21 January 1992 to William Chapman. I have also seen the letter you have had from Stephen Wooler of LSLO.

The Lord Chancellor has seen your letter and was interested in the major findings of the enclosed research paper. He is inclined to agree with the Home Secretary and the Attorney General that the circumstances in England and Wales make the idea of a new offence unattractive, though he recalls that there is such an offence in Scots law under section 3 of the Bail Etc (Scotland) Act 1980, an annotated copy of which I enclose with this letter, should you be interested to see the provision and some of the case law which stems from it.

The approach you outline in your letter seems the most likely to be productive in all the circumstances.

Copies of this letter and the enclosure go to the recipients of yours.

Yours sincerely
Jenny

Miss J Rowe

cst.ps/let/11nh30.1

UNCLASSIFIED

Treasury Chambers Parliament Street
071-270 3000
Fax 071-270 5456

Paul Pugh Esq
Private Secretary
Home Office
Queen Anne's Gate
London
SW1H 9AT

31 January 1992

Dear Paul,

OFFENDING ON BAIL

The Chief Secretary has seen your letter of 21 January to William Chapman and Stephen Wooler's letter to you of 24 January.

2. The Chief Secretary is content for the Home Secretary to announce the package of measures and publish the research paper as proposed. He considers that this should help to reduce pressures for a much tighter regime on bail. That would not appear to be justified on the basis of the evidence. It would also have very unwelcome implications for the size of the prison population. The Chief Secretary notes that the package of measures, by focusing on selective improvements where necessary, should provide a credible and cost effective response to the concerns expressed.

3. The Chief Secretary's agreement to these proposals is based on the understanding that they can be put into effect within agreed resources.

4. I am copying this letter to the Private Secretaries to the Prime Minister, the Lord Chancellor, the Attorney General, members of HS, the Chief Whip, the Lord President and Sir Robin Butler.

Yours ever,

N I HOLGATE
Private Secretary

1721

Paul Pugh Esq.,
Private Secretary to the Home Secretary,
Home Office,
Queen Anne's Gate,
London, SW1H 9AT

Our ref: 400/91/192

24 January 1992

OFFENDING ON BAIL

Thank you for copying to the Legal Secretariat your letter of the 21st January 1992 to William Chapman outlining the Home Secretary's proposal to publish a research paper about offending on bail and announce the steps to be taken by the Government.

The Attorney General has seen your letter. He shares the view of the Home Secretary that the Government should not seek a new offence of offending on bail but concentrate on measures aimed at improving bail decisions and improving supervision of those on bail as well as seeking to speed up criminal proceedings.

Copies of this letter go to the Private Secretaries to the Lord Chancellor, Members of HS, the Chief Whip, the Lord President and Sir Robin Butler.

S. J. WOOLER

From: THE PRIVATE SECRETARY

B

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

21 January 1992

Dear William

OFFENDING ON BAIL

In the light of recent, widely publicised concern among the police and others about the level of offending by people on bail, the Home Secretary proposes to publish a research paper which summarises and critically reviews recent studies of the problem, and to announce at the same time a number of steps which the Government will be taking to reduce it.

... I enclose a copy of the research paper, "Offending while on bail - a survey of recent studies". The main findings are: the proportion of those granted bail who are known to have committed an offence while on bail is generally about 10%, but up to 17% according to one study; the proportion does not appear to have changed between 1978 and 1988; the highest rates of offending while on bail were found among persons charged with theft or from a vehicle and burglary; and offending on bail was highest in the 17-20 year old group.

Press reporting, based for the most part on the police studies in Avon and Somerset and Northumbria, has implied a significant deterioration in the position of offending on bail, but this is not borne out by the Home Office analysis. There is evidence of a significant problem, but most defendants on bail do not commit offences while on bail, which suggests that there is no need for any change to the criteria in the Bail Act 1976. Any change in the direction of a blanket reduction in the granting of bail would, of course, have significant and unwelcome implications for the prison population; which in present circumstances would be almost bound to feed through to numbers in police cells, with all that that means for resources and the diversion of police officers from their primary duties. Furthermore, we have no reason to believe it would make a significant impact on the level of offending on bail.

The Home Secretary has considered carefully whether there should be a new offence of offending on bail. However, such an offence would have little deterrent effect on the hard core of persistent property offenders who are responsible for most of the offences committed on bail. It is extremely unlikely that a separate penalty for offending on bail would deter people who are not deterred by the usually larger penalties impose for the offence itself. Furthermore, legal advice is that such an offence would, if it made

William Chapman Esq
Private Secretary
10 Downing Street
London SW1

/2

it possible to convict a person both for the offence committed on bail and for a separate offence of offending on bail, be in breach of the fundamental principle of the common law that a person cannot be put in double jeopardy, and of Article 14(7) of the International Covenant on Civil and Political Rights, which gives effect to that principle. If the offence of offending on bail were, instead, available as an alternative to the charge of the offence itself, the same difficulties would not arise, but it could be regarded as an infringement of the basic principle that it is not permissible in criminal proceedings to adduce evidence which would be prejudicial to a defendant's case by, for example, impugning his character. Either way, there would seem to be formidable difficulties involved in creating an offence of offending on bail.

The Home Secretary believes that, in order to deal more effectively with the significant minority - for the most part, young male property offenders - who continue to commit offences regardless of the consequences, it would be more effective to focus on improving bail decisions; improving supervision of bailees; reduced delays in criminal proceedings; and better monitoring. The work done suggests there is scope also for improvements to the arrangements for police bail. A number of measures to this end are already in hand, which with some modest strengthening and new action in certain areas, constitutes in the Home Secretary's view a credible Government response. Preliminary discussions with senior police officers elicited a favourable response to the emphasis on improving bail decisions and procedures, rather than legislation to create a new offence.

The proposed package would consist of:

i <u>Providing the courts with better information relevant to bail decisions</u>

- The new computerised criminal record system, already announced, will, within a few years, enable criminal justice agencies to have up-to-date information about a defendant's previous record, including whether or not he has previously offended while on bail.

- The Home Office intends also to introduce pilot schemes in a few local areas in which the courts, police Crown Prosecution Service and probation service will co-operate to improve the collection and presentation of relevant information. The CPS and LCD have already been approached at official level about this proposal.

ii <u>Training for magistrates</u>

- The Home Office will, through the LCD, ask the Judicial Studies Board to assist in reviewing the adequacy of training of magistrates in the criteria in the Bail Act 1976.

iii <u>Supervision of bailees</u>

- £900k in new money for 1992/93 was secured in PES 91 to introduce bail support schemes for juveniles and young adults. These schemes

will be extended to include among their objectives reducing the risk that bailees offend, as well as ensuring they do not infringe bail conditions. The same sub-head will also provide supported accommodation. Overall, £8 million is now to be made available over the next three years.

iv **Police bail: new police power**

- The police have asked for clarification of the statutory criteria for refusing police bail, and for a power of arrest for breach of police bail. There is to be a joint ACPO/Home Office Working Group to address the criteria: It is considered that there would be some tactical advantage in announcing at this stage that the Government is also prepared in principle to bring forward legislation on arrest, notwithstanding that this may increase the pressure from the police to do so soon, and there is no immediately suitable legislative opportunity.

v **Monitoring**

- The Home Office Statistical Department is exploring with the police how to collect information about the proportion of detected crime committed by people on bail as part of the normal crime statistics. This would enable national trends to be monitored. The Home Office would make the information available to practitioners.

vi **Warning to defendant**

- The Home Office will ask all magistrates courts to ensure that the Bail Notice issued to defendants makes it clear that they risk being remanded in custody if they fail to comply with any conditions of bail or offend while on bail.

The Home Secretary would be grateful for colleagues' early agreement to the publication of the research paper and an announcement as proposed, which is the subject of official discussion with LCD and the Crown Prosecution Service. I am copying this to the private secretaries to the Lord Chancellor, the Attorney-General, members of HS, the Chief Whip, the Lord President and Sir Robin Butler.

coming back

Yours

Paul

PAUL PUGH

offending while on bail: a survey of recent studies

Patricia M Morgan

RESEARCH AND PLANNING UNIT
PAPER 65

Home Office

Summary

Studies on the topic of 'offending while on bail' have been carried out by the Avon and Somerset Constabulary, Greater Manchester Police, Northumbria Police, the Metropolitan Police Directorate of Management Services, and the Home Office Research and Planning Unit. These studies have been brought together to get a picture of the extent of offending on bail, how it varies across England and Wales, and any changes there have been since an earlier Home Office research study looked at the situation in 1978.

It is clear that the rates of offending while on bail found in the studies depend on the methodology adopted. Differences arise from the methods of sampling defendants, from the types of offences included, from the different definitions of 'offending' and of 'conviction' that were used, from the types of bail that were included (police or court bail), and from the way in which offending while on bail was measured. Because of this, only limited comparisons can be made and many qualifications have to be made to these.

The answers to two key questions were sought, namely:- what proportion of defendants granted bail commit further offences while they are on bail; and what proportion of recorded crime is committed by persons on bail?

In answer to the first question, the studies show that the proportions of persons granted bail by the courts who were found guilty of offences committed while they were on bail were 10% in three areas outside London in 1986 and 1988, 12% in London in 1988, and 17% in Northumbria in 1989 (Table 1). When, however, account is taken of the fact that the Northumbria figure includes, in addition to those found guilty, those whose offences were taken into consideration by the courts and those dealt with by formal caution, it is clear that the three studies show results that are broadly similar to each other and to the proportions found in 1978, namely, 12% in London and 9% nationally. The highest rates of conviction for offences committed while on bail in the recent studies were found for persons charged with theft of or from a vehicle (23% in London) and with burglary (20% and 16% in and outside London); the lowest rates were found for persons charged with violence offences (6% to 8%).

Between 1985 and 1991, there has been a considerable increase in the number of persons given bail from around 350,000 to around 480,000. This means that,

although the proportion of defendants convicted of offences committed while on bail has remained at about 10 to 12 per cent, the number of persons who were so convicted has probably increased by between 13,000 and 15,500.

The question regarding the proportion of crime that is committed by defendants who are on bail is more difficult to answer because two thirds of recorded crime remains undetected. The answers can only, therefore, be based on the third of recorded crime that is detected.

The Northumbria study looked at crime that was cleared up in the North Tyneside division in 1989 to find the proportion committed by persons who were on bail. It was clear that this proportion varied with the way in which crimes were detected (Table 4). The proportions that were found to be committed by persons on bail were:- 31% for crimes cleared up charge or summons (26% of detections); 39% for crimes cleared up by being taken into consideration by the courts (16% of detections), and 57% for crimes cleared up by interviews with prisoners serving custodial sentences (41% of detections). The lowest figure was 7% for crimes that were cleared up by cautions (11% of detections).

No earlier studies have looked at the proportion of detected crime that was committed by persons who were on bail. It is not possible, therefore, to say whether there have been any increases in this measure in recent years.

Greater Manchester and Avon and Somerset police used a third measure, namely, the proportion of persons charged who were on bail when they were charged, and Northumbria derived a similar measure which was based on persons arrested rather than charged. Rates between 23 per cent and 29 per cent were found (Table 3). The advantage of these measures is that they are less costly to obtain than those based on convictions because they do not require the defendant's criminal history to be followed up using microfiches at the National Identification Bureau. The disadvantage is that they are not easy to relate to the two questions asked. The rates are higher than the proportions of persons convicted of offences committed while on bail given above, because a person was counted each time he was charged. But they are not comparable with the proportion of all crime cleared up that was committed by persons on bail because they are concerned specifically with crime cleared up by charge. It seems that these measures are most useful in monitoring changes over time in individual areas.

Contents

1 Introduction

In recent years there has been an increasing interest in the topic of 'offending while on bail'. Several police forces have suggested that this might be an explanation of the increasing rates of recorded crime, and have set in hand research projects to investigate the topic further. The research done by Northumbria Police and the Avon and Somerset Constabulary has attracted extensive media interest. At the same time, the Metropolitan Police had asked its Directorate of Management Services to look at this question in London, and the Home Office Research and Planning Unit had undertaken to provide a limited update of the earlier Home Office work on the topic which examined the position in 1978.

This paper was commissioned to bring together the results of these various studies in an attempt to show what the overall picture is in different areas of England and Wales and, if possible, to assess whether there have been changes in recent years. The studies surveyed in this paper are those carried out by the police forces of Avon and Somerset (Brookes, 1991), Greater Manchester (Greater Manchester Police, 1987 and 1988), and Northumbria (Northumbria Police, 1991), the Metropolitan Police Directorate of Management Services (Ennis and Nichols, 1990), and the Home Office Research and Planning Unit (Henderson and Nichols, 1991). The studies are compared with the results of research relating to 1978 which was carried out by the Home Office (Home Office, 1981).

Objectives

The studies aimed to answer one or both of two key questions, i.e.

A. What proportion of defendants granted bail commit further offences while they are on bail?

B. What proportion of recorded crime is committed by persons on bail?

Those studies that addressed the first question focused mainly on the court remand decisions; they attempted to measure the proportion of these decisions

that gave rise to further offences being committed while the defendant was on bail.

The focus of the second question is the crime rate, and the extent to which recent increases in the level of recorded crime can be explained by offences committed by defendants who were on bail. The suggestion is that those who do offend while on bail commit considerably more offences per defendant than the average, and therefore account for a disproportionate amount of crimes committed.

Methodology

The attempts made in the studies to answer the questions given above have resulted in one or more of three indicators being calculated. These indicators are:

1. The proportion of persons given bail who committed offences while on bail;
2. The proportion of persons charged who were on bail when they were charged;
3. The proportion of crime cleared up that was committed by persons on bail.

The Home Office 1978, the Metropolitan Police, the RPU and the Northumbria studies used the first indicator. To measure this, samples of defendants who had been granted bail were chosen, and records were searched to find those who had been convicted of an offence which was committed while they were on bail.

Indicator 2 was used in the Greater Manchester and Avon and Somerset studies. Samples of defendants were selected at the time that they were charged, and records were checked to find those who were on bail at the time of the charge. A variation of this method, used by Northumbria, looked at defendants at the point of arrest rather than charge, and determined the percentage that were on bail when arrested. The Metropolitan Police study used the data collected for Indicator 1 to find the proportion of all persons charged who were on bail at the time the alleged offence was committed.

Indicator 3 was used by Northumbria. The method used was to look at all crimes cleared up, relate them to defendants' bail histories, and hence to determine the percentage of cleared crime that was committed by defendants who were on bail.

2 Indicator 1 - the proportion of persons on bail who committed further offences

The two Home Office studies and the Metropolitan Police study used a similar methodology in the way that they calculated this indicator - i.e. in the way that they estimated the proportion of defendants given bail who committed further offences while on bail.

First, a sample of defendants was chosen, including both males and females, and the dates between which each person was on bail were recorded. The records of each defendant in the National Identification Bureau (NIB) at Scotland Yard were then searched, to ascertain whether he or she had been found guilty of any offences which were committed during the period on bail, and details of any such offences were recorded. By definition, only those categories of offences which are reportable to NIB could be found in such searches, but these include all the Home Office categories of notifiable offences - i.e. all indictable/either way offences plus specific types of summary offences. Offences which were 'taken into consideration' by the court or dealt with by formal caution were not included as they were not known.

The studies differed in the way in which the samples of defendants were chosen, and the offence categories for which they were given bail. The Home Office 1978 study was based on over 7,000 defendants who were given bail by magistrates' courts in England and Wales during the first six months of operation of the Bail Act. Data for all such persons (125,000 in all) had been collected by the Home Office; the sample of over 7,000 was chosen by selecting those who were born on two specific days of any month. There was no selection by offence category.

The Metropolitan Police study was based on 1534 persons who were arrested and charged with reportable offences, in one of 10 divisions, during the first quarter of 1988, and who were subsequently given bail by the courts. The divisions were chosen to give a balance between Inner and Outer London, and to give a representative picture of criminal cases brought before magistrates in the force as a whole.

The Home Office RPU study included those who were charged with offences in one

of four main categories and given bail by one of three courts. The offence categories were violence, burglary, fraud and forgery and theft and handling; the courts were:- Brighton magistrates' court in 1988 (343 persons); Birmingham magistrates' court in 1986 (448 persons); or Bristol magistrates' court in 1986 (434 persons). As part of earlier research projects, information had been collected about all such persons who were given bail by these courts during three to six month periods in 1986 or 1988. All those in Brighton were then followed up to investigate offending while on bail, together with comparable size samples from Bristol and Birmingham (selected randomly by including those who were born on specific days of the month).

The Northumbria study was based on the North Tyneside/Blyth Division of the force in 1989. The force has built up a comprehensive database which includes details of, on the one hand, all arrests for crime in 1989 and associated periods of bail, and on the other hand, all crime cleared up in the division in 1989; links have then been made between the two. These data can be used to provide various measures. The North Tyneside division was chosen as being fairly typical of the force area. Also, because it has no boundary with another force, loss of data arising from defendants crossing force boundaries should have been kept to a minimum.

Findings - persons convicted of an offence while on court bail

Table 1 shows some results from the four studies mentioned above. The table indicates that the percentage of persons given bail by the courts who were convicted of an offence committed while they were on bail varied little between 1978 and 1988. The Home Office 1978 study, which used data from 1978, gave figures of 9% for England and Wales and 12% for London. The Home Office RPU study gave a figure of 10% from the three courts outside London in 1986 and 1988, and the Metropolitan Police study gave a figure of 12% for London in 1988. The Northumbria study gave the rather higher figure of 17% for 1989.

Table 1

Defendants on court bail who were convicted of offences committed while on bail

	Year of data	CONVICTED of an offence committed while on court bail	NOT CONVICTED	Number of defendants
Home Office 1978	1978	9%	91%	7,400
(HO 1978 Gr London	1978	12%	88%	1,750)
Home Office RPU	1986/88	10%	90%	1,225
Metropolitan Police	1988	12%	88%	1,534
Northumbria	1989	17%	83%	1,806

Note: the figures given in the table for Greater London in 1978 were taken from the appropriate part of the total Home Office sample of 7,400.

There were differences in the definition of 'convicted' between these four studies which would seem to account for the higher figure found in Northumbria. All four studies included, as convicted, persons who had been found guilty by the courts. In addition, the Home Office 1978 study included persons whose offences on bail were 'taken into consideration' by the courts, but stated that there were very few of these. The Northumbria study included persons whose offences on bail were either taken into consideration by the courts or were dealt with by formal caution, and the report shows that the number of crimes detected by either of these two methods was nearly as high as the number dealt with by charge or summons (shown later in Table 4).

A further difference was that the Home Office RPU study did not include juveniles.

Related findings - persons arrested for or charged with an offence while on bail

The Metropolitan Police study used police records to show that 18 per cent of defendants who were given court bail were **charged** with offences which were allegedly committed while they were on bail. Comparison with Table 1 shows that two thirds of the 18% (i.e. 12%) were found guilty of the offences.

The Northumbria study showed that 22 per cent of those granted bail by the courts were **arrested** for offences during their period of court bail. (The date the offences were committed was not known). About three quarters of these defendants were convicted, giving the 17% shown in Table 1 (as described above, convicted here includes those cautioned and those whose offences were taken into consideration as well as those found guilty).

Police bail

Table 1 was concerned with persons convicted of offences that were committed after they had been granted bail by the courts. There are, however, other types of bail as the Northumbria study points out. After arrest, the police may give a defendant bail to return to the police station on a given date, after which he may be dealt with by charge, by formal caution or there may be no further action taken. After charge, the police can grant bail to a defendant to appear at court on a given date.

The Home Office 1978 and the Metropolitan Police studies were confined to offending while on court bail. The Home Office RPU study did include police bail after charge when the defendant was subsequently granted bail by the court, but omission of this made little difference to the results. In contrast, the Northumbria study looked at offending on all the types of bail mentioned above, and showed that the percentage of defendants given **police or court** bail who were arrested while they were on bail was 18% (643 persons out of 3525). This figure should be compared with the figure of 22% (406 out of 1806), given above, which is the percentage of those given **court** bail who were arrested while they were on bail. It appears that when defendants who had been granted police bail were included, the total number of persons granted bail nearly doubled (from 1806 to 3525), but the number that were arrested while on bail only increased by about half (from 406 to 643). (While many additional people were given police bail of short duration, fewer of them were arrested while they were on bail.) Hence, when police bail was included, the rate of arrests while on bail decreased from 22% to 18%.

For comparison with the percentage of persons **convicted** of offences committed while on court bail in Table 1, it would be of interest to know the percentage of persons who were **convicted** of offences committed while they were on any type of bail, i.e. police or court bail. Although this figure is not

given directly by the Northumbria study, it can be deduced. The report mentions that 78% of arrests of persons on police or court bail resulted in a conviction. Application of this percentage to the 643 defendants who were on police or court bail when arrested, suggests that about 500 of these were convicted of the offence, i.e. about 14% of the 3525 persons who were granted police or court bail. This figure can be seen to be lower than the 17% in Table 1 which relates to offending while on court bail only; it seems, therefore that the rate of offending while on police bail was rather less in Northumbria than the rate of offending while on court bail.

Characteristics of offender and offence

The Metropolitan Police and RPU studies give breakdowns of the rates of conviction while on bail by age, sex, previous criminal history, and offence for which bail was given. These show that offending on bail:

(i) was highest in the 17-20 year old group (19% in London and 13% in the Brighton, Birmingham and Bristol areas) and lowest in the over 30 age group (6% in London and 8% in the other three areas);

(ii) was higher for males (13% in London and 11% in the other three areas) and lower for females (8% in London and 4% in the other three areas); females formed around 13-14% of the samples;

(iii) was high for defendants given bail for offences of vehicle-related crime (theft of or from a vehicle) (23% in London) and burglary (20% in London and 16% in the other three areas); and low for violence offences (6% in London and 8% in the other three areas);

(iv) was higher for defendants with previous convictions (15% in London and 13% in the other three areas); and lower for those with no previous convictions (4% in London, and 5% in the other three areas).

The results of the Home Office 1978 study cannot be directly compared because the offences committed on bail granted during proceedings at the magistrates' court were dealt with separately from offences on bail granted after committal for trial (these were combined to give the overall rate quoted in Table 1). Nevertheless, similar patterns of groups with higher and lower offending rates

were found.

Number of times defendants were convicted while they were on bail

So far, only defendants have been considered, but information is also available on the number of times they were convicted of offences committed while on bail. Table 2 shows the findings of the Metropolitan Police and RPU studies on this point. Both studies counted the number of separate occasions on which a defendant was found guilty of at least one offence committed while on bail. The results, shown in Table 2, were very similar. In both studies, defendants who were convicted of an offence committed while they were on bail were convicted

Table 2
Number of occasions defendants were convicted of at least one offence committed during bail periods

No. of separate occasions convicted while on bail	Home Office RPU study 1986/88	Metropolitan Police study 1988
	Percentage of defendants	
None	90.0%	88.0%
1	7.8%	9.3%
2	1.5%	2.0%
3	.6%	.6%
4	.1%	.1%
No. of defendants	1225	1534
No. who offended on bail	123	184
Average times convicted per defendant	.16	.13
Average times convicted per defendant who offended while on bail	1.30	1.29

on 1.3 occasions on average. The Home Office 1978 study used a slightly

different measure; this study showed that defendants who were convicted of an offence committed while they were on bail were convicted of 1.5 offences on average.

3 Indicator 2 - the proportion of persons charged who were on bail when charged

The method used in the Avon and Somerset and Manchester studies was to select samples of defendants at the time they were charged with an offence, and to record whether they were already on bail for another offence at the time of charge: this information on current bail status was taken from the force criminal records computer systems.

Northumbria used a variation of this method in that they looked at defendants who were arrested (rather than charged) to see whether they were already on bail for another offence at the time of the arrest. Many of these defendants were later charged but others were not. Some were cautioned, and for some, no further action was taken.

The Metropolitan Police study also provided a measure of this indicator which was derived from the data collected for Indicator 1.

It is clear from the reports written that there is concern among police officers when persons whom they have recently arrested and charged are suspected of further offences. It is felt that the police success in detection is making no impact on the level of crime. This measure is, therefore, helpful to forces in quantifying these concerns.

Samples chosen

The Avon and Somerset report was based on four separate small surveys conducted in 1990/91. Together, these surveys recorded information on 1256 defendants. In the first two surveys (conducted in January and March, 1990) all detectives in the force were asked to give details of their two most recent cases in which a defendant was charged with an offence; these details included whether the defendant was shown by the force CRO computer to be already on bail. The report mentions that the detective surveys might have given results that were artificially high because detectives usually deal with the more serious

offences, so the other two surveys were devised as checks. In the third survey, custody officers were asked to give details of all persons arrested and charged with notifiable offences in April 1991 (those charged with summary offences or dealt with by summons, i.e. most juveniles, were not included). In the fourth survey, each new case appearing at Bristol magistrates' court in two separate weeks of 1990 was studied to see if the defendant had been on court bail at the time he was charged.

The Manchester studies were based on over 3474 defendants arrested and charged in the whole force area in August 1987, and 3000 in March, 1988. The information was taken from standard forms completed by the arresting officer and sent to the Greater Manchester Criminal Records Office. There was no selection by the offence charged, which meant that arrests for minor offences were included, e.g. prostitution. About 14% of the second sample were females (the corresponding figure for the first sample is not known).

Findings - defendants who were on bail when charged or arrested

Table 3 shows the main findings from the studies that used Indicator 2. The two Manchester studies and the Avon and Somerset study show broadly similar results in that 26% to 29% of defendants charged were on police or court bail at the time they were charged. The Northumbria study looked at defendants at the time of arrest, and showed that 23% were on any type of bail when they were arrested. The Metropolitan Police study showed that 16% of defendants who were charged, were on court bail when the alleged offence was committed.

There are some differences in the bases of the figures given in Table 3. First, the type of offences charged: by including all charges, the Manchester studies included minor offences such as prostitution, and in fact 17% of those who were on bail when charged were charged with prostitution. This would tend to make the Manchester figures higher than they would have been if some selection had been made.

Second, the type of bail included is important, i.e., court bail only or court and police bail. Indicator 2 compares the number of persons who were on bail when they were charged with the total number of persons charged (or arrested in the case of Northumbria). The second of these counts - the total persons charged - will not change whichever types of bail are included. However, the first count

– the number of persons on bail when charged – will be greater if police bail is included than if it is not, since some persons charged will have offended on police bail who did not offend while on court bail. All five of the studies counted persons charged while they were on court bail; Manchester and Avon and Somerset also included those on police bail after charge; and Northumbria included those who were on police bail after charge **and** those who were on police bail before charge. This difference would tend to make the Metropolitan Police figures relatively lower, and the Northumbria figures relatively higher, than they would have been if all the studies had included the same types of bail.

Table 3
Defendants who were on bail when charged or arrested

	Year of data	Number of defendants	The proportion of those charged who were on police or court bail when charged
Manchester	1987	3474	26%
Manchester	1988	3000	29%
Avon & Somerset	1990/91	1256	28%
			The proportion of those arrested who were on police or court bail when arrested
Northumbria	1989	5990	23%
			The proportion of those charged who were on court bail when the offence was committed
Metropolitan	1988	4538	16%

Differences between Indicator 1 and Indicator 2

There are major differences between these two indicators. (Indicator 1 gave the proportion of those on bail who were convicted of an offence committed while they were on bail, and Indicator 2 gave the proportion of those charged who were on bail when charged.) The first difference is that Indicator 2 counts separate times charged rather than persons, and aims to measure the offences committed on bail rather than the number of persons who so offend. Hence a person who commits three offences while on the same period of bail is likely to be counted three times in the second indicator compared with once in the first indicator.

A second difference is that Indicator 2 is based on persons charged or arrested only. Some of those arrested would not have been charged and some of those charged would not have been found guilty of the offence charged and cannot, therefore, be said to have 'offended'. (Metropolitan Police statistics for 1988 show that 60% of persons **charged** with indictable/triable either way offences were convicted; the Northumbria figures indicate that 75% of those who were **arrested** while they were on bail were **convicted** of the offence for which they were arrested). If persons arrested or charged while they were on bail were equally likely to be convicted as persons arrested or charged who were not on bail this difference would not matter. However, when convictions were used instead of charges in the Metropolitan Police indicator, the 16% figure was reduced to 13%.

The third difference is that, for Indicator 2, in all the studies except the Metropolitan Police, the fact that a person was on bail when charged or arrested is taken to mean that he or she was on bail when the offence charged was committed; in reality, this is not known. A scenario can be envisaged in which a defendant might have committed two offences before he or she was arrested and charged. Once known to the police for one offence, he became a suspect for the other offence, and so was charged with that (earlier offence) while he was on bail; he had not, however, been on bail when the earlier offence was committed.

The Northumbria study is helpful in that both indicators were used so the results can be compared. As shown in Table 3, Indicator 2 showed that 23% of defendants arrested were on police or court bail when they were arrested. The findings from Indicator 1 (described above under the heading 'police bail') showed that the proportion of defendants granted police or court bail who were

arrested while on bail was 18%. This difference is likely to be explained by the fact that some defendants were arrested more than once while they were on bail (2.3 times on average). It was then deduced earlier that the proportion of those on police or court bail who were **convicted** of an offence for which they were arrested while on bail was about 14%. **Hence a value of 23% for Indicator 2 corresponds to a value of 14% for Indicator 1.**

The Northumbria study gave breakdowns of Indicator 2 by offence charged. These show similar patterns to the findings from Indicator 1 although the offending rates were higher (as would be expected from the above comparison). The highest proportions of those arrested who were on bail when arrested were found for burglary (34%) and theft of or from a motor vehicle (36%), and the lowest rates were for violence offences (12%).

No earlier studies have looked at the proportion of persons charged who were on bail when charged, so it is not possible to say if this measure has increased in recent years.

4 Indicator 3 - the proportion of crime cleared-up attributed to persons on bail

The Northumbria study looked at all crimes detected in the North Tyneside Division to determine whether the offenders were on bail at the time the crime was committed. The report points out that 'a detection is traditionally understood to be one person arrested, charged and convicted at court', but explains that, in practice, many crimes are detected by other means which are listed in Table 4. Of the total crimes detected, 26% were detected when persons were charged or summonsed with the offences; many, but not all of these will have been found guilty by the court. A further 11% were admitted by defendants after which they were given a formal caution by the police. 16% were admitted by defendants during proceedings for other offences, so that they could be taken into consideration by the court. A further 41% were admitted by offenders who were interviewed by the police while they were serving prison sentences (these will be called prison admissions).

Police forces vary considerably in the extent to which crimes are cleared up by prison admissions. Home Office statistics for 1990 show that, nationally, 16% of detected crime was cleared up by this method, the figures varying from 1% to

44%; the percentage for the whole Northumbria force was 29%. The North Tyneside Division figure of 41% for 1988 does, therefore, compare with the highest rates in the country.

The table shows clearly how the proportion of detected crimes committed by persons on bail varied according to the method of detection. The first line shows a proportion of 31% for crimes detected by charge or summons. The proportion committed while on bail was higher (39%) for offences taken into consideration by the courts, and considerably higher (57%) for crimes that were detected by prison admissions. A very low proportion of crimes committed while on bail was found for those cleared by caution (7%).

Table 4
Northumbria: detected crimes attributed to persons on bail

Means of detection (1)	Number detected (2)	Attributed to persons on bail (3)	Percentage col (3) of col(2) (4)
Charged or summonsed	3,209	989	31%
Taken into consideration	1,980	780	39%
Cautioned	1,319	86	7%
Complainant declined to prosecute	210	21	10%
Admission by a person subsequently serving a custodial sentence	4,980	2,843	57%
Other means	549	196	36%
TOTAL	12,247	4,916	40%

Further information given in the Northumbria report shows that the proportions of detected crimes committed by persons on bail were lower for violence and shoplifting offences (14% and 19%), and very high for four categories of offences, namely burglary in a dwelling, other burglary, and theft of or from a motor vehicle (i.e. 54%, 44%, 55% and 45%). It also shows that two thirds of detections for burglary and vehicle crime offences were achieved by prison admissions, and that detections of these crimes accounted for nearly all (4,909 out of the 4,980) of the detections made by prison admissions in Table 4.

The high rate of offending on bail of 57% for prison admissions is perhaps to be expected for two reasons. First, it seems that the prison interviews were targeted at offenders sentenced for burglary and vehicle crimes, which have been shown to lead to the highest rates of offending while on bail. Secondly, detections made by interviewing serious offenders serving prison sentences must relate to additional offences committed by these offenders in the period before they were sentenced. As many of these offenders will have been on bail at this time (and probably for a long period before a Crown Court trial), some of these offences are likely to have been committed while they were on bail. In contrast, persons whose crimes were cleared up by charge or summons were much less likely to have been on bail at the time. The implication is that police forces who make more use of prison admissions in clearing up crime will show higher proportions of detected crime committed while the defendants were on bail.

As no previous studies have shown the percentage of detected crime that was committed by persons who were on bail, it is not possible to say whether the Northumbria results show any increases over recent years.

5 Conclusions

Comparison of the rates of offending on bail across England and Wales is made difficult by the differences in methodology adopted in the studies that have been described in this paper. Only those studies which used the same indicators or measures can be compared and, even then, allowances must be made for the different bases on which the indicators have been calculated.

If an accurate, nationwide, picture is to be obtained, and monitored over time, it is essential that a methodology should be agreed by those interested in investigating offending on bail further. Such a methodology needs to embrace

sampling methods, offence categories, types of bail to be included, indicators to be measured, and detail that should be given in the report so that comparisons with other areas can be made. If possible, future studies should be encouraged to use Indicator 1 (the proportion of defendants given bail who are convicted of offences committed while on bail) together with counts of the numbers of offences committed by those who offend on bail; this indicator is directly related to the remand decision, is the easiest to interpret, and avoids many of the difficulties associated with the other approaches.

Methods of choosing samples of defendants are important in that they determine the categories of bail that are included in the measures of offending while on bail. If defendants are selected at the point of arrest, any offences committed while the defendant was on police bail after arrest and before charge, and after charge and before the first court appearance, are included. If defendants are selected at the point of charge, only offences committed while on police bail after charge are included, but those who are summonsed are omitted and these may be the persons least likely to offend when given bail by the courts. If defendants are selected after they have been granted bail by a court, any offences committed during periods of police bail are not included. Furthermore, to avoid bias, it is important that the selection of the sample should be carefully controlled.

The question of selection by offence category is also relevant. If the definition of offending on bail includes charges or convictions for minor offences, the rates found will be higher than if the study is restricted to more serious offences; conversely, if minor offences are excluded, the rates found will be relatively lower.

The use of arrest or charge as a surrogate measure for 'offending' is convenient for police forces since, after charge, the handling of a case passes to the Crown Prosecution Service and the courts; and searching criminal records for convictions relating to dates on bail is a time-consuming and expensive process. However, the use of such measures is likely to produce higher results than studies which use convictions. In the same way, looking at persons who were on bail when charged as a surrogate for persons who were on bail when the offence was committed is likely to give different results.

Two questions were posed at the beginning of this paper. The first concerned the proportion of defendants given bail who commit offences while they were on bail.

The studies (shown in Table 1) indicate that the proportion of defendants granted **court** bail who were found guilty of further offences committed while they were on bail (Indicator 1) was 10 to 12 per cent, and rose to 17 per cent (in Northumbria) when the figure included offences taken into consideration by the courts and offences dealt with by formal caution. These rates are similar to the proportions found in 1978. The Northumbria study also looked at offending while on police bail: the proportion of persons who were convicted (including those whose offences were taken into consideration or dealt with by caution) of offences for which they were arrested while on **police or court** bail was about 14 per cent, i.e. slightly less than the 17 per cent found for court bail only.

The answer to the second question is more difficult. Determining the proportion of recorded crime that is committed by persons on bail is not possible because only about a third of such crime is detected (1990 figures). Simply, if the person who committed the crime is not known, nothing can be said about whether he or she was on bail at the time the crime was committed.

Crimes are detected or cleared up by a number of different methods. National figures for 1990 show that about a half, i.e. about 17% of all recorded crime, was detected by persons being charged or summonsed and dealt with by the courts (although not all of these persons will have been found guilty). A further tenth was detected when persons were dealt with by formal caution, and the remainder were cleared up by a number of different methods, such as being taken into consideration when a defendant appeared at court on another charge, or by an admission made by an offender while he was subsequently serving a prison sentence.

The Northumbria study analysed all crime cleared up in the North Tyneside division of the force in 1989, and showed that the proportion of crime committed while the defendant was on bail varied according to the method of clear-up (Table 4). Thirty one per cent of crimes cleared up by charge or summons were found to have been committed while the defendant was on bail. Higher proportions were found for crimes cleared up when they were taken into consideration by the courts (39%) and by admissions from prisoners who were interviewed while serving a prison sentence (57%), the latter being mainly confined to burglary and vehicle crime. Burglary and theft of or from a vehicle together accounted for 60 per cent of detections in the North Tyneside division, and around 50 per cent of these crimes were found to have been committed by persons on bail.

It seems likely that crimes detected by police forces that make more use of prison interviews will include more crimes that were committed while the defendants were on bail, whereas police forces which make less use of prison interviews will include fewer crimes committed while the defendants were on bail. This may not reflect a real difference in the proportion of **all** crime committed while defendants were on bail, but one which arises from the different detection practices of the individual forces.

Although the Metropolitan Police and Home Office RPU studies showed that the proportion of defendants granted bail who committed offences while on bail was similar in 1988 to 1978, it is clear that if more defendants have been given bail in recent years, then more offences will have been committed on bail. Home Office Statistics indicate that the number of persons granted bail by the courts increased from 350,000 in 1985 to 480,000 in 1990, an increase of 130,000. If 10 to 12 per cent of these persons committed offences while on bail, and committed 1.7 offences on average (a figure taken from the RPU study), there would have been an extra 22,000 to 26,500 offences committed while on bail. This represents 2% of the total crimes cleared up in 1985. However, had the offender been dealt with immediately and not given a custodial sentence, some of these offences would probably still have been committed: while the offences would have taken place, they would not have been offences committed while the offender was on bail.

A third measure of offending on bail used in the studies is the proportion of defendants charged who were on bail at the time of charge. Values found for this ranged between 23 and 29 per cent (Table 3). The indicator is not easy to interpret in terms of the two questions asked; it measures offences rather than defendants and so gives higher rates than Indicator 1, but relates to one category of cleared-up crime only, namely offences cleared up by charge. This measure is probably of most use in monitoring changes over time in individual force areas; Greater Manchester uses it in this way.

Media comments on the published police studies have inferred that if more people were remanded in custody, a large percentage of crime would be prevented. It is worth considering the implications of this in a little more detail.

Research on sentenced prisoners suggests that the use of custody does not have a significant impact on the level of recorded crime. One study which considered

two options suggests that increasing the time offenders spent in custody b[redacted]5% or 40% would reduce recorded crime by 1.2% or 1.6% (Brody and Tarling, 1980).

Returning to the question of remand decisions, the important issue is the task magistrates face. They have to balance the rights of the community - not to be exposed to unnecessary crime - and the rights of the defendant - not to lose his liberty without due cause. Furthermore, increasing the use of remands in custody unnecessarily (i.e. by remanding in custody those who would not have offended if granted bail) would only cause an increase in the remand prison population without any commensurate benefits to society.

The research described in this paper has indicated what the current position is. Of those defendants who were granted bail, 10% to 17% were found to have committed offences during the bail period (or, looked at in another way, at least 83% of defendants were **not** shown to have offended during the bail period). On the other hand, Home Office statistics show that, of those defendants who were remanded in custody in 1989, nearly 40% were not subsequently given custodial sentences (Home Office 1990).

The highest risk cases are probably those in which the police recommended that bail should not be granted (and research has shown that the most common objection to bail is on the grounds that further offences might be committed). The Metropolitan Police study showed that when police recommended that bail be opposed but bail was nevertheless granted, 18% committed offences on bail compared with 9% when bail was not opposed. Again, looked at in another way, 82% of these defendants were not shown to have offended on bail.

To bring about the twin benefits of minimising offending on bail while not increasing the remand population unnecessarily, remands in custody should be reserved for those who will commmit offences while on bail. But identifying this group is no easy task. The problem here is that, even in the high risk groups (such as 17 to 20 year olds charged with burglary or vehicle offences) fewer persons offend on bail than do not offend on bail. Better ways of selecting even within these groups are needed.

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Dear William,

OFFENDING ON BAIL

FILE WITH MA

My ~~Secretary~~ of State has seen a copy of Paul Pugh's letter to you of ~~21~~ January about an announcement to respond to concerns about offending on bail.

The system of bail in Scotland is similar but not identical to that in England and Wales. There are similar concerns here as to the operation of the bail process and my Secretary of State is interested in the steps proposed by the Home Secretary. To a degree they already reflect work which is underway here on the development of bail information schemes, support services and research into the decision making process. The proposed announcement will therefore not create any difficulties and my Secretary of State is content for his interest with its terms.

The Bail Etc (Scotland) Act 1980 includes an offence of breaching conditions of bail. As one of the standard conditions is that an accused shall not commit an offence while on bail, any person who commits an offence may be charged separately with a bail offence. The bail offence is distinct from the further offence and both may be charged either separately or together. Consequently issues of double jeopardy or breach of international obligations do not arise.

I am copying this letter to the private secretaries to the Lord Chancellor, the Attorney General, the Lord Advocate, the Solicitor General, members of HS, the Chief Whip, the Lord President and Sir Robin Butler.

Yours sincerely,

Alan

ALAN FRASER
Private Secretary

JRE02128.012

HOME AFFAIRS: Sentencing Powers PTS

fst.nb/fst/09b.12.91

CONFIDENTIAL

nJPM
BHP
13/12

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Peter Lilley MP
Secretary of State for Trade and Industry
Department of Trade and Industry
Ashdown House
123 Victoria Street
LONDON
SW1E 6RB

9 December 1991

Dear Peter,

EA(CP) PAPER ON RTP LAW REFORM

I have read with interest your paper EA(CP)~~(91)~~12 on your proposals for restrictive trade practices legislation.

I appreciate that you are anxious to introduce legislation as quickly as possible, and to ensure a speedy and trouble-free passage through Parliament. However, I am very concerned by the extent which your new proposals would depart from the approach towards anti-competitive agreements to which we committed ourselves in our 1989 White Paper. They will inevitably be seen as a substantial retreat from that commitment under pressure from professional bodies and business interests. I have to say that I find your arguments for this abrupt change unpersuasive.

The prohibition-based system we originally planned would not place an excessively heavy burden on business. Compliance costs would only be increased from £1 million a year to, at most, £2 million a year; a small price to pay if substantial improvements in economic efficiency follow.

The White Paper approach carried the great benefit to business that it meshed with the prohibition-based system operated by the Commission under article 85 of the Treaty of Rome. Your approach abandons this. Would it not be simpler to operate the two systems together if they are constructed on similar lines? Compliance costs are likely to be considerably higher if firms have to deal with different systems in the UK and Europe, especially if the agreement concerned is large enough to be likely to warrant the attention of both authorities.

I do not understand why there is concern that a prohibition-based system would not be suited to agreements affecting the provision of professional services.

I fully appreciate that the extension of restrictive trade practices law to cover the professions will be difficult and

require sensitive handling. However, these difficulties would not be reduced by the gradual approach you now envisage; indeed, they might even be increased, since we should then face a battle with each profession when its turn came. Moreover if we dealt with the later cases in slightly different ways, there would be immediate pressure to reopen the cases of the first professions to be brought within the scope of the Act.

The original proposals were simple, tough and effective. They held the prospect of substantially improving the efficiency of the economy, and, as such, formed an important part of our programme of supply-side reform. Their effects on the professions were less controversial than we might have anticipated.

I think it would be helpful, therefore, if you could circulate a further note to EA(CP) in time for the meeting, setting out the arguments for abandoning the prohibition-based approach. The Committee will also want to have some indication of how we could handle the inevitable and damaging criticism that would follow if we retreated from our clear commitment to a major strengthening of restrictive trade practices law.

Finally, the paper should have considered the public expenditure implications of your new proposals and the original White Paper proposals. However, I understand your officials will be writing to mine to set out the position in detail.

I am copying this letter to the Prime Minister, Norman Lamont, other members of EA(CP) and to Sir Robin Butler.

FRANCIS MAUDE

File a:\miscarriage.ltr

cc: PU

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

9 December 1991

MISCARRIAGE OF JUSTICE CASES

The Prime Minister has seen your letter to me of 4 December. He was grateful to the Home Office for setting out the points which can be made to reassure the public if further miscarriage of justice cases emerge. He has commented, however, that it will not be easy to prevail should a steady drip of cases occur.

Andrew Turnbull

Colin Walters, Esq.,
Home Office.

From: THE PRIVATE SECRETARY

CAPU

Prime Minister
This provides only limited comfort. Already drip d cases cannot be damaging

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

4 December 1991

Dear Andrew

MISCARRIAGE OF JUSTICE CASES

In your letter of 28 October to Paul Regan, you report that the Prime Minister has asked what the Government can do to reassure the public if further miscarriage of justice cases involving former members of the West Midlands Serious Crime Squad should emerge. Since then, of course, there have been significant developments in the Broadwater Farm case, and I wanted to ensure that account was taken of those developments when replying.

We will be able to offer some assurance that miscarriages of justice can be, and are being, rectified by the effective use of the Home Secretary's powers of reference to the Court of Appeal. We will also be able to point to the setting up of the Royal Commission on Criminal Justice and can give an assurance that the Government will introduce any measures which are considered necessary in the light of the Commission's report in due course. As the Home Secretary said in his note of 26 September to the Prime Minister, the conduct of police investigations (an issue both in the West Midlands and Broadwater Farm cases) is among the matters under review by the Royal Commission. The Broadwater Farm case also raises questions of access to legal advice and the use of uncorroborated confession evidence to secure convictions, both of which are within the Royal Commission's terms of reference.

As the Prime Minister recognises, however, we need to be able to reassure the public that they can still have confidence in the police, and that the implementation of PACE has been of positive value in protecting the public.

As to the West Midlands cases, the fortuitous circumstance that some of the officers still serving in the Serious Crime Squad had also been among those involved in the investigation of the Birmingham pub bombings, coupled with the high profile attached to its disbandment, have led the media to imply that we are to expect disclosures of widespread and institutionalised evidence-rigging. We think this is likely to prove to be an exaggeration. We cannot gauge just how much misconduct there was until the Crown Prosecution Service has decided what charges would be appropriate, and indeed this cannot be definitely stated until all the criminal and disciplinary cases have been heard. In the meantime, the best estimate we can give of the number of potentially guilty officers is between 12 and 20. This is serious, but on a very much more restricted scale than some early indications would have led us to expect. For example, the PCA press release of 20 December 1990 referred to 198 officers who had been given formal warnings. Some (probably about half) of these 12-20 cases will be discreditable, but will not concern the fabrication of evidence - a number of cases, for example, involve officers who are known to have claimed money for informants who never received it.

The number of potentially guilty officers, however, gives no indication of the number of potential miscarriage of justice cases. As I said in my letter of 7 October, we do not have a clear picture of the likely extent of possible wrongful convictions, although the Home Office is already considering a number of the West Midlands cases in which the normal appeal rights have been exhausted.

In some of these cases, the subsequent changes to, for example, contemporaneous notes may be symptomatic of sloppy work rather than a deliberate attempt to fabricate evidence. Nevertheless, those changes could discredit the evidence and result in its rejection if the case is brought to appeal. We may well take the view that it is right to refer many such cases to the Court of Appeal on the grounds that it is for the courts, not the Home Secretary, to determine the value of any new evidence. It is possible, therefore, that over the next year or so there will be a number of cases in which successful appeals will be said to imply a miscarriage of justice, and there is little prospect that the media will distinguish between convictions being quashed because the evidence was faulty and those where there is a real likelihood that an injustice has been done.

It is possible to stress rather more than has been done so far, the role of the Police and Criminal Evidence Act 1984 iln putting in place requirements for police investigation which, by making it very apparent if these requirements are not met, prevent abuses taking place. Many of the recent successful appeals in the West Midlands cases can be ascribed to the far higher standards being required for the way in which police evidence is gathered and recorded. Indeed, many of those appealing would have been unable to prove their case before PACE and the higher standards of recording it inaugurated. The answer to much public criticism may lie in claiming credit for establishing the procedures which enable such misconduct to be uncovered. The Broadwater Farm case occurred just as the PACE codes of practice were being introduced and officers would not have been experienced in their application. This would not of itself excuse conduct in breach of the codes, but the circumstances of that case should not necessarily be regarded as representative of the effectiveness of the legislation several years later.

Equally, it is right to stress the speed and thoroughness with which the police themselves acted as soon as it became apparent that there were serious doubts emerging about the activities of the West Midlands Crime Squad. The disbanding of the squad and the immediate request to the Police Complaints Authority to supervise an investigation demonstrate the commitment of the senior management of the service to ensuring proper standards of probity and competence. It was the police who recognised the significance of, and passed to the Crown Prosecution Service, the evidence which eventually led to the freeing of the Guildford Four. The thoroughness and professionalism of the police service in contributing to the eventual outcome in other recent miscarriage of justice cases, for example, the Birmingham Six, has also been widely commended. It is this which is the more typical of the service today than the conduct of a very small number of police officers which brings discredit not only on themselves but, disproportionately, on the service as a whole.

/cont...

For its part, the Police Complaints Authority, also set up under PACE, showed quite clearly its effectiveness in responding to the request from the police to become involved in the cases involving the West Midlands Crime Squad by instituting immediately a thorough examination of all the cases which could potentially be regarded as suspect, rather than waiting for complaints to be submitted. The Authority as well as the police service has shown a clear determination to maintain high standards in the police service and root out any instances where officers fall below those high standards.

The Broadwater Farm case may also, in due course, give rise to questions about police complaints and discipline procedures in the light of the fact that Detective Chief Superintendent Melvin, the man whose evidence in respect of the Winston Silcott interview notes has recently been discredited in the Court of Appeal, had some time ago been acquitted of all disciplinary charges against him. While the Director of Public Prosecutions is considering whether to bring any criminal charges against Mr Melvin, we must decline to comment on these matters, but at the appropriate time our response will be to make it clear that the authenticity of the Silcott interview notes was only recently challenged and that the disciplinary charges against Melvin bore no relation to Silcott, who never made a formal complaint.

There is nothing in any of the statistics available to us to indicate widespread misconduct on the part of the police. Complaints, though numerically large, are not high in relation to the size of the population or of the police service. In 1990, the police service received some 20,000 cases of complaint in relation to their strength of some 128,000. To put this in perspective, roughly the same number of people complained about the police as complained about their solicitors; and half that number complained to the advertising standards authorities about advertising which they disliked. The police themselves received in 1990 twice as many letters of thanks and commendation as they did cases of complaint.

The Home Secretary, and other Home Office Ministers, will continue to look for suitable opportunities both to reinforce public confidence in the police and to boost police morale.

yours

Paul Regan

C J WALTERS

pp

Andrew Turnbull, Esq., CB.
No 10 Downing Street
LONDON, S.W.1.

MISS SINCLAIR 27th November 1991

cc Mr Turnbull

AGGRAVATED CRIMINAL TAKING

What the Prime Minister said to several million people, after consultation with the Home Office, at the Party Conference was

> 'We shall ensure that when they reach driving age they can be banned from the road'.

This was taken as implying bans from driving age.

While I understand Mr Turnbull's point about the courts not liking delayed sentences (though they are quite happy with suspended ones), it is essential that the Home Office should not cut the ground from beneath the Prime Minister. Therefore it follows that the guidance pointing out the principles of disqualification extending past the age of 17 should be as clear and prescriptive as it is possible to be. (What does actually happen in these cases?)

The public, quite rightly, have a very low toleration level of dangerous driving, and feel, rightly or wrongly, that the courts have been too soft on such offences. It is to be hoped that the policy set out in the Prime Minister's speech will be carried through into practice, and that this is reflected in the Home Office's press guidance.

CR

NICHOLAS TRUE

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

25 November 1991

Dear Mr Graham

VEHICLES AGGRAVATED-TAKING BILL

As you may know, this Bill was considered by the Legislation Committee today **Monday 25 November**. The Committee approved introduction in the House of Commons. I should be grateful if you would arrange for notice of presentation to be tabled **tomorrow, Tuesday 26 November** in readiness for the Bill's introduction at the commencement of public business on **Wednesday, 27 November** with publication taking place immediately on introduction.

The Bill should be presented by Mr Secretary Baker supported by:

The Prime Minister
Mr Secretary Heseltine
Mr Secretary Rifkind
Mr Secretary Hunt
Mr Secretary Lilley
Mr John Patten

It has been decided that there will be no press conference on Wednesday 27 November but that a Press Notice will be issued that day. I should be grateful if you would arrange for 150 copies of the Bill, addressed to the Home Secretary, to be delivered to the Vote Office ready for collection as soon as the Bill has been introduced.

I am sending copies of this letter to Dominic Morris (Prime Minister's Office), Ros McCool (Cabinet Office), Ian Stage (Lord President's Office), Murdo Maclean (Chief Whips Office, Commons) and Ralph Hulme (Chief Whips Office, Lords).

Yours sincerely

B E KINNEY
Parliamentary Clerk

Peter Graham CB QC
First Parliamentary Counsel

This is becoming disastrous. What confidence can the public have?

4/24/11.

Prime Minister.
AG recommends hearing to be heard on the Silcott case. I see no alternative. The missing link is what happens to Superintendent Melvin, who has already been suspended.
AP
22/4

HOME SECRETARY

On 26 September you referred to the Court of Appeal under section 17 of the Criminal Appeal Act 1968 the case of Winston Silcott. The Director of Public Prosecutions then became the respondent to the appeal. He has since considered with the benefit of advice from Mr Roy Amlot QC and Senior Treasury Counsel what stance he should take in the appeal having regard to the further evidence which has now emerged.

The fresh evidence is a report by a documents expert, Mr Robert Radley, which called into question the authenticity of parts of an allegedly contemporaneous note of an interview in which Silcott is said to have responded to police questions in terms amounting to an admission to murder. Mr Radley's findings have since been confirmed by another expert, Dr Baxendale, who was consulted by the police. The effect is that the Crown can no longer rely on the one and only piece of evidence on which the conviction of Winston Silcott was founded. Counsel have advised that there are no arguments which can be advanced to the Court of Appeal with dignity or propriety on behalf of the Crown to resist the appeal. The Acting Director of Public Prosecutions has accepted that advice and I agree with him.

Counsel has considered how the appeal should be handled in the light of this conclusion and the very proper concern of the Court of Appeal itself that it should not be seen merely to endorse decisions effectively taken by the prosecuting authorities. It will be necessary to tell counsel for Winston Silcott (Anthony Scrivener QC) of the Crown's position sometime before his appeal together with those of Raghip and Braithwaite is heard on 25 November. He would do so in confidence. Counsel then propose to allow the defence to make the running. It is antici-pated that Scrivener will present his case briefly and call one or both of the experts. The Crown will then state that it does not dispute the expert evidence or the conclusion. That will probably be the appropriate moment to say that the Crown is no longer able to rely on the truthfulness of the evidence of Detective Chief Superintendent Melvin and that, in consequence, there are no arguments enabling us to resist the appeal.

The Court should then go on to consider the cases of the other two Appellants (Braithwaite and Raghip) in the ordinary way. We cannot predict whether or not judgement in respect of Silcott will precede this.

The inevitable outcome will be a further blow to confidence in the administration of criminal justice but, as your minute of 26 September to the Prime Minister points out, the issues which arise are all within the remit of the Royal Commission on Criminal Justice. I do not see that any further political response is appropriate. It is unlikely to be appropriate for you to volunteer a statement at a time when the Court of Appeal will be actively considering the appeals of Braithwaite and Raghip.

Copies of this go to the Lord Chancellor, the Lord President and the Prime Minister.

AM

20 November 1991

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

18 November 1991

Dear Andrew

AGGRAVATED CRIMINAL TAKING

Your minute of 5 November asked me to confirm the way in which mandatory disqualification would apply to offenders under the age of 17.

We certainly intend to ensure that disqualification will be mandatory for those under the age of 17, as well as for those over that age. If the courts use their power to disqualify an offender beyond his seventeenth birthday, the effect would indeed be to delay the point at which he could otherwise acquire a licence. We have checked the position with the Department of Transport, who have confirmed that a person who is banned from driving beyond his seventeenth birthday will find at the age of 17 that he is unable to obtain a licence.

May I offer a word of caution against over-emphasising disqualification as the main thrust of our Bill. Disqualification works best for offenders who, despite lapses which may be serious, have some respect for the law. Young people who take other people's cars, race and destroy them are unlikely to be much influenced by fear of mandatory disqualification. Placing too much stress on it, rather than the increased possibility of significant prison sentences, could undermine the credibility of our proposals.

I am copying this letter to the Private Secretaries to members of HS, to Michael Harrison (MAFF), Juliet Wheldon (Attorney General's Office), Alan Maxwell (Lord Advocate's Office) and P J Moore (First Parliamentary Counsel's Office).

C J WALTERS

Andrew Turnbull, Esq., CB.
No 10 Downing Street
LONDON, S.W.1.

HOME AFFAIRS: Capital Punishment Pt 5

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

5 November 1991

Dear Colin,

AGGRAVATED CRIMINAL TAKING

The Prime Minister has seen the Home Secretary's minute of 31 October. He was content for a Bill incorporating the definition of the new offence now agreed with the Attorney General to be drafted.

The Prime Minister was pleased to see that the new offence will carry mandatory disqualification for at least 12 months. Could you confirm that this would apply to offenders under the age of 17 and that if the period of disqualification continued past their 17th birthday the effect would be to delay the time they could acquire a licence.

I am copying this letter to the Private Secretaries to members of HS, to Michael Harrison (Ministry of Agriculture, Fisheries and Food), Juliet Wheldon (Attorney General's Office), Alan Maxwell (Lord Advocate's Office) and P J Moore (First Parliamentary Counsel's Office).

Yours sincerely
Andrew Turnbull

ANDREW TURNBULL

Colin Walters Esq
Home Office

CCPU

PRIME MINISTER

AGGRAVATED CRIMINAL TAKING

with AT ?

I have seen the Home Secretary's Minute of 31st October.

I can confirm that the option to make the criminal taker liable for higher penalties, which was suggested by my Secretariat, is entirely acceptable in principle.

I am copying this to the recipients of the Home Secretary's Minute.

PX

4th November 1991

HOME AFFAIRS : CAP PUNISHMENT AE 5

TJS/AG

P.1/1

NDM AT 5/11

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

4 November 1991

Dear Kenneth,

AGGRAVATED CRIMINAL TAKING

– with AT/WEC?

We spoke on the telephone earlier this evening about your minute to the Prime Minister of 31 October.

In view of the further incidents, I entirely understand your need to be able to say with conviction that the Government is taking this forward with the greatest possible speed. The detailed approval of the policy proposals will of course be for HS Committee, chaired by David Waddington, although I expect that they will be able to agree in correspondence.

So far as drafting authority is concerned, I am content that you should proceed without delay to instruct Counsel on the basis of the proposals set out in your minute to the Prime Minister. If any remaining points on the policy remain unresolved, we can if necessary resolve these once we have sight of a draft of the Bill, which will need to come to LG for clearance in the usual way.

I am copying this letter to the Prime Minister, David Waddington, other members of HS and LG Committees, John Gummer and to First Parliamentary Counsel and Sir Robin Butler.

Yours ever,

JM

JOHN MACGREGOR

The Rt Hon Kenneth Baker MP
Home Secretary
Queen Anne's Gate
London SW1

(2)

Prime Minister
There is agreement on the definition of the offence of aggravated criminal taking and that legislation should be introduced by a Private Member's Bill, or failing that a Govt Bill.
I do need to pursue the disqualification point and ask to get Home Office to confirm that disqualification will apply to under 17's, and will be extended past their 17th birthday.
AT 4/11

PRIME MINISTER

AGGRAVATED CRIMINAL TAKING

WITH AT?

The Lord President's Office's letter of 9 October recorded colleagues' agreement in principle to my proposal to strengthen the law against "joy riders" and your Private Secretary minuted mine on 11 October with your comments. I have now agreed with John MacGregor that we should make the change in a short Government Bill this Session unless a Private Member successful in the ballot takes the matter up. I must now seek drafting authority for the Bill. Some important points remain to be resolved.

As you know, the main outstanding issue on the policy is whether there should be a presumption - which I proposed should be rebuttable by the defence - that the criminal taker was responsible for related offences of dangerous driving or criminal damage.

My view is that the evidential difficulties which presently prevent successful separate prosecutions for criminal damage or reckless driving will spoil the new offence too unless we strengthen the prosecution's hand. The Attorney General accepted my judgement that we should strengthen the law but he, and the Lord Chancellor, had reservations about presuming that the criminal taker had committed the aggravating acts.

My officials have since discussed the matter with the Attorney's, and have identified a further option, namely that the criminal taker should be made liable to the higher penalties I proposed when the vehicle was damaged or driven dangerously before its return, but that the new offence should not presume him to have committed the aggravating offences.

The distinction is a fine one and not necessarily very easy to argue, but I accept that it could have certain presentational advantages. I agree too that we need to pay especial attention to the drafting of the new offence. I would want us to be guided by Parliamentary Counsel on how best our policy objectives can be reflected. However, either option would satisfy my policy objectives and I would hope therefore that colleagues could agree to our proceeding on the basis that we can reserve a final decision on which option we pursue until we see the draft clauses.

The second point, raised in Andrew Turnbull's letter, is the scope of disqualification powers for my new offence. Your understanding that the effect of making disqualification mandatory for the new offence will be that anyone convicted of it will face immediate disqualification for at least 12 months is correct. We agree that we should make that the case whichever the aggravating feature. I shall certainly see to it that the courts are reminded of their power to impose an unlimited period of disqualification when we implement the new offence or before.

Legislating in this way this Session runs the risk of incurring expenditure in the 1992/93 financial year. It may be that I shall want to tie implementation to certain wider initiatives in Car Crime Prevention Year but I accept, of course, the Lord Chancellor and Attorney's conditions.

I am copying this to members of HS, James Mackay, Malcom Rifkind, John Gummer, Paddy Mayhew, Peter Fraser, Sir Robin Butler and First Parliamentary Counsel. AG Ld Adv

31 October 1991

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

28 October 1991

Dear Paul,

MISCARRIAGE OF JUSTICE CASES

The Prime Minister was grateful for Mr Patten's minute of 24 October giving notice of two cases which were referred to the Court of Appeal in connection with the West Midlands Serious Crimes Squad. The Prime Minister has asked what the Government could do to reassure the public if further such cases emerge, particularly as it is becoming more difficult to argue that these cases pre-dated PACE.

Yours ever

Andrew Turnbull

ANDREW TURNBULL

Paul Regan, Esq.
Office of The Rt. Hon. John Patten, M.P.
Minister of State
Home Office

CONFIDENTIAL

cc PM

Prime Minister
We are a long from the
allegations be words
on this one
AT
25/10

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

Prime Minister

MISCARRIAGE OF JUSTICE CASES

In his letter of 17 October to Mr Turnbull, the Home Secretary's Private Secretary gave details of a number of cases in which there is a strong campaign alleging a miscarriage of justice. In addition, he referred to two separate investigations, one in the West Midlands and one in South Wales, which were likely to give rise to particular public concern.

You will wish to know that, in connection with developments in the West Midlands, two cases are being referred today to the Court of Appeal, in accordance with the Home Secretary's powers under section 17(1)(a) of the Criminal Appeal Act 1968. The cases concern Mr Delroy Hare, who was given a six year prison sentence in March 1987, and Mr George Glen Lewis, who was sentenced to ten years' imprisonment in June 1987 for offences of robbery and burglary. Officers of the West Midlands Serious Crime Squad were responsible for the original investigation of these offences. In the light of reports by the West Yorkshire Police into complaints against officers of the Squad made by both Hare and Lewis, it has been decided that there are grounds for referring both cases to the Court of Appeal.

J.P.

JOHN PATTEN

24 October 1991

JP1276

there is becoming a bigger scandal as to each case.

If any more emerge what can we do to reassure the public about the police? 24/10

HOME AFFAIRS · Senerana. Pts

Prime Minister

I have seen a copy of Kenneth Baker's minute of 7 October to you.

While I fully support Kenneth's intention to toughen the law on joyriding in England and Wales, the position in Scotland is rather different. Joyriding alone already attracts a maximum penalty of 12 months imprisonment and, when combined with common law offences such as malicious mischief and reckless conduct, could attract any penalty up to life imprisonment.

So I am not convinced that changes to the law, or at least the same changes, are necessary in Scotland. But I shall consider this further in the light of Kenneth's announcement. My officials will keep in touch with the Home Office as thinking on any new offence develops.

I am copying this letter to members of HS, James MacKay, Malcolm Rifkind, John Gummer, Paddy Mayhew, Peter Fraser, Sir Robin Butler, First Parliamentary Counsel, and First Scottish Parliamentary Counsel.

I L

Scottish Office
14 October 1991

EML00309.101

HOME AFFAIRS: Sentencing PS

CONFIDENTIAL

cite JH
bcc PH

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

11 October 1991

Dear John.

AGGRAVATED CRIMINAL TAKING

The Prime Minister has seen the Home Secretary's minute of 7 October and the Attorney General's minute of 8 October. The Prime Minister was content with the proposal to establish a more serious offence of aggravated criminal taking. The Home Secretary announced this in his speech to the Conservative Party Conference. The Prime Minister was keen to ensure that young people under the driving age could find themselves having to wait to get a full licence when they reached the normal age if they had been involved in car theft. As you will have seen he said in his own speech

> "Some of those involved are too young for a licence. We will ensure that when they reach driving age they can be banned from the road".

The Prime Minister understands his announcement to be based on the following. First, anyone found guilty of the new offence of aggravated criminal taking under either the dangerous driving condition or the criminal damage condition, would be subject to an automatic disqualification of a minimum of twelve months. This would run from the time the offence was committed. Secondly, a circular would be issued to the courts guiding them towards the possibility that the disqualification could be more than the minimum and could extend beyond the driving age. Please could you confirm these understandings.

The main outstanding issue is that raised by the Attorney General, ie. whether there should be a presumption that the criminal taker was responsible for any related offences of dangerous driving or criminal damage. This is an area where the Prime Minister will want to be guided by the legal experts but he does very much want the new offence to bite strongly on this form of crime.

CONFIDENTIAL

I am copying this letter to the Private Secretaries to Members of HS, Jennie Rowe (Lord Chancellor's Office), Simon Whiteley (Department of Transport), David Rossington (Ministry of Agriculture, Fisheries and Food), Juliet Wheldon (Law Officers' Department), Alan Maxwell (Lord Advocate's Department), Sonia Phippard (Cabinet Office) and Peter Moore (First Parliamentary Counsel).

Yours ever

Andrew Turnbull

ANDREW TURNBULL

Colin Walters, Esq.,
Home Office

TJS/AG

cc PC

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

9 October 1991

Dear William,

JOY RIDING

The Home Secretary spoke to the Lord President on the telephone about this subject, before submitting his minute of 7 October to the Prime Minister. The Lord President has asked me to pass on his own views.

The Lord President fully understands and sympathises with the Home Secretary's reasons for wishing to strengthen the law in relation to joy riding. He has told the Home Secretary that he is content for this to be announced later this week, without a commitment as to how or when in what remains of this Parliament we take the necessary legislative steps.

As to the options for legislation, the Lord President agreed with the Home Secretary that it would not be sensible to tack this provision on to the Prison Security Bill, for fear of turning it into a Criminal Justice Miscellaneous Provisions type of measure. The Lord President feels that there are really two options: a short Bill, that would not be mentioned in the Queen's Speech (as the Home Secretary's minute to the Prime Minster acknowledges); or a Private Member's Bill. If a backbencher at the top of the ballot or close to it were to be sympathetic, the Lord President thinks that this would be an attractive subject for a Private Member's Bill. But this is not something on which we need to reach a final view before an announcement this week.

I am copying this letter to the Private Secretaries to the Home Secretary, the Lord Chancellor, the Secretary of State for Transport, the Minister of Agriculture, the Chief Secretary, the Attorney General, the Lord Advocate, other members of HS, and to Sir Robin Butler and First Parliamentary Counsel.

Yours ever,
T. Sutton

T J SUTTON
Principal Private Secretary

William Chapman Esq
PS/Prime Minister
10 Downing Street
London SW1

Home Affairs : Sentencing Powers

cc Nick True
Fax

cc PM

HOME SECRETARY

JOY RIDING

Thank you for copying to me your minute of 7th October to the Prime Minister .

I accept your judgement that the law in relation to joy riding should be strengthened so as to signal to the public our determination to deal with this mischief. You are however already aware of my serious misgivings about the proposed presumption that the criminal taker was responsible for any related offences of dangerous driving or criminal damage. Having spoken to James Mackay I know that he shares my concern that such a presumption could give rise to wrong convictions. It is also likely to discourage confessions. I think a lot of thought will be needed before we could decide to incorporate this provision. My agreement cannot as yet, therefore, extend to the inclusion of that presumption.

When we spoke yesterday you accepted that although David Mellor should be asked to make the necessary provision for this initiative, the Home Office would be responsible for the bid and would make provision for the CPS costs (presently estimated at £1.9 million per annum at 1990 prices, but subject to closer examination by officials) by way of PES transfer. My agreement had to be, and must remain, conditional on this. It may in any

event be that these costs will arise sooner than anticipated if John McGregor is successful in finding you a slot before the end of this Parliament: there appears to be no reason why implementation should not follow quite quickly.

I am copying this minute to the recipients of yours.

S. J. Wood

8th October 1991

Approved by the Attorney General and signed in his absence

From: THE PRIVATE SECRETARY

CCS

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

Prime Minister
Although the Home Sec told you he thought we had come through all the main miscarriage of justice cases, the position is not as comforting as that. The trouble is likely to come not from the existing high profile cases but from investigations by the West Midlands and South Wales police. The worrying feature is that some of their misdemeanours come after the introduction of PACE. You should therefore, avoid any over sanguine statement about the worst being behind us.

Thank you.
7/10

7 October 1991

Dear Andrew

AT 8/10

MISCARRIAGE OF JUSTICE CASES

... Thank you for your letter of ~~26~~ 24th September. I attach, as requested, a note of those cases in which there is at present a strong campaign alleging a miscarriage of justice. The cases involved are those of the Hickeys (convicted of the murder of Carl Bridgewater), Derek Bentley and Sara Thornton. While it is perhaps dangerous to speculate, our experience of such cases does not at present suggest that any of these three is likely to have the same implications for the criminal justice system as the others which have caused such concern recently.

Of these, the Thornton case is different in character to the other recent high profile cases, in that there is no question of police malpractice, or of doubtful forensic evidence. Campaigners are endeavouring to use this case, in part, to try to force a change in the law on provocation. As to the Bentley case, campaigners have until recently focused mainly on a strong feeling that, in the particular circumstances of the case, it was the exacting of the extreme penalty of the law that was unjust. More recently greater attention has been paid to suggestions that there is now new evidence of fabrication of evidence by the police, which casts doubt on the safety of the conviction itself, and these claims are being examined. The case nevertheless occurred over 20 years before the Guildford Four and Maguires cases. The Hickeys' case has been reviewed several times, and in 1987 was referred by Mr Hurd to the Court of Appeal. The most recent representations suggest that certain statements made in connection with the original investigation were fabricated, and these are still being considered.

Matters which seem more likely to give rise to greater public concern relate to two separate investigations. The first, which is already widely known, is the ongoing investigation by the West Yorkshire Police, under the supervision of the Police Complaints Authority, into the activities of the West Midlands Serious Crime Squad. The investigation has involved looking at allegations made by 97 individuals who had been interviewed by the Squad in

Andrew Turnbull Esq, CB
10 Downing Street
LONDON SW1A 2AA

/2

CONFIDENTIAL

connection with inquiries into criminal offences. Of these, a number were either not proceeded against or were acquitted at trial. The number of potential miscarriages of justice is therefore reduced. Although we do not at present have a clear picture of the likely extent of possible miscarriages of justice in these cases, it is probable that a number of them will be dealt with through the normal judicial processes.

The Home Office is, however, already considering a number of the West Midlands cases in which the normal appeal rights have already been exhausted, and decisions will have to be taken over the next few months on whether the Home Secretary should intervene in those cases by referring them back to the Court of Appeal. The office of the Director of Public Prosecutions is understood to be awaiting the completion of the present investigation before deciding whether to institute criminal proceedings against individual officers. We understand that such a decision is unlikely to be taken before the early part of 1992, but clearly any decision to prosecute officers will increase the pressure on the Home Office to intervene in any case involving those officers.

The second investigation, which is not yet public knowledge, concerns the South Wales police force. We understand that the Police Complaints Authority have been supervising an investigation into the activities of a number of police officers in that force. This follows concern about irregularities in officers' pocket books and the reliability of statements alleged to have been made to South Wales officers in a particular case, which resulted in a reference of that case to the Court of Appeal by the Home Secretary in February this year. We understand that 20 cases have so far been identified in which the same police officers were involved and which there were "not guilty" pleas. In addition, there are a further 290 cases involving the same officers, where there was a plea of "guilty". Should serious doubts arise about the reliability of the police evidence in the initial 20 cases, it is very likely that a substantial number of the 290 will also seek to show that their convictions were wrongly obtained, despite the nature of their original plea. Concerns about what has happened in South Wales are, we understand, likely to become public knowledge within the next few weeks.

In the light of what happened with the Guildford Four and Maguires, we did take the initiative to institute particularly searching enquiries into those cases which seemed most likely to have close similarities. In the case of the Birmingham Six, the results of our enquiries were central to the grounds on which the convictions were ultimately overturned, and in Miss Ward's case, they led to the decision to refer the case in August to the Court of Appeal.

/3

There are, of course, a number of other cases under consideration at present where the Home Office is making further inquiries into claims of alleged miscarriage of justice. It is not possible to say, in regard to any of these, whether they are likely to fall into the same category as those cases which have recently attracted so much attention, but we are not aware of any time bombs likely to explode in the near future. We are, nevertheless, continuing to consider very carefully whether other cases involving, for example, contentious forensic science evidence or disputed confessions should be the subject of exceptionally careful scrutiny.

There is perhaps one further point I should make. Most of the contentious cases so far made public concern events which took place prior to the introduction of the Police and Criminal Evidence Act 1984 (PACE): this is not true of the West Midlands and South Wales cases just referred to.

C J WALTERS

Annex

THE CASE OF SARA THORNTON

On 23 February 1990 Sara Thornton was convicted, by a 10-1 majority, of the murder of her husband and the mandatory sentence of life imprisonment was imposed. Her appeal against conviction was refused by the Court of Appeal on 29 July 1991.

Circumstances of the offence

2. Following her return to the matrimonial home from a pub, and after an argument, Mrs Thornton stabbed her husband dead while he lay on a sofa in an intoxicated state. There had been a history of domestic violence - Mr Thornton had been charged with assault - and Mrs Thornton had earlier given her husband sufficient sleeping tablets to cause an overdose although he revived and refused to go to hospital.

The trial

3. At the trial defence counsel in seeking to have the murder charge against Mrs Thornton reduced to manslaughter, relied on a defence of diminished responsibility. The judge asked the jury to consider also the defence of provocation and whether there was "a sudden and temporary loss of self-control which would have caused a reasonably sober person to lose her self-control and behave as the defendant behaved". The jury rejected both defences.

The appeal

4. Mrs Thornton appealed on the grounds that the trial judge misdirected the jury on the question of provocation and diminished responsibility and that the Court of Appeal should find the conviction unsafe and unsatisfactory because defence counsel failed to put forward and actively pursue the defence of provocation as an alternative to, or in conjunction with, the defence of diminished responsibility. The appeal was dismissed and leave to appeal to the House of Lords on a point of law refused.

THE CASE OF DEREK WILLIAM BENTLEY

Facts of the case

On 2 November 1952, Derek Bentley, aged 19, and Christopher Craig, aged 16, were intercepted by police officers on the roof of a warehouse in Croydon. Craig, who was armed, fired several shots at the police and killed PC Miles. Bentley, who had no firearm, had been detained by the police for some while before the fatal shot was fired but he was alleged to have encouraged Craig to shoot by shouting "Let Him Have It, Chris". Both youths were convicted of murder. Craig, who was too young to be hanged, was sentenced to be detained during Her Majesty's pleasure. (He was released on licence in 1963). Bentley was sentenced to the statutory death penalty; his appeal failed and he was executed on 28 January 1953.

Earlier reviews

2. The case caused considerable controversy at the time particularly with regard to the decision of the then Home Secretary, Sir David Maxwell Fyfe, not to grant a reprieve (despite the jury's recommendation of mercy). Periodic representations have been received over the years, notably in the early seventies following publication of David Yallop's book "To Encourage The Others" which suggested that PC Miles had been accidentally shot by a fellow policeman and that both Craig and Bentley were innocent. Enquiries produced no evidence to cast doubt upon the safety of either conviction.

Current representations

3. Within the last year or two, Bentley's case has attracted yet more attention with four books, including a new edition by David Yallop and one by Craig's defence counsel, John Parris. A feature film, "Let Him Have It", is premiered this week. In addition, Thames Television screened programmes in September 1990 and September 1991. Much of the current debate centres upon the perceived unfairness of the decision to execute Bentley but the

TV programmes presented alleged new evidence from fresh witnesses (including that of a police officer alleged to be at the scene) which purports to cast doubt on the evidence of the police at the trial. There is a suggestion that the police conspired to convict Bentley by fabricating evidence. The police have been asked to investigate these allegations.

Strength of campaign

Ministers receive surprisingly few letters from MPs but a recent Early Day Motion was signed by 164 Members calling for a public inquiry and a posthumous Free Pardon for Bentley. The Division receives a larger number of letters from members of the public and this is likely to increase when the film goes on general release. There is very considerable press interest in all aspects of the case.

MM451

THE CASE OF MICHAEL HICKEY, VINCENT HICKEY, JAMES ROBINSON AND PATRICK MOLLOY (DECEASED)

(THE CARL BRIDGEWATER MURDER CASE)

Preliminary note

While the popular press refer to this case as the Carl Bridgewater case, and some refer to those convicted as the 'Bridgewater Four', we aim to refer to it in all official correspondence as the Hickey case. This is out of deference to the victim's parents.

Facts of the case

2. On 9 November 1979 at Stafford Crown Court Michael Hickey, Vincent Hickey and James Robinson were convicted of murder and aggravated burglary. A fourth man, Patrick Molloy, who died in prison in 1981, was acquitted of murder but convicted of manslaughter and aggravated burglary. Michael Hickey, who was 17 years old at the time of the offence, was sentenced to be detained during Her Majesty's pleasure; Vincent Hickey and James Robinson were sentenced to life imprisonment; Molloy received a total of 12 years' imprisonment. All four men applied for leave to appeal against conviction. Molloy died before his application could be heard. The applications of the other three were dismissed by the full Court of Appeal in December 1981.

3. The four men were alleged to have broken into an isolated farmhouse. The victim, a 13 year old newspaper boy who arrived at the house unexpectedly, was shot at virtual point blank range as he sat on a sofa in the living room. The house was ransacked and valuables were removed. The murder enquiry was conducted by Staffordshire Police with assistance from officers attached to the West Midlands Serious Crime Squad.

4. The four men were eventually arrested. Vincent Hickey made admissions which he later retracted. Molloy admitted his part in the burglary and made a statement implicating the other three and saying he was upstairs when the boy was shot. Robinson and Michael Hickey denied any involvement but there was evidence of

association between all four and incriminating remarks made to, as overheard, by fellow prisoners, prison officers and other witnesses.

Earlier reviews

5. During the last 10 years there has been a persistent campaign on behalf of the convicted men. It has been led by Paul Foot and Mrs Whelan, Michael Hickey's mother, who has persuaded prosecution witnesses to retract their evidence. In 1987, following a retraction by a significant witness, the then Home Secretary (Mr Hurd) referred the case to the Court of Appeal. In 1989, after a long and careful review of the evidence, the Court confirmed that the convictions should be regarded as safe and satisfactory.

Current representations

6. Solicitors acting for the convicted men submitted further representations in June 1991. They suggest that Molloy's admissions, and the statement he dictated and signed, were fabricated by police officers including ex-Det. Constable Perkins, a recently discredited member of the West Midlands Serious Crime Squad. They also seek to undermine another prosecution witness who gave evidence of incriminating remarks made by Robinson. Careful consideration is being given to these points.

Strength of campaign

7. Ministers receive no more than one or two letters a month from Members of Parliament who usually enclose letters from constituents without expressing any views themselves. The Division also receives 5-10 letters per month from members of the public. The campaign cannot be said to have ignited public sympathy but the case attracts frequent press interest. Paul Foot regularly comments on each development in his Daily Mirror column.

MM450

Subsequent developments

5. On 31 July a man who had battered his wife to death, received a two year suspended sentence on the grounds of provocation. Following his trial Mrs Thornton began a hunger strike which she subsequently ended on 22 August.

6. Jack Ashley MP meanwhile made representations about Sara Thornton's case and raised the general question of the law of provocation. Mr Ashley indicated his intention to attempt to introduce a Private Member's Bill, should the Home Secretary refuse to initiate legislation to change the law on provocation. The Home Secretary informed Mr Ashley on 30 August that there were no special compelling grounds in Mrs Thornton's case for recommending the exercise of the Royal Prerogative of Mercy to secure her release but that he would be ready to consider any new evidence or other consideration of substance which was not available before the courts with a view to exercising his powers to refer the case back to the Court of Appeal. He also informed Mr Ashley that he was not persuaded that new legislation on provocation was required.

Campaign to free Sara Thornton

7. Several women's groups and many individuals have taken up the case of Sara Thornton in support of their call for a change in the law of provocation. So far some 73 MPs have made representations on behalf of Mrs Thornton, alleging that there has been a miscarriage of justice, and there have been 500 letters from members of the general public. There have also been numerous representations from both MPs and the public on the general question of the law on provocation. Some groups have extended their protests to the cases of Kiranjit Ahluwalia and Amelia Rossiter. Both of these women have been convicted of murder and both have applied for leave to appeal. Their cases are therefore sub-judice.

8. There are currently fortnightly demonstrations each Wednesday outside the Home Office in support of all three women. These are organised by the Southall Black Sisters and will apparently continue "until the law is changed and the women are released". We understand that there is also to be a national demonstration for women on 23 November in support of the international day of action against violence against women and that the cases of Thornton, Ahluwalia and Rossiter could feature in this protest.

9. A prime mover in the campaign for Sara Thornton is Mr George Delf, a close friend of Mrs Thornton's who is believed to be a professional writer. Together with a Juliet Stevenson, Mr Delf has requested the exercise of the Royal Prerogative of Mercy to grant Mrs Thornton a Free Pardon and to secure her immediate release from prison.

Current position

10. The Home Secretary is currently considering whether medical evidence provided by Dr Farn, Mrs Thornton's general practitioner, may be seen as constituting new evidence for the purposes of a reference to the Court of Appeal. He is also considering the recent request for the exercise of the Royal Prerogative to effect Mrs Thornton's release and will take all these matters into account before deciding whether he would be justified in intervening in her case.

DC684

PRIME MINISTER

thank!

JOY RIDING

You do not need to worry with this note tonight, although you will want to be aware in case the Home Secretary raises the issue.

Mr Baker has responded to our request to look at a power to allow deferred loss of licence for under-age joy riders with a plea for support for his own proposal - a tougher new sentence of aggravated taking which would carry a sentence of up to two years. Kenneth Baker wants to announce this on Wednesday, although he suggests that you might announce disqualification for these offenders on Friday. His proposal and yours are not necessarily mutually exclusive.

The Home Office are missing the point about whether a new power, as we propose, would hit those under-age joy riders who cannot now lose their licences.

We have spoken to Andrew Turnbull on this. He is going back to the Home Office tomorrow to pursue them further. We will report.

NC

NICK TRUE
7 October 1991

· 010

CCA

cc Nick True by Fax

To be put to attached PM. by Fax 7/10

Prime Minister

JOY RIDING

Nicholas True wrote to Tony Kerpel about your wish to give a tough message on joy riding at the Party Conference.

2 I have been reviewing the law in this area for some time. I spoke to James MacKay, Paddy Mayhew and other colleagues over the weekend about my conclusions. We agreed the present law is seen as soft. There is a public misunderstanding that the Criminal Justice Act 1988 made matters worse by altering the joy riding offence to one triable by magistrates only. That view is mistaken: the 1988 reform simply brought procedure into line with the way the courts were treating the offence, cutting out wasted resources on needless Crown Court trials and opportunities for acquittals.

3 The real problem is the mismatch between what the courts can properly hand down for the mischief of the joy riding offence itself - and it is that offence which is all that can usually be charged - and the sum of the conduct which goes with the joy riding.

4 I would not want us to turn the clock back to 1988 on this offence. What I want to do - and to announce at Conference on Wednesday - is to toughen the law itself so that aggravating mischiefs - dangerous driving and criminal damage - are easier to charge and can be charged as part of a new offence. John MacGregor has agreed that my new offence need not be referred to in the Queen's Speech and would expect to find a slot later in the session.

/2

5 The new offence of "aggravated criminal taking" would sit side by side with the simple "joy riding" offence, with bad cases triable in the Crown Court and a maximum sentence of two years imprisonment. The new offence would be charged as an alternative to the existing one where the prosecution could prove joy riding - let us call it criminal taking - and either that an offence of dangerous driving had been committed during the period that the vehicle had been taken from its keeper or that an offence of criminal damage had been committed involving the vehicle before its recovery, or both.

6 The sting in the tail would be that if either such aggravating offence had been committed during the relevant period then it would be presumed that the criminal taker was responsible. It would be open, as it is with other offences where the normal burden of proof is reversed in this way, to the defence to show on the balance of probabilities that the criminal taker had not committed the aggravating offence. But the connection between such offences and the criminal taker, and any accomplices, would not, as now, need to be established by the prosecution beyond reasonable doubt. I know, however, that Paddy has reservations about this presumption, and we will need to consider the details carefully in due course. I do not propose to say anything on this point at Conference.

7 The message I plan to give to Conference is that so-called "joy riders" could face a quadrupled prison sentence and an unlimited fine. I think that these tougher penalties will act as a major deterrent. It would certainly help if this message were underscored in your speech.

8 On disqualification, the present law is that courts can disqualify following the simple taking offence. But the Court

of Appeal has discouraged excessive bans because they are often counter-productive, encouraging the offender to drive in defiance of the ban, and therefore without insurance. Under my new aggravated criminal taking offence I think we can justify obligatory disqualifications when the aggravating feature was dangerous or reckless driving. If Malcolm Rifkind agreed I would be happy if you made that point in your speech.

9 Our preliminary assessment is that, annually, up to 1000 of the 20,000 odd prosecutions for "taking" cases might be sentenced in the Crown Court. The exact numbers in the Crown Court and getting more custody in the magistrates' courts depends on the precise formulation of the offence and how the CPS apply it. At the moment we think we are looking at additional costs of £3 - £6m in a full year (1990 prices). David Mellor is content we should go ahead on the basis that we would need to enact legislation for the new offence and that expenditure need not be incurred until the 1993/94 financial year.

10 I am copying this to members of HS, James MacKay, Malcolm Rifkind, John Gummer, Paddy Mayhew, Peter Fraser, Sir Robin Butler and First Parliamentary Counsel.

7 October 1991

9a-b

SECRET

ANDREW TURNBULL

2 October 1991

cc Mrs Hogg

POLICE: WINSTON SILCOTT

As agreed, I attach a draft letter for you to send to Colin Walters.

This is a sensitive subject. I am not sure how far you want to copy your letter. The correspondence went to the Lord Chancellor, the Attorney General, Chris Patten, Ian Lang and Peter Brooke.

CAROLYN SINCLAIR

470.CS

6

SECRET

DRAFT LETTER FOR SIGNATURE BY ANDREW TURNBULL

Colin Walters Esq
Home Office

WINSTON SILCOTT

The Prime Minister has seen the Home Secretary's minute of 26 September. He has also seen the Attorney General's minute of 27 September supporting the suggestion of Ministerial support for the police service.

You pointed out that, providentially, it is the Chief Constable of Lancashire who will be the next chairman of ACPO

The Prime Minister will be meeting the police when he thanks them for their efforts after the Party Conference. He will use that occasion to emphasize the Government's support for those policemen who risk danger to themselves to protect the rest of us, and to uphold order in the streets.

While the Prime Minister accepts the importance of sustaining the morale of policemen in the front line, he does feel that a number of factors now point to the need for a radical review of the police. The Royal Commission on Criminal Justice will deal with matters such as the quality of police evidence. But it will not look at issues such as funding, management and structure. The Prime Minister believes that we must be prepared to tackle these issues very soon after an Election. Accordingly, he would be grateful if nothing was said now which appeared to rule out such a review. The Prime Minister accepts that aspects of ~~the review may be unsettling to the police, and he is anxious to avoid accusations of bad faith.~~

would allow the opportunity to discuss such a would

can with the Home Secretary at the next bilateral

I am copying this letter to Jeremy Heywood (Chancellor of Exchequer) and Juliet Wheldon (Law Officers Dept) and to Sir Robin Butler.

CAROLYN SINCLAIR

2 October 1991

cc Mrs Hogg
Mr Turnbull

DISQUALIFYING JOY RIDERS FROM HAVING DRIVING LICENCES

Thank you for your helpful note. It seems to me more than tidy-mindedness: it seems dotty. Joy riders like having cars. They get their kicks from driving cars. They hurt other people when they drive cars.

It is true that the possession or otherwise of driving licences does not control whether people steal cars. It is true also that there are other criminal sanctions which can be used. (How many joy-riders have been sentenced? And what were the sentences?)

However, the public - and perhaps some of those involved - would see a link between illegal and dangerous driving and the loss of the right to drive. It might be a deterrent for some; it would seem a salutary penalty to the public. And there is no reason why it could not be imposed in addition to whatever other penalty might be held appropriate.

(What, incidentally, happens in the case of someone who has a provisional licence, who joy rides or drink drives? Can they proceed to a full licence if they pass their test? Or are they subject to the points system?)

I think there would be a case for pursuing this, not only for the next bilateral, but to see what the Prime Minister could say in his Party Conference speech.

NICK TRUE

(024)

B/F for next Hong Kong bilateral

MR TRUE

1 October 1991

cc Mrs Hogg
Mr Turnbull

DISQUALIFYING JOY RIDERS FROM HAVING DRIVING LICENCES

You asked if there were any powers to enable people convicted of joy riding offences to be penalised in terms of their ability to get or keep a valid driving licence.

Before 1988 the courts had discretion to make a connection of this kind. The Department of Transport and the Home Office did not think it logical to mix up the points system, which can lead to the withholding of a driving licence as a result of driving offences, and the committing of other offences (joy riding is theft).

So the law has been changed and it is not now possible to make such a connection.

This does sound to me like a bit of tidy-mindedness. The Prime Minister could ask Kenneth Baker about this at the next bilateral.

CAROLYN SINCLAIR

466.CS

HOME SECRETARY

Prime Minister

I understand you asked for this tonight. Neither Carolyn nor I think that two speeches and further Ministerial support for the police is going to "lift" public confidence in them. Carolyn is preparing a note on riots/police/capping for the weekend box — that and this minute would best be considered together.

PRIME MINISTER

WINSTON SILCOTT

I told you this morning of today's developments in the Winston Silcott case, and my decision that the cases of both Silcott and Braithwaite should be referred to the Court of Appeal. I attach a copy of the announcement which we are issuing at 4 p.m., to coincide with an announcement by the Metropolitan Police about the suspension of Chief Superintendent Melvin.

Content to defer responding to Mr. Baker until you've seen Carolyn's note?

2. These announcements will be a considerable blow to the police service, following as they do the quashing of the convictions of the Birmingham Six, Guildford Four and the Maguires. Nor can I rule out the possibility of further bad news: the investigations into the activities of the West Midlands Serious Crime Squad, in particular, are not yet complete.

3. We agreed that I should consider what action might be taken to restore police morale and to lift public confidence in the police, and I shall be taking the opportunity presented by two speeches - to the Bar on Saturday and to the Association of Chief Police Officers next Thursday - to convey some important messages.

Yes.

4. First, the issues relating to the conduct by the police of the investigations raised by the Silcott case fall squarely within the remit of the Royal Commission on Criminal Justice chaired by Lord Runciman. I enclose a copy of the terms of reference, and you will see that (i) makes this quite clear. The other issue raised by the Silcott case is the corroboration of confession evidence (in effect there was none in this case). The problem is complex, and we will have to focus on the need to ensure that the guilty are convicted as much as on the rights of the innocent. So it is entirely right that the matter should be considered carefully by the Royal Commission before any further action is taken.

5. Secondly, however, I shall point out that major reforms have already been carried through. Silcott was arrested before the provisions of the 1984 Police and Criminal Evidence Act (PACE) came into force. PACE codified and clarified all aspects of the handling of criminal evidence. It also paved the way for the introduction of tape recorded evidence, and it is in this area, and in time the introduction of video recorded interviews, that I believe the future lies for the police service.

6. Finally, we shall probably need to tackle renewed arguments for a Royal Commission on the police. The Police Federation and the Superintendents' Association have both suggested a Royal Commission, although they have not been supported by the Association of Chief Police Officers so far. It is difficult to see what useful purpose such an enquiry could serve. It would certainly open up structural issues in a way which

I believe would be a distraction to the police at a time when the important reforms introduced by PACE are still not entirely digested and managerial changes closely related to the "Citizen's Charter" are being carried through. And in any case, the question of procedural safeguards which could prevent any repetition of the recent miscarriage of justice cases are already in the sights of the Runciman Commission.

7. I shall clearly need to work patiently with the leaders of the police service through what is going to be some choppy water ahead. They will need our support more than ever, and I am fortunate in having a good opportunity next week to show it. It would also be of enormous value if you were able to demonstrate your personal support for the police service in the near future, and I wonder whether you might be willing to fit a visit to the police into your programme during the next few weeks?

This doesn't seem very advisable. WSR

8. Copies of this go to James Mackay, Paddy Mayhew, Chris Patten, Ian Lang and Peter Brooke.

WS.

26 September 1991

26 September 1991 071 273 4600

BROADWATER FARM CASE - HOME SECRETARY REFERS WINSTON SILCOTT AND MARK BRAITHWAITE CASES TO COURT OF APPEAL

The Home Secretary, the Rt Hon Kenneth Baker MP, today referred to the Court of Appeal the cases of Winston Silcott and Mark Braithwaite.

Mr Silcott and Mr Braithwaite were convicted of riot, and of the murder, in 1985, of Police Constable Keith Blakelock.

The Home Secretary has acted in the case of Mr Silcott following receipt today of a report from the Commissioner of the Metropolitan Police on an investigation into the reliability of the records of interviews between Mr Silcott and the police. The investigation was conducted on behalf of the Commissioner by the Assistant Chief Constable of Essex, Mr Geoffrey R Markham, QPM.

That investigation included an assessment of the reliability of the records of interview in Mr Braithwaite's case. There are no grounds on that account for the Home Secretary to intervene in his case, but he has decided to refer the case the light of separate representations on behalf of Mr Braithwaite which relate to the admission in evidence of statements which he made to the police following his arrest.

The Home Secretary's action is taken in exercise of his power under Section 17 (1) (a) of the Criminal Appeal Act 1968. The cases are now sub-judice.

Notes for Editors

Mr Silcott, together with Mr Braithwaite and Mr Engin Raghip, was convicted of the murder of Police Constable Blakelock during the riot in 1985 on the Broadwater Farm estate. The case of Mr Raghip was referred to the Court of Appeal in December 1990.

On 25 July 1991 the Home Secretary asked the Commissioner of the Metropolitan Police for a report on certain issues raised by the recent representations received on behalf of Mr Silcott in respect of his conviction. He said that in the light of the report he would consider whether there were grounds for further intervention in the case. At that time the Home Secretary was also considering separate representations received on behalf of Mr Braithwaite.

The arrest and interviewing of Winston Silcott took place in October 1985 prior to the coming into force on 1 January 1986 of the Codes of Practice under the Police and Criminal Evidence Act 1984. The Metropolitan Police were then operating a 'dry run' under the procedures of the Codes of Practice but knowledge of them was patchy and they were not at that time a legal requirement.

A Code of Practice relating to the tape-recording of interviews with suspects was issued in 1988.

In practice the tape-recording of interviews is now general and will become mandatory when the Home Secretary issues an order under section 60(1)(b) of PACE. A repetition of the circumstances of recent miscarriage of justice cases where written interview evidence has been subsequently questioned therefore seems unlikely in the future.

The issues raised by this case fall within the terms of reference of the Royal Commission on Criminal Justice (the Runciman Commission) announced by the Home Secretary on 14 March this year. The Runciman Commission's terms of reference included:-

> "...to consider whether changes are needed in
>
> > the conduct of police investigations and their supervision by senior police officers, and in particular the degree of control that is exercised by those officers over the conduct of the investigation and the gathering and preparation of evidence;...
> >
> > the powers of the courts in directing proceedings, the possibility of their having an investigative role both before and during the trial, and the role of pre-trial reviews; the courts' duty in considering evidence, including uncorroborated forensic evidence;..."

F.B.

ROYAL COMMISSION ON CRIMINAL JUSTICE

Terms of reference

To examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent, having regard to the efficient use of resources, and in particular to consider whether changes are needed in

i. the conduct of police investigations and their supervision by senior police officers, and in particular the degree of control that is exercised by those officers over the conduct of the investigation and the gathering and preparation of evidence;

ii. the role of the prosecutor in supervising the gathering of evidence and deciding whether to proceed with a case, and the arrangements for the disclosure of material, including unused material, to the defence;

iii. the role of experts in criminal proceedings, their responsibilities to the court, prosecution, and defence, and the relationship between the forensic science services and the police;

iv. the arrangements for the defence of accused persons, access to legal advice, and access to expert evidence;

v. the opportunities available for an accused person to state his position on the matters charged and the extent to which the courts might draw proper inferences from primary facts, the conduct of the accused, and any failure on his part to take advantage of an opportunity to state his position;

vi. the powers of the courts in directing proceedings, the possibility of their having an investigative role both before and during the trial, and the role of pre-trial reviews; the courts' duty in considering evidence, including uncorroborated confession evidence;

vii. the role of the Court of Appeal in considering new evidence on appeal, including directing the investigation of allegations;

viii. the arrangements for considering and investigating allegations of miscarriages of justice when appeal rights have been exhausted.

CONFIDENTIAL

fie 85

(c:\PPS\Broadwat)

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

26 September 1991

BROADWATER FARM

The Home Secretary reported to the Prime Minister on the latest developments in the Broadwater Farm case. He said the notes of the Chief Superintendent in charge of the investigation had been examined by Essex police who had concluded that they were not, as they purported to be, contemporaneous records. It appeared that the "confessions" had been fabricated. In the light of this, it had been decided to suspend the Chief Superintendent in question and to pass the papers to the DPP. This would become public at around 1600 this afternoon. The Home Secretary said he had no alternative but to refer the cases of Silkott and Braithwaite to the Court of Appeal. The Court would probably take six months to a year to resolve the matter. The Home Secretary agreed to send the Prime Minister a copy of his Statement and associated briefing.

The Prime Minister said this would further weaken public confidence in the police and he asked whether there were further measures the Government needed to take to restore confidence. The Home Secretary said he had already set up the Royal Commission under Lord Runciman. One of its areas of study would be uncorroborated confessions. Nevertheless, he would examine what more could be done and what was needed to publicise the actions which had already been taken. The Home Secretary agreed to provide the Prime Minister with a note on this.

The Prime Minister asked whether this was the last such case which was known about and he suggested that someone might be asked to review dubious cases. The Home Secretary said he hoped it was the last. Could you provide a note on any cases where strong campaigns about a miscarriage of justice are running, eg Carl Bridgwater.

ANDREW TURNBULL

Colin Walters, Esq.
Home Office

CONFIDENTIAL

PERSONAL IN CONFIDENCE

a PM

PM/91
2 Feb

HOME SECRETARY

Recent events suggest that we made a mistake in 1988 when we turned 'Taking and Driving Away' into a summary offence punishable with only six months imprisonment. There is surely no shame in our saying that we never foresaw at that time the terrible incidents which have taken place recently, in some cases leading to the maiming and death of innocent people.

Is it not worth considering saying in your Conference speech that in view of recent events the Government has decided to make the offence once more triable on indictment to emphasise the seriousness of it?

I am copying this to the Prime Minister.

WADDINGTON

24 September 1991

CC PO

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Lord Waddington QC
Lord Privy Seal
Privy Council Office
70 Whitehall
LONDON
SW1A 2AT

12 August 1991

Dear David,

PRISONERS AND CRIMINAL EVIDENCE (SCOTLAND) BILL
(FORMERLY, PAROLE ETC (SCOTLAND) BILL)
DISCRETIONARY LIE SENTENCE PRISONERS

I am writing to seek HS Committee's policy agreement for legislation to amend the procedures governing the release of discretionary life sentence prisoners in Scotland.

This matter has been dealt with in previous correspondence, in particular Kenneth Baker's letter of 13 May and mine of 17 May to John MacGregor, your letter of 23 May to me and my further letter of 1 July to John MacGregor. In summary, what was agreed was that provision to establish new arrangements for the release of discretionary life sentence prisoners in England and Wales should be brought forward to replace, in the Criminal Justice Bill, the much wider-ranging provisions which had been added to the Bill by the House of Lords; that it should if necessary be made clear that Scottish provisions to like effect would be brought forward separately, as part of the proposed legislation to implement the recommendations of the Kincraig Committee; and that these provisions should be included in either the (fifth session) Parole Etc (Scotland) Bill or the (first session) Administration of Justice (Scotland) Bill.

You were concerned that the addition of measures relating to discretionary life sentence prisoners and certain other minor prisoner related measures, would broaden the scope of the Parole Etc (Scotland) Bill, which is also to include provision for evidence by live television links from abroad. However, as I indicated in my letter of 1 July, all the proposals affecting prisoners are inter-related by virtue of their subject matter and the new short title suggested by the draftsman, as above, would emphasise the 2-topic nature of the Bill.

My proposals are outlined in the appendix to this letter. The provisions which I have in mind would be very similar to those which have now been enacted for England and Wales. Compliance with the European Convention on Human Rights, following the ECHR judgement in the Thynne, Wilson and Gunnell case, would thus be secured in a virtually uniform manner north and south of the Border.

I estimate that the cost of these proposals - arising from the appointment of additional Parole Board members, additional administrative support, and legal aid - would amount to around £25,000 in the first full year of operations and about £12,000 in each year thereafter. Gillian Shepherd indicated in her letter of 15 May to Kenneth Baker that her agreement to these changes would be conditional on the cost being absorbed from within existing cash limited provision and I can confirm that the additional costs in Scotland would be met on that basis.

I am sending copies of this letter to other members of HS and FLG Committees and to Sir Robin Butler, First Parliamentary Counsel and to the Legal Secretary, Lord Advocate's Department.

Yours ever,

Ian.

IAN LANG

PRISONERS AND CRIMINAL EVIDENCE (SCOTLAND) BILL
PROPOSALS RELATING TO DISCRETIONARY LIFE SENTENCE PRISONERS

1. In the light of the judgement of the European Court of Human Rights (ECHR) in the Thynne, Wilson and Gunnell case, the object of these proposals is to secure compliance in Scotland with Article 5(4) of the European Convention of Human Rights in respect of discretionary life sentence prisoners. The view of the ECHR is that a discretionary life sentence falls into 2 parts: first the period which is appropriate as punishment for the offence and thereafter continued detention for so long as the offender remains a risk to the public. To comply with Article 5(4), continued detention on public safety grounds must be subject to review by an independent body having the standing of a court.

2. The proposals match very closely the provisions recently enacted for England and Wales in the Criminal Justice Act 1991.

Sentencing

3. At present, the period which a discretionary life sentence prisoner should serve in custody is determined by the Secretary of State after consultation with the judiciary and the Parole Board for Scotland. It is proposed that in future, when imposing a discretionary life sentence partly on grounds of public safety, the court should be required to specify the part of the sentence - the punitive term - to be served as punishment for the offence, taking into account both the seriousness of the offence and the early release provisions which will apply to determinate sentences. That specified part of the sentence would be subject to appeal in the same way as the sentence itself.

4. Where the offence is so serious as to justify a life sentence, regardless of public safety considerations, the court will be free not to specify a punitive term. In such cases, the offender will be treated in the same way as a mandatory life sentence prisoner and the Secretary of State will retain discretion over the timing of his release.

The Independent Body

5. It is proposed that the independent body responsible for reviews and release decisions should take the form of a specially constituted panel of the Parole Board for Scotland. This panel would be chaired by a judge and would include a psychiatrist and at least one other member of the Board. The panel's procedure would be subject to separate rules dealing with the prisoner's right to be heard, to be legally represented and to have disclosed to him relevant information and documents. Such rules will be necessary to ensure that the panel has the characteristics of a court as required under Article 5(4).

Criterion for Release

6. It is proposed that the Parole Board should not direct the release of a discretionary life prisoner unless they are satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

Procedure

7. A discretionary life prisoner would be entitled to require the Secretary of State to refer his case to the Board -

7.1 after he had served the relevant part of his sentence;

7.2 after the end of a period of 2 years beginning with the disposal of any previous reference to the Board;

7.3 after he had served half of any determinate sentence, running concurrently provided this date is not earlier than the date under 7.1.

8. Where, in any case referred to them, the Board were satisfied that the criteria for release had been met, they would direct the Secretary of State to release the prisoner on licence and he would be bound by that direction. The licence would be issued by the Secretary of State, but the conditions attached to it would be determined by the Board.

9. The Secretary of State would be empowered to recall a discretionary life sentence prisoner whose release on licence had been directed by the Board, but would be required to refer to the Board the case of any such prisoner recalled by him and to release the prisoner again if the Board so directed.

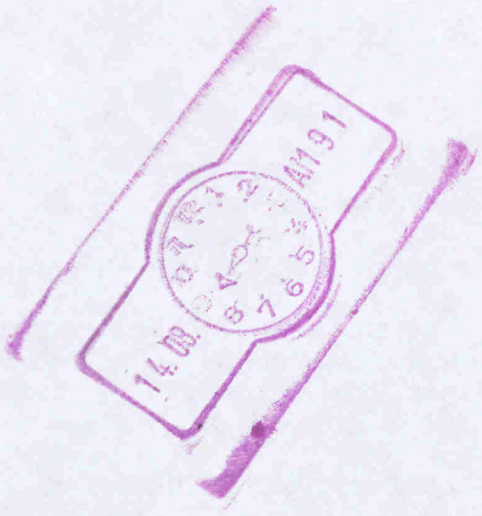
Transferred Prisoners

10. As for England and Wales, it will be necessary for Scotland to make provision to apply these proposed new arrangements to any transferred prisoner who, had he been sentenced in Scotland, would have received a discretionary life sentence.

Transitional Provisions

11. In respect of each of the 25 existing discretionary life sentence prisoners in Scotland, it will be necessary to establish, in consultation with the judiciary, what part of the sentence would probably have been specified by the court for the purpose of the proposed new arrangements had those arrangements been in place at the time the sentence was passed. It appears likely that about half the total number of such prisoners would be entitled to have their cases referred to the Parole Board as soon as the proposed new arrangements are brought into operation.

HOME AFFAIRS: sentencing policy pt 5



From: THE PRIVATE SECRETARY

R317

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

30 July 1991

→ file

Dear William,

VICTIM SUPPORT

You asked for advice and a briefing note on Helen Reeves' remarks, in the margins of the Victim Support Annual Conference last week, about the squeeze in their funding and the effect on their support for victims of more "ordinary" crime.

... I attach a briefing note which covers Ms Reeves' points about the alleged shortfall in funding for Victim Support. As you will see, the Home Office grant to Victim Support has risen by 20% this year and, where necessary, the Office has relaxed its funding criteria to tide over schemes which have lost local authority funding.

Yours,

Heather.

MISS H J WILKINSON

William Chapman Esq
10 Downing Street
London SW1

E.R.

VICTIM SUPPORT'S DIFFICULTIES: HELEN REEVES' REMARKS

Helen Reeves, Director of the voluntary organisation Victim Support, has been reported - accurately - as saying in interviews at VS's Annual Conference last week that:

(a) victim support schemes are increasingly dealing with more serious crimes of violence and sexual offences, to the detriment of what they can do for victims of 'ordinary' burglaries;

(b) local authorities are cutting back their support in cash and kind; and

(c) Home Office money is failing to 'keep pace' with rising demands.

Bull points

- The Home Office grant - £5.4m this year - has risen very rapidly: 20% more this year than last, which was 22% more than the year before; and it is set to increase (on Government plans) by 14% next year and again the year after.

- Victim Support is a voluntary service. The HO grant is not intended to 'keep pace' with increased referrals. It is up to VS to find the volunteers to do that. Government responds to their praiseworthy commitment by paying towards the essential administrative infrastructure to help them make best use of volunteers' time.

- Over 320 schemes now have salary grants for coordinators, and others have running costs grants (of 370).

- 96% by population of England and Wales is now covered by schemes.

E.R.

- Government has always looked to schemes to find help in cash and kind from other sources, within the communities they serve. Help has come from many local authorities who have recognised the benefits.

- The Government regrets that some local authorities are now cutting back and trying to point the finger at Government if the service locally suffers. Government cannot be expected to plug the gap. The Home Office has relaxed its funding criteria to tide threatened schemes over while they find other support.

Background

Victim Support is the national umbrella organisation for 370 independently managed voluntary victim support schemes throughout England and Wales (now covering 96% of the population). There are nearly 8000 volunteers who provide support - visiting victims, talking through what happened, giving practical advice on crime prevention for the future and on possible avenues to compensation or insurance. (Another 3-4000 volunteers are involved on scheme management committees).

550,000 cases were referred to VS by the police in 1990/1 - about 60% of them burglaries, 20% sexual and violent crimes.

It looks as if referrals will rise by a third this year, with sexual and violent offences (which generally require more intensive and sustained support) forming a bigger proportion. There is scope for the police to refer many more cases (but not all 4m recorded offences because a considerable fraction are not against individuals).

Since 1986/7 the Home Office has paid a grant - administered by VS nationally - to enable local schemes to employ a paid coordinator or to help them with other costs. The local scheme grant has risen rapidly.

E.R.

		£m		Salaried posts
	1986/7	0.136		151
	1987/8	1.6		180
	1988/9	2.55	*+60%*	227
	1989/90	3.7	*+45%*	292
	1990/1	4.5	*+22%*	315
	1991/2	5.4	*+20%*	335
Plans	1992/3	6.2	*+14%*	360
	1993/4	7.1	*+14%*	385

The importance of paid coordinators is that they can recruit, train and organise volunteers and look after administration which is unattractive as voluntary work and can be done more practically by full-time workers.

The object of the grant is to help provide a basic administrative infrastructure - not to establish a state victims scheme of paid workers instead of volunteers.

Some local authorities - notably in Greater Manchester - have cut their grants threatening some schemes (but more usually only paid workers where there were already more than the HO would pay for). We have relaxed funding criteria to enable VS to tide the most threatened schemes over, but have not tried to find new money to plug the gap. HO Ministers have insisted that local authorities, and others, should play their part.

Home Office
C4 Division
30 July 1991

AC639

FED
VA

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

29 July 1991

Dear Colin,

VICTIM'S CHARTER

Further to our conversation today, I am writing to confirm that the Prime Minister is content with the proposed announcement as set out in Paul Pugh's letter and enclosure of 18 July.

You kindly undertook to provide me with a note on the press report of 26 July of the financial difficulties facing Victims' Support.

I am copying this letter to the Private Secretaries to the Lord Chancellor, Attorney General, Lord President, Financial Secretary and Sir Robin Butler, and to Andrew Whetnall (Cabinet Office).

Yours

WILLIAM E. CHAPMAN

Colin Walters, Esq.,
Home Office.

fst.nb/pr/24i.07.91

RESTRICTED

Prime Minister

Treasury Chambers, Parliament Street, SW1P 3AG

William Chapman Esq
Private Secretary to the Prime Minister
10 Downing Street
LONDON SW1

24 July 1991

Dear William,

You spoke to me yesterday about Paul Pugh's letter of 18 July to Andrew Turnbull.

This is just to confirm that the Financial Secretary has no objections to the Home Office proposals. Though the presentation of the Home Office Press Release is not particularly exciting, we think that it would be helpful to have some announcements along these lines next week.

I am copying this letter to Paul Pugh.

Yours sincerely,
Philip Rutnam

PHILIP RUTNAM
Private Secretary

RESTRICTED

CCPO

THE LEGAL SECRETARIAT TO THE LAW OFFICERS
ATTORNEY GENERAL'S CHAMBERS
9 BUCKINGHAM GATE
LONDON SW1E 6JP

General enquiries 071-828 7155
Direct line 071-828

Paul Pugh Esq
Private Secretary
The Home Office
Queen Anne's Gate
London
SW1

24 July 1991

Dear Paul:

VICTIMS CHARTER

Thank you for copying to us your letter of 18th July to Andrew Turnbull concerning the Victims Charter. As you will be aware, Stephen Wooler has already spoken to Colin Walters to mention our concerns about some aspects of the draft press release. The purpose of this letter is to identify these concerns in a little more detail.

The first paragraph on page 2 refers to a costed action plan concerning pre-trial issues by an Inter-Departmental Working Group. In view of the fact that the Crown Prosecution Service has been the main impetus behind the Working Group on Pre-Trial Issues (which was established by the Directors Senior Liaison Committee) we think that it would be misleading to imply that the Lord Chancellor's Department has had the lead. Additionally the impression ought not to be given that the membership of the Group is confined to Government. It would also be helpful, in the context of the press release, to refer to the effect of the measures upon victims. In these circumstances we offer the following alternative paragraph:

"A costed action plan for implementation of the report by the Working Group on Pre-Trial Issues is being prepared. The action plan is almost complete and should lead to measures to tackle problems arising from pre-trial and court procedures and to greatly improve the flow of information between criminal justice agencies and to victims".

The next paragraph, which concerns the introduction of arrangements to enable victims, families and witnesses to talk about their case, has taken the CPS completely by surprise. There has effectively been no discussion between the Home Office and the CPS about the introduction of such arrangements, and of course no guidance to CPS staff is planned. The introduction of such arrangements gives rise both to issues of principle and questions about the allocation of resources, and it will not be possible to resolve any of these matters before the issue of the press release. The legal professions would have to be involved. It must however be clearly stated that the CPS is at present unable to deliver on a commitment couched in present terms. In those circumstances we consider that the line taken about communication should follow the Government response to the fourth report from the Home Affairs Committee on the CPS. I suggest the following:

"The Government has said in response to a report from the Home Affairs Committee that it accepts that in the interest of public confidence explanations to the police about decisions of the CPS should be provided wherever possible. This in turn will enable the police to communicate effectively with victims. In addition important objectives will be to improve awareness and consideration of the needs of victims, their families and witnesses, particularly when attending Court, on the part of representatives of the Crown Prosecution Service and counsel instructed on its behalf".

In these circumstances it is no longer necessary to include a reference to the CPS on page 1, paragraph 3.

I am copying this letter to recipients of yours.

Yours sincerely,

Stephen Parkinson

STEPHEN L. PARKINSON

GOVT MACH: categories blurred Pt 5.

From: THE PRIVATE SECRETARY

Copy

Prime Minister (1)

I have been awaiting Mr Maude's comments before putting this to you. I have now heard that Mr Maude is content with the proposed Home Office announcement. Are you?

LVE 16/7.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

18 July 1991

Dear Andrew

Content

VICTIM'S CHARTER

We published our own Victim's Charter in February last year. There has been a continuing programme of work since with the criminal justice services to give better effect to its thinking, and this material has, of course, been shared with those preparing the Citizen's Charter.

Mr John Patten has for some time been planning to give the Victim's Charter a further boost, by reporting progress so far and signalling what further steps the Home Office plans to take to press the services to do that bit better. The ideas chime very well with the Citizen's Charter of course.

Our plan is that Mr Patten should issue the enclosed draft press release in the first week of the Recess. We think it would provide a useful follow-up to publication of the Citizen's Charter, and would help to keep up the flow of creditable news during the Summer. The way in which we have moved forward with the statutory services, and are planning to move further, suggests that our material would be best used in this way, complementing the Citizen's Charter by building upon its approach. Essentially, the release represents the work we have been engaged upon over the last 18 months.

We are, of course, anxious not to cut across anything in the Citizens' Charter, in content or handling. So I am writing to you now to ensure that you would content with our bringing our work to fruition in the way I have described.

Copies to the Private Secretaries to the Lord Chancellor, Attorney, Lord President, Financial Secretary and Sir Robin Butler, and to Andrew Whetnall in MG.

Yours sincerely

Paul Pugh

PAUL PUGH

P.S. It's a pity about the timing of content and x attached. I'm asking the Home Office if they have proposals to help the charity 'Victims' Support'.

Andrew Turnbull Esq, CB
10 Downing Street
London SW1

DRAFT DRAFT DRAFT

[TBA] 071 273 4600

JOHN PATTEN OUTLINES DEVELOPMENTS ON VICTIM'S CHARTER

Home Office Minister the Rt Hon John Patten MP today set out a series of steps, including quality of service indicators, to be taken by the Home Office in the next twelve months to ensure that victims of crime are given full recognition and fair treatment by agencies involved in the criminal justice system.

The Victim's Charter was published on 22 February 1990. The Home Office has subsequently held discussions with criminal justice services on how it can be given maximum effect. Much is already being done and these services are increasingly adjusting quality programmes to meet the standards of service to the public outlined in the Charter. The next steps build on their encouraging response.

New guidance to police, courts, the Crown Prosecution Service and the probation service are among the measures being taken to improve communication between criminal justice agencies and victims of crime who come into contact with them. The measures include :

* A circular to police forces advising that every victim should receive the advisory leaflet "Victims Of Crime" within three days of reporting an offence, and that categories of non-violent offence should be referred automatically to victim support schemes.

* Quality indicators on speed and kind of response, sympathetic treatment, explanations of process and follow up contact with victims will be tested through the checklist produced to see how well police forces deal with victims.

* A circular to courts advising that witnesses should be sent the explanatory leaflet "Witness In Court" with their witness order to appear and give evidence. This sets out in simple terms court arrangements and what to expect when giving evidence.

  The Home Office is considering the practicalities of issuing a separate illustrated guide for child witnesses.

* A circular to all Chief Probation Officers reminding them of the need to take into account the views of victims and their families when considering release plans for life sentence prisoners.

* A costed action plan by the Inter-Departmental Working Group, led by the Lord Chancellor's Department, to tackle problems arising from pre-trial and court procedures and provide a greatly improved information flow between criminal justice agencies. The Group should produce the action plan this summer.

* The introduction of arrangements for victims, their families and witnesses to talk about their case, if they wish, with the prosecuting solicitor, counsel, or a representative of the Crown Prosecution Service.

* Encouraging adequate provision of seating and interview room facilities in courts for victims and witnesses, and access out of hours to court buildings to show them what to expect when they attend hearings.

* The extension of block listing of cases in magistrates' courts, grouping morning and afternoon cases separately for the convenience of victims and witnesses.

The measures set out by Mr Patten [in a speech to..../in reply to a PQ ....] have been developed by the Home Office in cooperation with other agencies to implement the commitment to high standards of service in the Victim's Charter published last year.

The Charter set out for the first time how victims of crime should be treated by criminal justice agencies and covers keeping victims and witnesses informed of investigations and any court proceedings in cases involving them, their treatment in court and helping them to secure compensation.

Mr Patten said :

" People quite rightly want to see higher standards set for performance by the public services, including the criminal justice system. Different approaches may be needed for different public services.

" The approach we took in the Victim's Charter was to set out not only those rights which we have already established for victims, but also an agenda to raise criminal justice service standards generally.

" The measures which I have set out today mark the considerable progress which has been achieved. With the commitment and cooperation of the agencies involved, we intend to ensure that the interests of victims drawn into contact with the criminal justice system are given the fullest consideration."

/NOTES FOR EDITORS

1. " Victim's Charter : A Statement Of The Rights Of Victims Of Crime " was published on 22 February 1990. The Charter set out for the first time the rights, entitlements and expectations of those who have become victims of crime.

2. " Victims Of Crime : How You Can Help The Police To Help You " was announced on 12 April 1988. This leaflet explains how victims can apply for compensation for injury, loss or damage resulting from crime. Together with forms to apply to the Criminal Injuries Compensation Board, this leaflet has been available through police stations. Police forces already take positive steps to draw the attention of victims, particularly of crimes of violence, to this advice.

3. " Witness In Court " was launched on 14 June 1988. This leaflet explains what happens in magistrates' and Crown Courts and contains helpful information for victims and witnesses about the procedures which they will be involved in at the court.

Copies of these booklets and leaflets have been widely circulated to criminal justice agencies, victim support schemes, citizens advice bureaux and public libraries. They can also be obtained by telephoning [Divisional contact points ?]

4. Victim Support is a charity founded in 1979. The Home Office gives grant to the national office of VS to help them raise awareness of victims' issues, co-ordinate a consistent national service and provide training for local schemes. This has risen by 80 per cent since 1986, from £ 150,000 to £ 270,000 in 1991/92. Funding has been increased by 12 per cent and 15 per cent respectively in each of the last two years.

There are now over 350 individual local victim support scemes covering 96 per cent of England and Wales and hopes to extend this to cover the whole area during 1991/92.

Local schemes are run by over 10,000 volunteers with Home Office financial support which has risen almost forty-fold since 1986/87, with increase of 20 per cent or over in each of the past two years. In 1991/92 it will amount to £ 5.4 m.

5. The Criminal Injuries Compensation Board was set up in 1964 and was the first such state Scheme in Europe. Eleven other countries in Western Europe now operate similar schemes. These vary in detail but none is more generous or wide in scope than the CICB Scheme, which extends not only to all victims of crimes of violence injured in Great Britain (or on British ships and aircraft), regardless of nationality, but to people injured in the course of preventing crime or assisting the police.

Since 1964 more than £ 600 m has been paid out to victims. Annual payments more than doubled in the last four years, from £ 52 m in 1987/88 to £ 110 m in 1990/91. It is expected that about £ 125 m will be paid out in 1991/92.

TODAY BBC Radio 4

Friday 26 July 1991

HEADLINES: In South Africa further bankrolling allegations have emerged. The US says it is has an assurance of Israeli withdrawal from occupied territories as part of a Middle East peace plan. NUPE are calling for an investigation into the resignation of the finance director of Guy's Hopspital. The charity Victims' Support may have to close owing to withdrawal of local authority support.

The South African government is embroiled in ever deepening allegations of political corruption. The latest involve the covert funding of trade unions and a students' unions to counter ANC influence in the universities. The British Government has expressed concern.

0635 Syria has claimed that President Bush has a pledge from Israel to withdraw from some of the occupied territories as part of a Middle East peace plan. This is the first sign of any Israeli willingness to trade land.

The much travelled James Baker is now off to Mongolia, the second oldest communist country and the latest to abandon communism. Like all countries going through the post-communist trauma, the Mongolian economy is in a mess and Mr Baker is sure to be asked for help.

The Cayman Islands are about to loom large in the BCCI affair. The islands are a financial paradise, there is no income tax and strict rules on confidentiality. Cayman is host to the parent company that owns BCCI although the bank wasn't run from there.

Lynda Chalker interviewed - we have made it very clear to President de Klerk that he must use the full resources of the police and the courts to clear up political corruption in South Africa. The spate of bankrolling allegations is playing into the hands of extremists and risks undoing much of President de Klerk's good work.

0705 The charity Victims' Support, which helps the victims of crime, says that it may have to close. Funding from local authorities has fallen and, although the Home Office has increased its support, the steep rise in violent crime has meant that demand far outruns the charity's resources and they will now provide support only in cases of murder and rape.

The resignation of Peter Burroughs, the finance director of Guy's Hospital has focussed attention on the viability of the hospital trust scheme. Guy's was in debt before becoming a trust and it remains as much in debt afterwards, but St Thomas's and King's College still intend to go down the same road. NUPE has asked the Commons Health Select Committee to investigate the reasons for Mr Burroughs departure.

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

26 June 1991

Dear Andrew,

ROYAL COMMISSION ON CRIMINAL JUSTICE

As I mentioned when we spoke by telephone this morning, Lord Waddington has been asked to give evidence to the Royal Commission on Criminal Justice.

I am grateful to Ken Sutton in Sir Clive Whitmore's office who has discussed the request with the Secretary to the Royal Commission. I understand that as a courtesy former Home Secretaries have been invited to give evidence to the Royal Commission but there is no expectation that those who like Lord Waddington, are still members of the Government will accept. On this basis, Lord Waddington will be refusing the invitation.

I am copying this letter to Richard Gozney (Foreign Secretary's office), Colin Walters (Home Secretary's office), Ken Sutton (Sir Clive Whitmore's office) and to Sonia Phippard (Sir Robin Butler's office).

Yours sincerely,

Gillian Kirton

GILLIAN KIRTON
Private Secretary

Andrew Turnbull Esq

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
SW1A 0PW

11th June 1991

Dear Kenneth,

Criminal Justice Bill: Life Sentences

Thank you for sending me a copy of your letter of 13th May to John MacGregor, in which you set out your proposals in relation to life sentences following the defeats at Committee Stage in the House of Lords. I certainly agree with you that we should not underestimate the strength of feeling on these issues in the House of Lords following the Select Committee Report on Murder and Life Imprisonment.

Before I comment on the detail of your proposals, I should perhaps refer to the resource implications they appear to raise for my Department, which will have to be considered. You refer to additional Legal Aid expenditure which may be considerable. I would need an assurance that extra provision could be made because I have no means of absorbing these extra costs from my present provision. You also propose a right of appeal against the term set by the judge, and this will lead to an increase in the number of appeals to the Court of Appeal, at least in the early stages, although it is not easy to predict what that increase might be. Any estimate would need to take into account the Attorney General's power to refer unduly lenient sentences to the Court of Appeal and the pressure there would be for sentences in this type of cases to be referred. You also refer to the need to recruit extra members for the Parole Board. I am not sure whether you have in mind any increase in the number of judicial members of the Parole Board, but given what you say about the need for a judicial chairman, this seems likely. If the level of chairmanship is required to be of High Court Judge level this will add to my already considerable difficulties in relation to High Court Judge power.

The Rt Hon Kenneth Baker Esq MP
Secretary of State
Home Office Department
Queen Anne's Gate
LONDON SW1H 9AT

Turning to the detail of your proposals, I understand that the cases before the ECHR have only been concerned with discretionary life sentences and that the analysis is that your existing power to determine the release date of prisoners serving mandatory life sentences would not be vulnerable before the ECHR in the same way, on the basis that the element of punishment continues throughout a mandatory life sentence and there is therefore, no alteration in the legal authority for detention. Having read the judgment of the ECHR, I have to say that it seems to me unlikely that the court would accept that analysis when the opportunity of a closer consideration of our practice in relation to mandatory life sentences arises. Bearing in mind that the tariff is indicated by the trial judge in the same way as for discretionary life sentences, the distinction between mandatory and discretionary life sentences is a fairly technical one and, more significantly, one which may not commend itself to those who would like to see a judicial recommendation made in court in all cases. I see from the Attorney General's note of 13th May that he has similar reservations about these aspects.

There is another aspect on which I would be grateful for clarification. If I have understood the proposals correctly, it seems to me that they will create three categories of life sentence. The first would be the mandatory life sentence which you propose should be unaffected. The second is the case in which the sentencer feels that a life sentence is appropriate, no doubt because the defendant's mental state makes him a danger to the public. In that case the sentencer is to set the term required for punishment and leave the question of his release date to be determined thereafter by the Parole Board. You also envisage a third type of case, in which the sentencer will not fix a term, because he will be unable to foresee the time by which the offender will have been sufficiently punished. I take it that here you have in mind the "few exceptions" referred to by the Lord Chief Justice in Wilkinson (1983 5 Cr. App. R. (s 105) which do not involve the mental element. If that is the intention, it may be important to make it clear as there may otherwise be a temptation to use it to avoid setting a term in difficult cases involving a mental element.

In relation to the second category, I understand your reasons for saying that the term would need to be about half of the determinate sentence which would otherwise have been passed. I am , however, concerned that this aspect of your proposal seems to cut across established sentencing practice. When fixing a determinate sentence, the sentencer decides the appropriate term of years in accordance with the Court of Appeal guidance relating to the offence in question and without reference to the effect of remission or parole, which he is enjoined to ignore. What seems to be proposed is that the sentencer who intends to pass a discretionary life sentence should first decide what the determinate sentence would have been and then halve it because of those very considerations he must normally ignore.

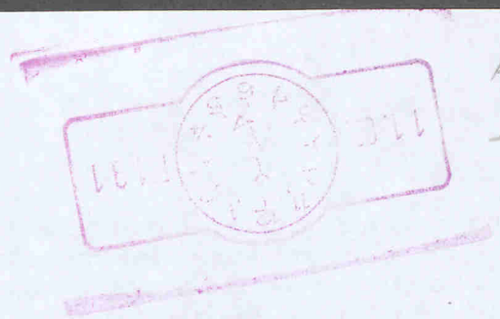
Furthermore, it seems to me that it could produce apparently odd results in cases involving two or more defendants. An example might be a case in which a judge would have sentenced defendant A to 12 years but decides that a life sentence is appropriate because of his mental state. The term to be set would therefore be 6 years. Co-defendant B's culpability is less and there is no mental instability so the judge finds that a sentence of 8 years is appropriate. Thus however carefully the judge has weighed up their respective roles, B though less culpable, will appear to have a longer sentence. I wonder whether consideration has been given to the alternative of requiring the judge to state what term he would have given had he not decided to pass a life sentence - in my example, 12 years for A. Thereafter statute could provide that in such cases, the prisoner will be considered for release when he has reached the point in his sentence at which a prisoner subject to a determinate sentence would be entitled to be considered for release.

A final point which troubles me is the power you propose to delay the release of a life sentence prisoner for up to 6 months in the public interest. In that case, he would have served the period necessary for punishment and the Parole Board would have decided that his continued detention was no longer necessary for the protection of the public. I take it that you are satisfied that such a power will not contravene the Convention but I find it difficult to see what would be the legal basis for detaining him any further or, indeed, why it should be necessary to do so.

I am sending copies of this letter to the recipients of yours.

Yours ever,

James.



Home Affairs
Secretary for [illegible]

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

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

31 May 1991

Dear Kenneth,

CRIMINAL JUSTICE BILL: LIFE SENTENCES

Thank you for sending me a copy of your letter of 13 May to John MacGregor. I have also seen John's Private Secretary's letter of 15 May modifying the original proposal.

Despite the fact that the arrangements for reviewing life sentences in Northern Ireland are different from those in England and Wales - for example, we have no statutory Parole Board - and the opinion of our legal advisers that we are not bound by the ECHR judgment in Gunnell et al, I expect we shall come under pressure to follow your lead as regards the small number of prisoners serving discretionary life sentences in Northern Ireland.

We shall, therefore, have to consider our position carefully but in the meantime I am content with how you propose to handle the issue, and the others arising from the House of Lords' amendments, when the Criminal Justice Bill returns to the Commons.

I am copying this letter to the Prime Minister, the other members of the HS and LG Committees and the Foreign Secretary, and to Sir Robin Butler, First Parliamentary Counsel and the Legal Secretary, Lord Advocate's Department.

Yours

Peter

PB

LD/SOFS/6168

HOME AFFAIRS: Capital Punishment Pt 5

CCP(

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon John MacGregor OBE MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AB

17 May 1991

Dear John,

CRIMINAL JUSTICE BILL: LIFE SENTENCES

I refer to Kenneth Baker's letter of 13 May and to the letter of 15 May from David Waddington's Private Secretary modifying the procedure earlier proposed.

I strongly agree with Kenneth that we should offer no concession in relation to the mandatory life sentence for murder or the procedures for the review and release of those subject to mandatory life sentences.

As Kenneth says, however, we are under an obligation, following the recent ECHR judgement to which he referred, to introduce changes in the procedures governing the release of discretionary life sentence prisoners. I shall therefore have to bring forward changes in the Scottish legislation similar in effect, but necessarily different in matters of detail, to those which Kenneth is now proposing for England and Wales. An assurance that the matter will be dealt with in separate Scottish legislation will be expected; I am content that such an assurance should be given; and I attach a copy of a statement on the Scottish position which might be included in David Waddington's introductory remarks at the commencement of Report stage on Monday 20 May.

Either the Parole Etc (Scotland) Bill (Fifth Session) or the Administration of Justice (Scotland) Bill (First Session) would be suitable vehicles for the necessary Scottish measures.

I am sending copies of this letter to the Prime Minister, the other members of HS and LG Committees, the Foreign Secretary, Sir Robin Butler, First Parliamentary Counsel and the Legal Secretary, Lord Advocate's Department.

Yours ever,

Ian.

ENC

IAN LANG

HSI00116.051

CRIMINAL JUSTICE BILL

RELEASE ARRANGEMENTS FOR DISCRETIONARY LIFE SENTENCE PRISONERS IN SCOTLAND

Speaking Note

Separate legislation governs the review and release of discretionary life sentence prisoners in Scotland, and there are differences in practice and procedure between Scotland and England and Wales. The same principles apply, however, and the Government therefore propose that amendments to a similar effect should be made to the corresponding Scottish legislation.

We have already announced our intention to bring forward separate legislation to introduce in Scotland a new system of early release for prisoners with determinate sentences, based upon our response - published in July 1990 - to the Kincraig Report on Parole and Related Issues in Scotland (our equivalent of the Carlisle Report, whose recommendations for England and Wales lie behind Part II of this Bill). This will provide the appropriate context in which to amend the law of Scotland in respect of discretionary life sentence prisoners at the same time as the role of the Parole Board for Scotland is otherwise amended.

Thus we shall secure the policy objectives now in contemplation in a manner which takes account of the separate Scottish legislation, institutions and procedures.

HOME AFFAIRS: Capital Punishment Pt 5

CCJ5.

ATTORNEY GENERAL

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1884

2 pps

The Rt Hon Kenneth Baker M.P
Secretary of State for the Home Department
Home Office
Queen Annes Gate
London SW1H 9AT

15 May 1991

Dear Kenneth:

CRIMINAL JUSTICE BILL: LIFE SENTENCES

Thank you for copying to me your letter of the 13th May 1991 to the Lord President setting out your proposal for handling the amendments made to the Criminal Justice Bill in the House of Lords and also for compliance with the ECHR ruling on discretionary life sentences.

The two points of concern to me were set out in my note of the 13th May to you which crossed with your own letter. I should be grateful if you would treat it as a formal response.

I am now copying this letter together with a copy of my note of the 13th May to the Lord President and colleagues on HS and LG committee.

Yours ever,
Patrick

HOME SECRETARY

LIFE SENTENCES

Two recent developments in relation to sentences of life imprisonment concern me because they may have serious implications for my duties under section 36 of the Criminal Justice Act 1988 - the power to refer unduly lenient sentences to the Court of Appeal.

The action of the House of Lords in amending the Criminal Justice Bill so as to replace the present mandatory life sentence for murder with a discretion on the part of the trial Judge will, if it is not reversed, bring those sentences within the ambit of the unduly lenient sentence provision. Although that consequence is perfectly logical in principle, it could lead to an unwelcome change in the role of the Attorney General generally in relation to this jurisdiction.

Sentencing in murder cases will be a particularly difficult task for the judiciary. The spectrum of the offence as presently defined is very wide, and the range of culpability will vary correspondingly. It is likely that a high proportion of sentences in murder cases would prove controversial, especially in the early days of a discretionary regime. I fear that the combination of such a discretion and the Attorney General's power to refer unduly lenient sentences will lead to him being asked to review practically every case. That risk would be particularly acute at the outset before any criteria were developed by the Court of Appeal. Decisions by the Attorney General would be likely to achieve a far greater significance in setting judicial sentencing policy than was ever intended by the legislature. The concept of the unduly lenient sentence procedure as one which allowed the wholly out of line sentence

(which would damage confidence if left unaltered) to be challenged would be negated.

I believe that this is one of the factors for consideration by you in deciding how to respond to the amendment made by the House of Lords.

In relation to discretionary life sentences, I welcome of course your decision to implement the decision of the European Court of Human Rights in the case of Wilson, Thynne and Gunnell. But similar considerations are likely to arise in relation to your present proposal in this area, namely that the trial Judge should determine and announce in open court a "tariff" which is "commensurate with the seriousness of the offence" as the basis for distinguishing between the penal and protective components of the sentence; and that these recommendations should be subject to the s.36 procedure. An additional difficulty would also arise: it will be extremely difficult in practice to be as scientific as seems to be suggested about the dividing line between the two components of a sentence, and therefore correspondingly difficult to "second guess" the judiciary. Most of the jurisprudence and the precedents are directed to the assessment of multiple factors and the determining of the appropriate sentence <u>overall</u>. I accordingly do not want to see the tariff component being subject to the unduly lenient sentence procedure.

Incidentally, I think the creation of an appealable tariff will make it in the longer term much more difficult to continue to resist similar changes as regards <u>mandatory</u> life sentences.

P.M.

13 May 1991

HOME AFFAIRS: Capital Punishment
P+S

TJS/AG

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

15 May 1991

CRIMINAL JUSTICE BILL: LIFE SENTENCES

The Lord Privy Seal had a brief discussion with the Home Secretary and the Lord President about this at 10 pm on Tuesday 14 May. The Chief Whip (Lords) and the Deputy Chief Whip (Commons) were also present. Ministers had before them the Home Secretary's letter of 13 May to the Lord President.

The Lord Privy Seal said that Ministers were agreed on the Government's policy objectives, which were to retain mandatory life sentences for murder and establish an acceptable review procedure for non-mandatory life sentences. This meant that new clause 23 which abolished the mandatory life sentence had to be reversed and new clause 24 had to be replaced with provisions introducing an acceptable review scheme. The detailed proposals in the Home Secretary's letter had run into the difficulty that it went against the conventions of the Lords to remove at Report Stage an amendment made in Committee. Other amendments made to the Bill in the Lords in Committee set out the Opposition's views on a review procedure for non-mandatory life sentences; these too would need revision. He therefore proposed to tell the House of Lords at the commencement of Report Stage on Monday that the Government would not be bringing forward amendments to clauses 23 and 24 in the Lords, but would deal with the whole subject in the Commons. Although he could not preempt the view the Commons might take, he would make clear that the Government would be introducing a review procedure for non-mandatory life sentences. He and the Chief Whip (Lords) were confident that this would be welcome news in the Lords, and should make easier subsequent consideration by the Lords of Commons amendments including the reversal of the defeat on clause 23 easier.

The Home Secretary said that he was content with this way of proceeding, providing the draftsman responsible for the Bill confirmed that the additional amendments later in the Bill provided a sufficient peg on which to hang the Government's own amendments to introduce the review procedure for non-mandatory life sentences once clause 24 had been removed in the Commons. It would be desirable for the Lord Privy Seal to avoid setting out in too much detail the sort of review procedure the Government envisaged, as a number of details remained to be finalised.

Contd/2...

The Chief Whip (Lords) said that there remained the possibility that the Lords would reject the Commons reversal of clause 23, leading to "ping-pong" between the two Houses. The handling of this would require further thought subsequently, although the Home Secretary noted that Ministers would wish to press the Lords very hard on mandatory life sentences and the Lord President noted the desirability of avoiding any compromise requiring additional legislation in the first session of a new Parliament.

The Deputy Chief Whip (Commons) noted that the approach proposed by the Lord Privy Seal would lead to a single debate in the Commons covering both mandatory and non-mandatory life sentences. This should present no difficulties, although it would be necessary to consider the handling of the Commons stages when it was clear how many additional amendments there were to be dealt with.

Summing up the discussion, the Lord President said it had been agreed that new clauses 23 and 24 should be reversed in the Commons, with the Lord Privy Seal explaining during Report Stage in the House of Lords on Monday the Government's firm intention to set up a review procedure for non-mandatory life sentences. In view of the very strong feeling that the Government's wish to retain the mandatory life sentence for murder should not be frustrated by the Upper House, there was a clear possibility of "ping-pong" if the Lords pressed their contrary view to the point of reversing the Commons reversal of new clause 23. Further discussion would be necessary nearer the time should this seem likely.

I am copying this letter to Dominic Morris (No 10), Colin Walters (Home Office), Murdo Maclean (No 12), and the Private Secretaries to other members of HS and LG Committees, Richard Gozney (FCO), First Parliamentary Counsel, and to Sonia Phippard and Muir Russell (Cabinet Office).

T J SUTTON
Principal Private Secretary

Ms Gillian Kirton
PS/Lord Privy Seal

HOME AFFAIRS: Capital Punishment pt 5

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

13 May 1991

Prime Minister

Another row with the Lords is
prospect just before the Whit recess.
But x overleaf will help a bit

CRIMINAL JUSTICE BILL: LIFE SENTENCES

I am writing to let you, and colleagues on HS and LG Committees, know how I propose to handle the question of life sentences following the defeats which we suffered on these questions during the House of Lords Committee stage.

The two votes which we lost were first on an amendment to abolish the mandatory life sentence for murder (177 votes to 79) and then on an amendment requiring a court which passed a life sentence to state a "penal term", which would be subject to appeal, after which the offender would be eligible for release if so sanctioned by a judicial tribunal (120 votes to 68). Further amendments to establish a tribunal, and to extend the provisions to Scotland, were not pressed in the light of David Waddington's undertaking that the Government would consider the implications of the earlier votes.

Having considered the matter further with David Waddington, I am clear that we should offer no concession in relation to the mandatory life sentence for murder. We must retain the mandatory sentence to mark out the unique heinousness of this crime. When the death penalty was abolished, the public were assured that this crime would continue to be marked out by a unique penalty, and that convicted murderers would not be released before the Home Secretary of the day considered it appropriate, particlarly in the light of the need to protect the public from the possibility of a further such offence.

It is against this background that I believe we must also rule out the possibility of any concession to the House of Lords on the question who determines how long a prisoner sentenced to life for murder should serve before his case is reviewed, and when the prisoner should eventually be released. The House of Lords would like the Home Secretary to be bound to follow the judicial recommendation, which would be stated in open court, in deciding when the prisoner should first be considered for release, and would like the decision on release then to be taken by a judicial tribunal, rather than the Home Secretary.

The Rt Hon John MacGregor, OBE, MP
Lord President of the Council
Privy Council Office
Whitehall
London SW1

/2.

We shall therefore have to invite the Commons, on consideration of Lords amendments, to remove the Lords amendments so far as they relate to the existence of, and procedures governing, the mandatory life sentence. We should recognise, however, that feeling is very strong in the House of Lords, particularly in the light of the Government's failure to respond, in the way they would have liked, to the Lords Select Committee Report on murder and life imprisonment in 1989. We must therefore be ready for more than one exchange between the Houses on this, but I am sure that these are matters on which the views of the House of Commons can and should prevail in the end.

The considerations are somewhat different in relation to discretionary life sentences, that is those for manslaughter, rape and so on where the judge may give a life sentence or a determinate sentence. Here, we are already under an obligation, following the judgement of the European court in the case of Thynne, Wilson and Gunnell to introduce changes under which, after a period set by the trial judge which was related to the requirement to punish the offence, the offender's release would be decided by a judicial tribunal on the basis of the risk which he was then judged to pose to the public. Ideally, and as we argued in response to the Lords amendments, we should have liked to have taken more time to digest fully the implications of the ECHR judgement and to come forward with considered proposals in due course. Now, however, that our hand has been forced by the House of Lords, I think we must bring forward a scheme for inclusion in the Criminal Justice Bill. This will not solve all our handling difficulties in the Lords, given their strength of feeling on both mandatory and discretionary cases, but will put us in a much more defensible position. By bringing ourselves into conformity with the ECHR, we shall remove one of the main arguments which has been deployed against us.

The proposals which we have developed for this purpose are set out in Annex A. Briefly, the Parole Board would be given the task of deciding on the release of discretionary life sentence prisoners once the period set by the trial judge had elapsed. They would be bound by a strict criterion of risk to the public from the prisoner's release, and I would retain power to delay a prisoner's release for up to six months in the public interest.

One of the reasons for using the established machinery of the Parole Board is to minimise the costs of the new arrangements. These will not be large, but the new arrangements will be

/3.

somewhat more costly than the current ones. In order to satisfy the European Court's requirements, the Parole Board will have to operate in a court-like manner in these cases, holding hearings at which the prisoner can be legally represented. There will thus be additional administrative and legal aid expenditure, as well as the need to recruit and pay extra members for the Parole Board. I estimate the total additional cost to be about £250,000 in a full year, of which about £130,000 would fall on my votes, and which I would plan to absorb within existing provision.

There are no EC implications in this.

My proposals, and the amendments to the Bill, would apply only to England and Wales. There will, however, continue to be pressure for similar changes in Scotland, and I would like to be able to say, if Ian Lang agrees, that separate Scottish legislation would come forward as soon as the Parliamentary timetable allowed - in the expectation that this would be dealt with in Ian's Parole Bill scheduled for next session.

We expect life sentences to be discussed during the House of Lords Report Stage of the Bill on Monday 20 May. We are therefore planning to table amendments to give effect to the proposals on discretionary life sentences on Wednesday 15 May.

I am sending copies of this letter to the Prime Minister, the other members of HS and LG Committees, the Foreign Secretary, Sir Robin Butler and First Parliamentary Counsel.

SUBJECT cc MASTER

CONFIDENTIAL

A: ROYAL

cc Caroline Slocock PJG

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

25 April 1991

ROYAL COMMISSION ON CRIMINAL JUSTICE

The Prime Minister mentioned to the Home Secretary this morning his concern about the speed at which the Royal Commission was being established. When the Royal Commission had been announced there was some criticism that this way of proceeding had been chosen because it would kick the issue into the long grass for some time to come. The idea of a Royal Commission had been agreed explicitly on the understanding that this would not take longer than other forms of enquiry. He was concerned, therefore, that so far only the Chairman had been appointed and that the first meeting was scheduled for 20 May.

The Home Secretary said that nearly all the prospective members of the Commission had now been spoken to and that it would be possible to make appointments very soon. He agreed to see what could be done to accelerate the first meeting of the Royal Commission.

I am copying this letter to Jennie Rowe (Lord Chancellor's Department) and Juliet Wheldon (Law Officers' Department).

ANDREW TURNBULL

Colin Walters, Esq.,
Home Office.

CONFIDENTIAL

MRM

From: THE PRIVATE SECRETARY

R 25/3

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

Prime Minister (4)

22 March 1991

To be aware.
No need to read this new digest, but its aims are highlighted below. It helpfully puts some figures/myths in context - for example, it shows Britain is quite low down some international crime league tables, and elderly women are the group least likely to be victims of violent crime.
WJR
27/3.

Dear William

DIGEST OF INFORMATION ON THE CRIMINAL JUSTICE SYSTEM

The Home Secretary has asked me to send you a copy of a new annual publication produced by the department. The aim of the new publication is to present information not only covering the whole criminal justice system, including crime, sentencing and prisons but also to link this with information on resources and costs. It will be published on Wednesday 27 March.

is attached folder.

The Home Secretary hopes that this publication will enable a better understanding of crime and the interaction between the various parts of the criminal justice system. Copies of the publication are being sent to MP's judges, magistrates, police forces, probation committees, the media, international organisations including many Ministries of Justices, and the many voluntary organisations involved in criminal justice.

I am sending copies of this letter and the publication to the Private Secretaries to all members of HS Committee.

Yours

Paul

PAUL PUGH

William Chapman Esq
Private Secretary
10 Downing Street
London SW1

NDF 7
AF 1913

SECRETARY OF STATE

MO 9/24D

PRIME MINISTER

BOMB HOAXES

I strongly support the proposals in the Home Secretary's minute to you dated 8th March 1991. Defence installations are on the receiving end of large numbers of bomb hoaxes. Stiffer penalties for those who engage in this cynical and dangerous pursuit would be most welcome.

2. I am copying this minute to other members of the Cabinet and the Attorney General, and to Sir Robin Butler.

Tom King

Ministry of Defence
18 March 1991

Home Affairs: Sentencing
Policy

NDPM
AT 14/3

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

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

14 March 1991

Dear Kenneth,

BOMB HOAXES

Thank you for copying to me your minute of 8 March 1991 to the Prime Minister seeking agreement to table an amendment to the Criminal Justice Bill increasing the maximum penalties for bomb hoaxes. I am content that the maximum penalties in England and Wales should be increased to the levels you have indicated.

Bomb hoaxes are, of course, frequently used by terrorist groups in Northern Ireland for the purpose of causing widespread disruption and it is extremely important that the maximum penalty for this offence is in line with that for England and Wales. While the Criminal Justice Bill will not extend here I am pleased to say that there is in preparation a Fines and Penalties Order in Council which does provide a suitable and early legislative vehicle through which similar measures could be introduced. Accordingly I am making appropriate arrangements to this effect.

I am copying this letter to Cabinet colleagues, to the Attorney General and to Sir Robin Butler.

Yours ever
Peter

PB

Home Affairs: Sentencing
Policy

NBPM KT 18/3

SECRETARY OF STATE FOR SCOTLAND

Prime Minister

BOMB HOAXES

I have seen a copy of Kenneth Baker's minute of 8 March to you. We in Scotland have had our share of bomb hoaxes and I agree with his view that we need to increase the denunciatory effect of the law against this particular offence.

In particular I think that sheriffs should be able to impose up to six months imprisonment (in line with their powers in relation to a range of other statutory offences), and that up to seven years should be available on conviction on indictment in the High Court of Justiciary.

I should therefore be grateful if the amendments proposed by Kenneth were made on a GB basis; and if my officials could be consulted about the detailed drafting, as amendments to the "extent" clause of the Criminal Justice Bill may also be required.

I am copying this minute to Kenneth Baker, other members of Cabinet, to the Attorney General and to Sir Robin Butler.

14 MARCH 1991

IL

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HOME AFFAIRS: Capital Punishment Pts

NMSPM AF 1243 CCPU.

SECRETARY OF STATE FOR TRANSPORT

PRIME MINISTER

BOMB HOAXES

1. I have seen the Home Secretary's minute to you of 8 March seeking agreement to table an amendment to the Criminal Justice Bill to increase the maximum penalty for this offence from five to seven years in the Crown Court and to provide magistrates with their maximum powers to imprison (six months).

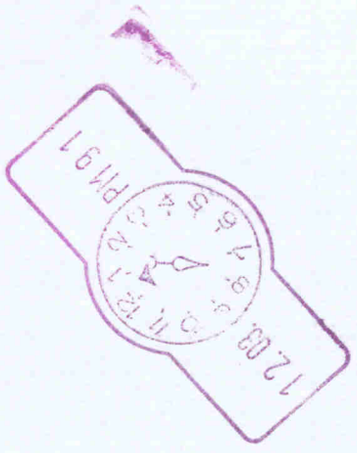
2. I strongly support these proposals. It is monstrous that the London rail network should be brought to a halt for long periods at a time simply because of hoax telephone calls by mischief-makers. While British Rail are taking steps to try to minimise the disruptive effect of bomb threats, higher penalties on those who are caught and convicted should be a salutary deterrent and enable the transport operators to focus their attention on the few calls that may be genuine.

3. I am copying this minute to other members of the Cabinet, to the Attorney General and to Sir Robin Butler.

MR

MALCOLM RIFKIND

12 March 1991



ATOMIC AFFAIRS : Secretary Policy Pts

RESTRICTED

file

a/| bomb. Leg

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

11 March 1991

BOMB HOAXES

The Prime Minister has seen the Home Secretary's minute of 8 March. He was content with the proposal to increase the penalties for bomb hoaxes through an amendment to the Criminal Justice Bill.

I am copying this letter to Tim Sutton (Lord President's Office), Gillian Kirton (Lord Privy Seal's Office), Juliet Wheldon (Attorney General's Office) and to Sonia Phippard (Cabinet Office).

Andrew Turnbull

Colin Walters, Esq.,
Home Office.

RESTRICTED

MRT

Prime Minister

The menace of hoaxes is not just the nuisance but the fact that they disrupt resources and make it more difficult to deal with real attacks. As such they could cost lives.

Agree to their increased penalties?

The best safeguard is to be able to trace hoax calls. I will find out what the position is on this

HT 8/3

PRIME MINISTER

Content

4 10.3

Thanks

BOMB HOAXES

We have been suffering a recent spate of bomb hoaxes. In response to concern expressed during Report Stage of the Criminal Justice Bill, John Patten said that we would review the maximum penalty for this offence. The purpose of this minute is to seek agreement to table an amendment to the Criminal Justice Bill increasing the maximum penalty for this offence from five to seven years in the Crown Court and to provide magistrates with their maximum powers to imprison.

2. Although not involving the deliberate infliction of injury, a bomb hoax can be a cynical and malicious attempt massively to disrupt the lives of large numbers of people, which can cause real damage in terms of thousands of pounds of wasted time and effort. We know that 84 hoax calls were received in the 24 hours following the Paddington bomb, and over 800 have been received since. As you know, terrorist organisations do use hoax calls, rather than actually planting bombs, to cause extensive disruption. This is particularly worrying since it is almost impossible to distinguish between genuine warnings and hoaxes.

3. A person found guilty of a bomb hoax is liable to three months' imprisonment and a Level 5 fine - currently £2,000 but to be raised to £5,000 by the Criminal Justice Bill - in the magistrates' court, and five years' imprisonment or an unlimited fine in the Crown Court. Most bomb hoaxes, which are irresponsible and foolish pranks rather than deliberately malicious, are dealt with in the magistrates' courts: they dealt with over 90% of the 135 offenders convicted in 1989, 12 of whom received a custodial sentence. There is a widespread feeling, shared by magistrates, that they should have their full powers of imprisonment available to them for this offence, especially since it carries imprisonment in the Crown Court. I therefore propose to increase the maximum penalty on summary conviction from three to six months.

4. The more serious cases are dealt with by the Crown Court, which imposed eight sentences of imprisonment in 1989, the longest being one and a half years. In the five years 1984 - 1989, the longest sentence imposed was three years. The maximum penalty is reserved for the most serious instance of any particular offence. I propose that we increase the maximum penalty to seven years as a clear indication to the courts of the seriousness with which this matter is viewed.

5. I should like to make these changes in the Criminal Justice Bill. The Bill increases the penalties for badger baiting and changes the penalties for certain sea fishing offences. Only a simple amendment is required, which would demonstrate that we are ready to respond swiftly to justified public concern. We would need to table the necessary amendment by 18 March.

6. I am copying this minute to other members of the Cabinet, to the Attorney General and to Sir Robin Butler. I will assume that colleagues are content unless I hear otherwise by 14 March.

K.S.

8 March 1991

SECRET

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

8 (a-b)

The Rt Hon Kenneth Baker MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
London
SW18 9AT

4 March
~~February~~ 1991

Dear Kenneth,

MISCARRIAGES OF JUSTICE

Thank you for sending me a copy of your letter of ~~21~~ 22 February to Lord Waddington about miscarriages of justice in which you seek agreement to the establishment of a major inquiry into the criminal justice system in England and Wales.

I agree that in the light of recent developments there is a need to move quickly to assuage public concern. Your proposal to establish an inquiry therefore has my support. I would also agree that the inquiry should have the status of a Royal Commission.

I am content that the inquiry's terms of reference should not include Northern Ireland. Its task will be difficult enough without the added complication of having to examine a different jurisdiction with slightly different practices. But, as has been the case with other fundamental inquiries confined to England and Wales, we would certainly wish to consider applying in Northern Ireland mutatis mutandis, whatever changes may be decided upon for England and Wales as a result of the review.

SECRET

SECRET

6

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

Yours ever

Peter

PB

SECRET

HOME AFFAIRS : Sentencing frs

cst.ps/dr/3dm28.2 **CONFIDENTIAL**

NBIM

AT 4/3

Treasury Chambers, Parliament Street SW1P 3AG
071-270 3000
Fax 071-270 5456

The Rt Hon Kenneth Baker MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

4 March 1991

Dear Ken.

MISCARRIAGES OF JUSTICE

Thank you for copying to me your letter of 21 February to David Waddington. I agree with your proposal to set up an enquiry into the criminal justice system and I am content with the draft terms of reference. I note that the cost of the enquiry this year will be financed out of existing provision. As you recognise, I cannot give you any assurance at this stage that additional provision for 1992-93 will be agreed in the coming Survey.

2. I am pleased to see that the third line of the terms of reference refers to the need for those conducting the enquiry to have regard to the efficient use of resources. I believe this is a most important point and very much hope that the contributions of the Home Office, Lord Chancellor's Department and the legal departments to the enquiry will give it full and proper weight. We have, as you know, given priority to the law and order programme since the Government came of office in 1979, and we should not leave the enquiry with any feeling that the way to solve the current problems is to throw money at them.

3. I am conscious that a number of the issues that arise will actually offer scope for improving efficiency and achieving savings. These include the role of senior and middle-ranking police officers in managing the very considerable resources at their disposal when supervising investigations, the role of the prosecutor in the investigation process (since an enhanced role could mean fewer applications by the police to the courts) and the arrangements for the defence of accused persons. On all such issues, I hope that the potential for improving efficiency and achieving savings will be considered positively alongside the

HOME AFFAIRS: Sentencing Policy PTS

cst.ps/dr/3dm28.2 CONFIDENTIAL

important need to achieve a better standard of justice in certain types of case; and that in this light the enquiry will look at experience in other legal systems besides our own in establishing the best practice.

4. I am copying this letter to the Prime Minister, James Mackay, Patrick Mayhew, David Waddington other members of HS Committee and Sir Robin Butler.

DAVID MELLOR

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

PERMANENT UNDER-SECRETARY OF STATE
SIR CLIVE WHITMORE GCB CVO

1 March 1991

Dear Robin,

PROPOSED CRIMINAL JUSTICE INQUIRY: LEAK INVESTIGATION

You had at Ploughley a word with me on Wednesday about my letter of 18 February. Subsequently I was speaking to Andrew Turnbull on a separate though related matter and took the opportunity to raise the leak inquiry with him.

In the light of our conversation and mine with Andrew I spoke to the Home Secretary and explained to him that it remained our view that the chances of a successful outcome of the investigation were very slim and that we were concerned that to pursue it in those circumstances might bring the leak inquiry system into disrepute. I also pointed out that there had not been much follow up in the media to the original leak and so it could not be claimed that it had been particularly damaging. All this suggested that it might be better not to take the investigation any further.

The Home Secretary said that he agreed.

I should be grateful if you would pass on to Royd Barker my thanks for taking the inquiry as far as he did. I do not regard his work as wasted since, even though it has been curtailed, the fact that we did not simply ignore the leak but launched an investigation will have been noticed and might help to reduce the likelihood of other disclosures.

I am sending copies of this letter to Tom Legg, Juliet Wheldon, the Director General of the Security Service and Andrew Turnbull.

Yours ever,

Clive

Sir Robin Butler KCB CVO

CONFIDENTIAL

Home Affairs: Capital Punishment

Pt 5.

SECRET

File 7

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

1 March 1991

Ken Kenneth

MISCARRIAGE OF JUSTICE

Thank you for your letter of 21 February seeking HS Committee's agreement to the establishment of a major inquiry into the criminal justice system, following the announcement by the Court of Appeal of its decision in the Birmingham Six case. You suggest that the inquiry should be appointed as a Royal Commission. You also attached a draft statement which you and the Lord Chancellor propose to make to Parliament in due course.

Ian Lang has written supporting the proposal but he does not wish the inquiry to extend to Scotland. I understand that David Mellor intends to write also supporting the proposal subject to the costs of the inquiry being met from existing resources. I understand that no other colleague intends to comment.

On this basis you may take it that you have HS Committee's policy clearance to proceed as you propose.

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

WADDINGTON

The Rt Hon Kenneth Baker, MP

Subject as MASTER

file 6(a-b)

SECRET

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

26 February 1991

Dear Colin,

CRIMINAL JUSTICE ENQUIRY

The Prime Minister held a meeting today to discuss the establishment of a criminal justice enquiry and its chairmanship. Present were the Lord Chancellor, Home Secretary, Attorney-General and Solicitor General.

I would be grateful if this letter could be copied only to those officials with a strict need to know of its contents.

The Attorney-General said the Court of Appeal had decided at yesterday's preliminary meeting that it wanted to hear evidence at the full hearing of the Birmingham Six case starting next Monday. This was likely to take two or three days. The Attorney-General said there was no doubt that the conviction would be found unsafe and that the Six would be released. They had not applied for bail because they wished to be released unconditionally. It was likely, therefore, that the Government would need to make a statement around Tuesday or Wednesday of next week. The Home Secretary said he would make a statement the same day if the verdict were given in the morning but the next day if it were given in the afternoon.

The Prime Minister asked whether criminal investigations were underway into the submission by the police of false evidence. The Solicitor General said they were and that they were well advanced.

Discussion then turned to the form such an enquiry would take. The Lord Chancellor said the importance of the subject matter fully justified making this a Royal Commission. The Prime Minister said he was content with this advice provided it was possible to counter the accusation that the Government had chosen a Royal Commission in order to kick the subject into the long grass. He asked whether it would be possible to state that it would take no longer than a Committee of Enquiry or, better still, to set a time-frame. The Lord Chancellor said it would be a large enquiry and needed to be done thoroughly. But it should be possible to give a time-frame of perhaps finishing within 18 months to two years. The Prime Minister asked for this to be included in the statement as it was important to give the impression of impetus.

The terms of reference attached to the Home Secretary's letter to the Lord Privy Seal of 21 February were agreed.

SECRET

Discussion then turned to the composition of the Royal Commission. The Lord Chancellor said it would need 10-12 members of high calibre. The most difficult choice, however, was the Chairman. He, the Attorney-General and the Solicitor General all felt that the Chairman should not be a lawyer. There was a danger that lawyers would seek to place blame for miscarriages of justice on the police. But it was equally relevant how it was that poor evidence had managed to go through the judicial system undetected. The Home Secretary wondered whether a layman would find the intricacies of the subject too much of a handicap. He had in mind someone who had at one stage had legal experience but was now identified as coming from a different field.

The choice quickly narrowed down to Lord Runciman or Sir Geoffrey Howe. The Home Secretary thought the latter would do the job well. One disadvantage was that it would be important to balance him with a lawyer from the Labour side. It had emerged that the first choice for this, Peter Archer, could not be chosen as he had been the Solicitor General at the time of some of the cases at issue. Other possibilities were Lord McClusky and

The Solicitor General said Lord Runciman was not well known to the public though he himself knew him well. He had shown qualities of leadership and chairmanship in running the family shipping business and had shown resolution in resisting hostile take-overs. He had been invited to take over as chairman of the Weir shipping company. Lord Runciman was also a man of outstanding intellect who combined his business life with being a fellow of Trinity College. He was an outstanding sociologist and historian.

The Lord Chancellor said he did not know Lord Runciman personally but those whom he had consulted gave him strong endorsement.

Concluding the discussion, the Prime Minister said Lord Runciman should be approached as the first choice and Sir Geoffrey Howe if Lord Runciman declined. Sir Clive Whitmore should be asked to see Lord Runciman in the first instance to set out the proposition and to establish whether Lord Runciman could take this on in addition to this other responsibilities. If these soundings proved positive the Lord Chancellor and the Home Secretary should see him. Meanwhile, the Home Secretary's statement should be refined to deal, in particular, with the accusation that a Royal Commission would be a way of treating the subject in slow time.

I am copying this letter to Jennie Rowe (Lord Chancellor's Office), Juliet Wheldon (Law Officers Department) and Sir Robin Butler.

Yours ever
Andrew Turnbull

(ANDREW TURNBULL)

Colin Walters, Esq.
Home Office.

when SH/meet? why RC? Chm? who approaches? Palace? Time-scale. Remit

PRIME MINISTER

CRIMINAL JUSTICE INQUIRY: CHAIRMAN

At the preliminary hearing today before the Court of Appeal, counsel for the DPP stated that the Crown would not be relying upon police evidence. This has correctly been interpreted as a collapse of the prosecution case which can only lead to the release of the Birmingham Six. The Court of Appeal said it would still want to consider all the evidence at the full hearing next Monday. Nothing will happen before then. Nevertheless, the Chairmanship of the Inquiry does need to be sorted out quickly.

There is still no consensus. I understand the Attorney has now switched his vote from Lord Windlesham to Zelman Cowen. I have warned the Lord Chancellor and Attorney General that you would like Sir Geoffrey Howe to be considered, though this will require agreement with the Opposition.

I have also mentioned the need, in the presentation and briefing, to ensure that the use of a Royal Commission is not interpreted as either consensusism or kicking into the long grass.

AT

ANDREW TURNBULL
25 February 1991

C:\PPS\CRIMINAL (DAS)

SECRET

5

PRIME MINISTER

ROYAL COMMISSION ON CRIMINAL JUSTICE

I have seen James Mackay's letter to you dated 22 February, and the letter to Andrew Turnbull from the Home Secretary's private secretary of the same date.

I agree firmly with the reasons that the Lord Chancellor sets out in support of his conclusion that Lord Alexander would not be a suitable chairman.

I have discussed Lord Runciman fully with Nick Lyell, and am entirely content with his opinion, based upon personal acquaintance, that Lord Runciman would be a suitable chairman.

Of the other names canvassed in the correspondence I am inclined to put Sir Zelman Cowan first. I know him quite well, and I think he has the right qualities to chair this extremely important commission. His reputation is, of course, quite formidable: in particular he did a brilliant job as Governor General of Australia after the Whitlam-Kerr imbroglio. Thereafter, my preferences would be for Lord Windlesham, Sir John Harvey Jones and Sir John Kingman in that order. While I think that Sir Robin Day would do a good job I think some will regard him as lightweight, and the appointment would be controversial. Sir Cyril Philips is too old, and I think has not enjoyed good health recently: I have no comment to make on any of the others in the list attached to Mr Walters' letter.

Copies of this note go to Kenneth Baker and James Mackay.

25 February 1991

SECRET

I would love with Runciman or Hunt, if.

PRIME MINISTER

CRIMINAL JUSTICE ENQUIRY: CHAIRMAN

It is still not clear when it will be necessary to make this statement. As soon as the DPP makes it known that he cannot rely on the Police evidence, which he will do on Monday, there will be tremendous pressure to bring the matter to a conclusion. Although the Court of Appeal itself might want a few days to review the evidence (it may want time to come to terms with the fact that they got things wrong) public pressure to release the Six will be very strong. It is likely, therefore, that a statement will be needed by the middle of the week. The Home Secretary's minute to Lord Waddington (**Flag A**) has attached to it a draft of the statement. Although the draft statement leaves open the question of whether this should be a Royal Commission, the minute itself argues for that course. You have indicated that you are content.

The remaining issue is who should chair the Commission. Mr Baker yesterday sought to persuade you that Lord Alexander was the right person. It subsequently emerged that his candidacy was strongly opposed by the Law Officers. The Lord Chancellor (**Flag B**) suggests four names and the Home Secretary (**Flag C**) a further eight. There is not much time to winnow out such a long list and no clear consensus has yet emerged.

The Attorney General favours Lord Windlesham. He has a lot of relevant experience at the Home Office, Northern Ireland Office and the Parole Board but, for many, it is too soon to overlook his whitewash of "Death on the Rock".

The Solicitor General favours Lord Runciman: he is an unusual figure, combining a business career in the family shipping firm with an academic career as an historian, philosopher and sociologist. He is undoubtedly a man of tremendous intellect but, reading between the lines, you might find him a bit SDPish. For many years he was Treasurer of the CPAG and his wife is a leading member of the CAB and the Prison Reform Trust. He is a

close friend of Anthony Lester, an eminent QC who specialises in civil rights and constitutional matters. The Home Secretary is looking for someone who will put equal weight on safeguards for defendants and removing obstacles to the conviction of villains. He may feel Lord Runciman would lean too much towards the first.

None of the remaining candidates stands out. The safest choice might be John Hunt.

A meeting has been arranged for Tuesday afternoon with the Home Secretary, the Lord Chancellor and Attorney General.

Are there any views you wish to feed in at this stage?

AT

ANDREW TURNBULL
22 February 1991
c\pps\dpp (kw)

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

HOUSE OF LORDS,
LONDON SW1A 0PW

B

22 February 1991

The Right Honourable
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

Dear Prime Minister,

CRIMINAL JUSTICE INQUIRY

Copy attr.

I have seen a copy of Andrew Turnbull's letter recording your conversation yesterday with Kenneth Baker. The Law Officers have discussed this with your office and I understand that, in the light of those discussions, you did not speak to the Governor of the Bank of England about Lord Alexander.

On the assumption that we will need to agree on a person to chair the inquiry within the next few days, I thought it might be helpful if I set out my reservations about Lord Alexander as Chairman, along with my thoughts on the other candidates canvassed yesterday. So far as Lord Alexander is concerned I have no doubts about either his ability or his integrity. I do however have serious reservations about his status. When his name was first mentioned to me I understood it was in the context of a much narrower, more specialised inquiry, than is now proposed, confined exclusively to the powers of the Court of Appeal. For such a task I think he would have been suited. However, when the necessity for a wider inquiry was mooted with the then Prime Minister by the then Home Secretary in August 1990, it was on the footing, quite rightly in my view, that the Chairman of any such inquiry should be a lay figure of some stature and not a lawyer.

One key reason for this lies in the public's understandable concern to identify where responsibility for the difficulties lies. More

than one published article has questioned whether the legal profession and the Judges are seeking to put the main responsibilities on the Police in an attempt to avoid their due share of responsibility. I would not in any way wish to suggest where the responsibility lies, but I think it vitally important that the public should feel that the Chairman of the inquiry should not be linked by his background to any of the relevant interests.

I do not think that the public would regard Lord Alexander in this light. He is a former Chairman of the Bar, who was very active in that role, and he only ceased to be in active practice little more than a year ago. I therefore believe that we need to identify a non-lawyer of high calibre to take on the Chairmanship.

You and Kenneth discussed three people yesterday. Lord Runciman is known to the Solicitor General and I attach a copy of a letter the Solicitor General wrote to the Attorney General setting out Lord Runciman's background. I have also today taken the opportunity of talking to Sir Graham Day about Lord Runciman. Graham Day knows Lord Runciman from his shipbuilding days, when Lord Runciman was on the Council of British Shipping. Graham has described Lord Runciman to me as a person who thought before he spoke, who showed no extremes of emotion, and who always appeared to offer considered opinions and judgments. He described him as "shining like a lighthouse in a thin fog" as compared with his fellow ship-owners. He is not well known to the public, but this may be an advantage.

not difficult!

Sir Robin Day, on the other hand, is a well known public figure. He trained as a lawyer, but has not practiced for well over 30 years. I do not think therefore that he would be associated in the public mind with the law. He is, however, knowledgeable about the legal system and he was a member of the Phillimore Committee on the Law of Contempt between 1971 and 1974. The only reservation that has been expressed about Robin Day is that he may be too well known and too associated with the media.

Lord Windlesham has been well known in the criminal justice field for some time. He was a Minister at the Home Office and the Northern Ireland Office and he is a former Chairman of the Parole Board and he has taken a prominent part in the House of Lords in debates on the criminal justice system and, most recently, in the debates on changing the mandatory life sentence for murder.

A further name who might be considered is that of Sir John Harvey-Jones, former Chairman of ICI. He is a successful businessman, who is also reasonably well known to the public.

I would be content with any of these candidates, but you will of course wish to take account of the views of the Home Secretary and

the Attorney General to whom I am copying this letter. It may be worth my adding that the last major inquiry into the criminal justice system, the Royal Commission on Criminal Procedure, which sat from 1978 to 1980, was chaired by a layman, Sir Cyril Phillips who was not well known to the public before his appointment. I do not think there was ever any suggestion that he did anything other than an excellent job in chairing this inquiry.

Yours ever,

James.

SECRET

(63)

SOLICITOR GENERAL

9 BUCKINGHAM GATE

LONDON SW1E 6JP

071-828 1558

14 January 1991

Dear Paddy,

Viscount Runciman of Doxford, CBE. FBA.

Pondering further on who might be Chairman of the proposed Criminal Justice Inquiry, I think Gary Runciman might have a great deal to commend him.

He has combined a distinguished career in the City with an equally distinguished academic career. In exceedingly difficult times he kept Walter Runciman & Co. going as a specialist ship owning company until its takeover by Avena (Sweden) last April. He had resisted a previous takeover bid by Telfos with great skill which I know won the respect of Jeffrey Sterling, among others. His recent appointment as Chairman of Andrew Weir & Co. Ltd, with which he had no previous connection, confirms the respect in which he is held as a businessman. He is also Joint Deputy Chairman of SIB.

He has combined all this by remaining, for over thirty years, an active Fellow of Trinity College, Cambridge where he took a starred First in History and where he is regarded as a leading philosopher, sociologist and expert in the theory of Government.

He sits on the crossbenches in the House of Lords. He has a deep interest in social issues but, I believe, as you would expect from his business background, that his feet are firmly on the ground. His old friends include, for example, Anthony Lester and Edward Cazalet. His wife, Ruth, is a leading member of the Citizens' Advice Bureau and takes a close interest in the Prison Reform Trust. For many years he was Treasurer of the Child Poverty Action Group.

If he were appointed, I think he could therefore be relied upon to be (a) a good and effective Chairman and (b) to command confidence across the spectrum of opinion. He certainly won much respect during his year as President of the Chamber of British Shipping from leaders of the shipping industry who, up until then, might have thought him more of an academic than a businessman.

SECRET

SECRET

SOLICITOR GENERAL

Personally I like both him and Ruth. I know them because he is my stepmother's nephew and our paths crossed in the early days when I left Oxford and was working for Walter Runciman & Co. in Newcastle while reading for the Bar. We have seen each other from time to time over the years but I would not claim to be one of his close friends and I think my assessment is objective.

Yours ever

Nick.

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

SECRET

4(a-c)

From: THE PRIVATE SECRETARY

SECRET

C

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

APPOINTMENTS - IN CONFIDENCE

22 February 1991

Dear Andrew

ROYAL COMMISSION ON CRIMINAL JUSTICE

– meeting record at flap.

When they met yesterday to discuss the proposed Royal Commission on Criminal Justice, the Prime Minister agreed with the Home Secretary that it should be set up as a Royal Commission and asked for further advice on possible candidates for the Chairmanship.

The Home Secretary's preference remains for Lord Alexander, but he understand why the Lord Chancellor and the Attorney General still consider that Lord Alexander is not suitable. Alternatives who might be considered are Lord Raynor or Lord Hunt. The Home Secretary asked me to discover whether the Lord Chancellor might be able to suggest a senior figure from the Scottish legal profession. From this field the Lord Chancellor's choice would be Lord Emslie, but it is far from certain that Lord Emslie would be willing to take on a commitment of this order. Attached is a note giving brief biographical details of these and some others we think might be suitable candidates.

Copies of this letter go to the Private Secretaries to the Lord Chancellor and the Attorney General and to Sonia Phippard.

Yours ever

C J WALTERS

Andrew Turnbull, Esq., CB
No 10 Downing Street
LONDON, S.W.1.

SECRET

ROYAL COMMISSION ON CRIMINAL JUSTICE

CANDIDATES FOR CHAIRMANSHIP

Sir Adrian Cadbury (61)	Former Chairman of Cadbury Schweppes until 1989. Chancellor of Aston University since 1979 and a Director of the Bank of England since 1970. Said to possess a strong sense of social concern and justice. (Recommended by DTI).
Sir Zelman Cowen (71)	Privy Councillor. Provost of Oriel College, Oxford. Pro-Vice-Chancellor, Oxford University 1988-90. Formerly Governor General of Australia 1977-82. Member, Law Reform Commission, Australia 1976-77. Member, Press Council 1983-88.
Lord Hunt (71)	Chairman, Banque Nationale de Paris plc since 1980. Chairman, Prudential Corporation 1985-90. Chairman, Disasters Emergency Committee since 1981. Third Secretary, Treasury 1971-72, Second Permanent Secretary, Cabinet Office 1972-73, Secretary to the Cabinet 1973-79. Chairman, Inquiry into Cable Expansion and Broadcasting Police 1982.
Sir Cyril Philips (78)	Chairman, Royal Commission on Criminal Procedure 1978-81. Chairman, Police Complaints Board 1980-85. Chairman, Council on Tribunals since 1986. Formerly Vice-Chancellor, London University.
Lord Raynor (64)	Retiring as Chairman of Marks & Spencer in March. Not clear what new part-time appointments he may take on.
Lord Walter Runciman (56)	Chairman, Walter Runciman plc since 1976. Fellow, Trinity College, Cambridge. Member of Social Science Research Council 1974-79. Member of Securities and Investment Board since 1986. Visiting Professor, Harvard 1970, and Visiting Fellow, Nuffield College, Oxford 1979-87.

TEMPORARILY RETAINED

Lord Jenkin (65)	Chief Secretary 1972-74. S of S for Social Services 1979-81. S of S for Industry 1981-83. S of S for Environment 1983-85. Member of UK Advisory Board, National Economic Research Associates, Director, Friends Provident Life, Chairman 1988. Vice President, National Association of Local Councils, Vice President Asscn of Metropolitan Authorities. Chairman, Westfield College Trust. Fellow RSA. Freeman City of London.
Lord Emslie (72)	QC 1957. Member of Scottish Committee, Council on Tribunals 1962-70. Sheriff of Perth and Angus 1963-66. Dean of Faculty of Advocates 1965-70/ Chairman, Scottish Agricultural Wages Board 1969-73. Senator of College of Justice 1970-72. Hon Bencher Inner Temple 1974.

Home Affairs : Capital Punishment
1+5

From: THE PRIVATE SECRETARY

SECRET

3(a-i)

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

A

21 February 1991

Dear David,

MISCARRIAGES OF JUSTICE

This letter seeks agreement to the establishment of a major inquiry into the criminal justice system following the announcement by the Court of Appeal of its decision in the Birmingham Six case. The substance of the letter has been agreed with James Mackay and Patrick Mayhew. We believe that, to give the inquiry the necessary authority and status, it should be appointed as a Royal Commission.

.... The Court of Appeal has indicated that it expects to begin its hearing on 4 March, but there is likely to be a preliminary hearing on 25 February, which is likely to become the effective hearing as the result of a further concession by the DPP that he cannot rely on the police evidence. As soon as the Court's decision is known we propose that the Lord Chancellor and I should inform Parliament of the decision to set up the inquiry. The text of a draft statement is attached.

Background

The quashing by the Court of Appeal of the convictions of the Guildford Four in October 1989 gave rise to concern about the quality of prosecution evidence and led the then Home Secretary and the Attorney General to appoint Sir John May, a former Court of Appeal judge, to conduct an inquiry into this and the related case of the Maguires. In July 1990 Sir John submitted an interim report on the Maguires case following public hearings during which the scientific evidence on which the convictions rested was discredited. At the conclusion of the hearings the Director of Public Prosecutions indicated he believed the convictions could no longer be regarded as safe. As Home Secretary, you referred the case to the Court of Appeal, which has yet to hold a hearing. The Maguires are no longer in custody.

There are other cases, still current, which have given rise to great concern. The most prominent is the Birmingham Six case. Cases are also emerging as a result of the

The Rt Hon Lord Waddington, QC.,
Lord Privy Seal
Privy Council Office
WHITEHALL, S.W.1.

/cont...

SECRET

investigation into allegations against members of the West Midlands Police Serious Crime Squad about the use in trials of false confession evidence. Two convictions have been quashed by the Court of Appeal, and a further 16 cases are awaiting hearings. There is, in addition, a case from South Wales in which the convictions of two people for manslaughter are likely to be called into question because of doubts which have now come to light about the conduct of the police's investigation and the recording of alleged confessions.

Issues involved

The various cases raise a number of issues of fundamental importance to the criminal justice system. These include supervision of police investigations by their senior officers, particularly in the case of serious crime; the reliability of uncorroborated confessions and the circumstances in which they should be admitted in evidence; the manner in which forensic science evidence is obtained and disclosed to the parties to a prosecution and given to the trial court; the role of the prosecutor in assessing the sufficiency of the evidence, deciding to prosecute, and deciding on the disclosure of material to the defence; the role of the trial court in hearing evidence and requiring further inquiries to be undertaken; the role of the Court of appeal in assessing new evidence and reaching a view on it or ordering a retrial; and the role of the Home Secretary in considering claims that a miscarriage of justice has occurred.

We believe that confidence in the criminal justice system has been badly shaken by the Birmingham, Guildford, and Maguires cases and the Lord Chancellor, the Attorney General and I believe that a full review of the effectiveness of our current arrangements is essential.

Previous action

The last major review of the criminal justice system was undertaken by the Royal Commission on Criminal Procedure, which reported in 1981. This was followed by a series of major reforms, including the Police and Criminal Evidence Act 1984, which codified police powers in investigating crime and amended the law on evidence, and the Prosecution of Offences Act 1985, which established the Crown Prosecution Service. It will clearly be important not to appear to be calling these reforms into question. Most of the miscarriage of justice cases which are now giving rise to concern were investigated in the seventies, before the more recent reforms. The West Midlands cases, however, occurred after the implementation of the Police and Criminal Evidence Act and we have to accept that some review of the effectiveness of the reforms is unavoidable. We would, however, see any further action as building on what has already been achieved.

/cont...

May Inquiry

The May Inquiry was set up to look at the circumstances surrounding the Guildford Four and Maguires cases. Its work has not yet been completed and we believe it will be right to allow Sir John May to continue his work to establish the facts of these cases. We do not believe, however, that he could take on the wider issues which arise in the light of the other cases. This calls for an inquiry on a larger scale which will have at its disposal a greater range of expertise. To ensure effective co-ordination and reduce any risk of duplication, we propose to invite Sir John May to become a member of the wider inquiry. We see his work continuing and enabling him to contribute any conclusions he or his team may have drawn on the wider issues from their investigation, in addition to any issues already covered in his own report.

Nature of new inquiry

We believe it is important to provide the new inquiry with wide terms of reference and to direct its attention to the need to ensure that the guilty are convicted as well as the innocent acquitted. We have considered the effectiveness of narrower terms of reference but have concluded that this will carry the risk of directing the inquiry's attention solely to the inadequacies which have been highlighted in the recent cases and lead them simply to propose further safeguards for the rights of suspects, with the consequence that it will become more difficult to convict the guilty.

The terms of reference which we propose will enable the inquiry to produce a balanced package which will have benefits for the prosecution as well. This is a point to which we attach considerable importance.

Financial and manpower implications

Our aim is that the inquiry should complete its work within two years (achievement of this will, of course, depend on the Commission itself). On that basis the cost is estimated at £0.3 million in 1991/92 and £0.4 million in 1992/93 for staff, and £0.3 million in 1991/92 and £0.4 million in 1992/93 for other costs, including accommodation, research, and administration. Over two years the total cost would be likely to be £1.4 million at current prices. We shall seek to absorb in-year the costs in 1991-92, and shall be bidding in PES 1991 for the later costs. We accept that we shall have to find those later costs from the provision available to us following the Survey. It is too early to say what might be the resource implications of any recommendations the Commission might make: this would need to be considered further in the light of its report.

/cont..

Conclusion

The Government will need to be in a position to respond to the concern that will be expressed following the Court of Appeal's decision in the Birmingham Six case, and our response must be commensurate with the scale of the problems underlying that concern. I invite colleagues to endorse the proposal to establish a Royal Commission with the attached terms of reference.

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

DRAFT

Q

MISCARRIAGES OF JUSTICE

Home Secretary's Statement to House of Commons

With your permission, Mr Speaker, I would like to make a statement about the Government's response to the decision [yesterday] by the Court of Appeal to [quash] the convictions for murder of Hugh Callaghan, Patrick Hill, Robert Hunter, Richard McIlkenny, William Power and John Walker arising from the two bomb explosions in public houses in Birmingham in November 1974.

2. I will arrange for a copy of the Court's judgement to be placed in the Library as soon as it is available. In the light of the circumstances now known to us as described in the Court of Appeal the conviction of these men, and the time it has taken to determine the reliability of the evidence on which their convictions were based, are matters of great regret and concern. Under the provisions of section 133 of the Criminal Justice Act 1988 any person whose conviction has been quashed on the basis of a new fact following a reference by me of the case to the Court of Appeal is entitled to apply for compensation. The amount will be decided by an independent assessor. I will, of course, give careful consideration to any application that is made to me by the six men.

3. This case, together with others which have occurred, raises a number of serious issues which must be a cause of concern to all of us. It is clear that unreliable confession evidence and incomplete or unreliable scientific evidence was presented to the courts in these cases, and that it has taken many years to bring these facts to light. It is of fundamental importance that the arrangements for criminal justice should secure the speedy conviction of the guilty and the acquittal of the innocent. When that is not achieved public confidence is undermined.

4. I recognise fully the seriousness of the issues raised by these cases and the Government is resolved to ensure they are properly addressed. However, it is important to recognise that the Government has already taken a wide variety of measures aimed at protecting innocent suspects, and facilitating the conviction of the guilty. These include the codification of police powers to investigate crime and controls over police interrogations, including the tape-recording of interviews; reform of the law of evidence as

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it affects confessions; the setting up of the Crown Prosecution Service and the Serious Fraud Office; extension of the Court of Appeal's power to order retrials; and improved quality controls over forensic science work.

5. Many of the cases that have given cause for concern pre-date these developments. My predecessors and I have demonstrated our willingness to look hard and seriously at any evidence presented to us about alleged miscarriages of justice, and our readiness when necessary to refer that evidence to the Court of Appeal. I believe that the criminal justice system is fundamentally sound. It would be wrong to conclude that nothing in the present arrangements is right. In the overwhelming majority of cases those involved in the investigation of crime and the prosecution of offenders carry out their work conscientiously and effectively. This should never be forgotten. The cases which are now the cause of our concern represent only a tiny proportion of the work which is carried out to very high standards. I would wish this to be clearly understood so that we do not get carried away with the quite erroneous belief that everything in our current arrangements is wrong.

6. We do believe, however, that it is necessary to undertake a review of the criminal justice process as it now stands, taking full account of recent reforms, with the aim of minimising so far as possible the likelihood that the pattern of events now revealed in the Birmingham case might ever happen again.

7. The review will embrace all stages of the criminal process: the investigation and pre-trial; the conduct of the trial and the duties and powers of the courts; appeals procedures and the powers of the Court of Appeal; and alleged miscarriages of justice once appeal rights have been exhausted, including the functions at present carried out by the Home Secretary. The review will be undertaken by [an independent committee appointed jointly by myself and my Rt Hon and learned Friends the Lord Chancellor and the Attorney General] OR [a Royal Commission ...]. I have placed a copy of its terms of reference in the library.

8. The Chairman of the [Committee/Royal Commission] will be [ ]. I shall announce the members as soon as possible.

9. The House will, of course, be aware that in October 1989 my predecessor and my Rt Hon and learned friend, the Attorney General, appointed Sir John May to inquire into the circumstances surrounding the convictions of the Guildford Four and the Maguires. In July 1990 Sir John submitted an interim report which led my predecessor to refer the convictions of the Maguires to the Court of Appeal. [The Court has yet to hear the case and I would not wish to make any further comment on it while it remains sub judice.]

10. Sir John May's inquiry still has work to do and we would wish him to complete his inquiry into the Guildford Four and Maguires cases. The appointment of the wider inquiry that I have announced today is not intended to inhibit him in any way. The Government think it right to ask Sir John and his team to confine themselves to inquiring into the circumstances of the cases themselves and to leave the wider issues to the [Royal Commission/new committee of inquiry]. Sir John May [will be a member of the wider inquiry and will thereby be able to bring to it the benefit of his analysis of the wider issues arising from his own inquiry. I am grateful to Sir John for agreeing to proceed on this basis.]

11. Mr Speaker, all of us in this House must be profoundly disturbed by the failure of our arrangements for criminal justice to achieve their objectives in these small number of cases. This should not lead us to conclude that all those arrangements are fundamentally flawed. Valuable reforms have already been introduced. I believe our present arrangements work well in the overwhelming majority of cases, and I pay tribute to all those who endeavour to achieve that.

12. I should also like to acknowledge the dedication of those who have spared no effort in their investigations into the recent cases, in particular [the Avon and Somerset and] the Devon and Cornwall [Constabularies/Constabulary] and the Forensic Science Service, whose painstaking work under the guidance of the DPP has been a tribute to their professionalism. It would also be right to recognise the unstinting co-operation and support they have received from the West Midlands police, who have demonstrated their determination to ensure that the truth was brought to light. The time is right, nevertheless, to take a fresh look at the existing arrangements, to see whether further improvements can be made; and that is why the Government has decided to [establish the independent inquiry] [the Royal Commission] I have announced today.

CRIMINAL JUSTICE INQUIRY

Draft terms of reference

To examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent, having regard to the efficient use of resources, and in particular to consider whether changes are needed in

i. the conduct of police investigations and their supervision by senior police officers, and in particular the degree of control that is exercised by those officers over the conduct of the investigation and the gathering and preparation of evidence;

ii. the role of the prosecutor in supervising the gathering of evidence and deciding whether to proceed with a case, and the arrangements for the disclosure of material, including unused material, to the defence;

iii. the role of experts in criminal proceedings, their responsibilities to the court, prosecution, and defence, and the relationship between the forensic science services and the police;

iv. the arrangements for the defence of accused persons, access to legal advice, and access to expert evidence;

v. the opportunities available for an accused person to state his position on the matters charged and the extent to which the courts might draw proper inferences from primary facts, the conduct of the accused, and any failure on his part to take advantage of an opportunity to state his position;

vi. the powers of the courts in directing proceedings, the possibility of their having an investigative role both before and during the trial, and the role of pre-trial reviews; the courts' duty in considering evidence, including uncorroborated confession evidence;

vii. the role of the Court of Appeal in considering new evidence on appeal, including directing the investigation of allegations;

viii. the arrangements for considering and investigating allegations of miscarriages of justice when appeal rights have been exhausted.

SOLICITOR GENERAL

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1558

Dear Prime Minister,

Lord Runciman

Referring to my note to Sir A G on his suitability to chair his Criminal Justice Inquiry there are two probably five an informed opinion include Sir Graham Day, Lord Richardson, & Sir David Walker.

Yours ever

Nick.

21 February 1991.

SECRET

SOLICITOR GENERAL

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1558

14 January 1991

Dear Paddy.

Viscount Runciman of Doxford, CBE. FBA.

Pondering further on who might be Chairman of the proposed Criminal Justice Inquiry, I think Gary Runciman might have a great deal to commend him.

He has combined a distinguished career in the City with an equally distinguished academic career. In exceedingly difficult times he kept Walter Runciman & Co. going as a specialist ship owning company until its takeover by Avena (Sweden) last April. He had resisted a previous takeover bid by Telfos with great skill which I know won the respect of Jeffrey Sterling, among others. His recent appointment as Chairman of Andrew Weir & Co. Ltd, with which he had no previous connection, confirms the respect in which he is held as a businessman. He is also Joint Deputy Chairman of SIB.

He has combined all this by remaining, for over thirty years, an active Fellow of Trinity College, Cambridge where he took a starred First in History and where he is regarded as a leading philosopher, sociologist and expert in the theory of Government.

He sits on the crossbenches in the House of Lords. He has a deep interest in social issues but, I believe, as you would expect from his business background, that his feet are firmly on the ground. His old friends include, for example, Anthony Lester and Edward Cazalet. His wife, Ruth, is a leading member of the Citizens' Advice Bureau and takes a close interest in the Prison Reform Trust. For many years he was Treasurer of the Child Poverty Action Group.

If he were appointed, I think he could therefore be relied upon to be (a) a good and effective Chairman and (b) to command confidence across the spectrum of opinion. He certainly won much respect during his year as President of the Chamber of British Shipping from leaders of the shipping industry who, up until then, might have thought him more of an academic than a businessman.

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SOLICITOR GENERAL

Personally I like both him and Ruth. I know them because he is my stepmother's nephew and our paths crossed in the early days when I left Oxford and was working for Walter Runciman & Co. in Newcastle while reading for the Bar. We have seen each other from time to time over the years but I would not claim to be one of his close friends and I think my assessment is objective.

Yours ever

Nick.

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

SECRET

FROM THE RIGHT HONOURABLE THE LORD MACKAY OF CLASHFERN

400/90/276.

HOUSE OF LORDS,
LONDON SW1A 0PW

21 December 1990

SECRET

The Right Honourable
Kenneth Baker Esq MP
The Secretary of State
for the Home Department
50 Queen Anne's Gate
LONDON
SW1H 9AT

Dear Kenneth,

CRIMINAL JUSTICE INQUIRY

Thank you for your letter of 14 December setting out the matters on which we have yet to reach agreement and your views on each of them.

I am content with the terms of reference as amended. I continue, however, to have some reservations about Lord Alexander as Chairman. I have no doubts about either his ability or his integrity, but rather as to his status. When his name was first mentioned to me I understood it was in the context of a much narrower, more specialised inquiry, than is now proposed, confined exclusively to the powers of the Court of Appeal. For such a task I think he would have been eminently suited. However, when David Waddington's office minuted the Prime Minister's Private Secretary about a wider inquiry on 21 August 1990 it was suggested, quite rightly in my view, that the Chairman of any such inquiry should be a lay person.

One key reason for this lies in the public's understandable concern to identify where responsibility for the difficulties lies. More than one article has questioned whether the legal profession and the judges are seeking to put the main responsibilities on the police in an attempt to avoid their due share of responsibility. I would not in any way wish to suggest where the responsibility lies, but I think it vitally important that the public should feel that the Chairman of the inquiry should not be linked by his background to any of the relevant interests.

I do not think that the public would regard Lord Alexander in this light. He is a former Chairman of the Bar, who was very active in that role, and he ceased to be in active practice little more than

a year ago. I believe that we should try identify a non-lawyer of high calibre and I hope that between us we might be able to come up with a range of candidates for consideration early in the New Year.

I would welcome the opportunity to discuss with you and Patrick Mayhew the arguments for and against setting up a Royal Commission before we come to a final conclusion.

I am content to attend your meeting with Sir John May and with the line you propose for handling.

I copy this letter to Patrick Mayhew.

Yours ever,

John.

ATTORNEY GENERAL

9 BUCKINGHAM GATE
LONDON SW1E 6JP

071-828 1884

21 December 1990

The Rt Hon Kenneth Baker Esq MP
Secretary of State for the Home Department
Queen Anne's Gate
LONDON S W 1

Dear Kenneth,

CRIMINAL JUSTICE INQUIRY

You copied to me your letter of 14 December to James Mackay and I have now seen his response, with which I am in entire agreement. Like him I very much hope that we can find a non-lawyer to chair the new Inquiry. I should add that at the moment I see advantages in that Inquiry taking the form of a Royal Commission and I certainly think Sir John May should be invited to be a member. I look forward to discussing these issues with you and James Mackay early in the New Year.

I am copying this letter to James Mackay.

Yours,

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Subject to charter

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

21 February 1991

TEMPORARILY RETAINED

Dear Colin.

CRIMINAL JUSTICE INQUIRY

The Home Secretary had a further discussion with the Prime Minister on this subject after Cabinet today. He explained that the Director of Public Prosecutions might concede the case early the following week and that the Birmingham 6 could be released immediately. He wished to be in a position to respond immediately to the concerns which this case, along with other miscarriages of justice, would create.

It was agreed that there should be a major inquiry into the criminal justice system and that there were advantages in giving this the form of a Royal Commission. It would take about 18-24 months whatever form the inquiry took so the objection that Royal Commissions took too long was not valid. The Home Secretary thought the membership of the Commission should be widely drawn and should include a senior Labour lawyer. He proposed to invite Mr Peter Archer who was not standing again at the next election. The Prime Minister agreed that the membership should be constructed in a way to create the maximum confidence and he was happy for a Labour figure like Mr Archer to be appointed.

The Home Secretary then ran through the draft terms of reference attached to your letter to me of 15 February. These were broadly agreed though he would be giving further thought to whether the balance between safeguards for defendants and augmented powers for the prosecution had been correctly struck.

Discussion then turned to the chairmanship of the Commission. The Home Secretary said the first choice had been Lord Alexander who, initially, had been keen to take it on. Lord Alexander had discussed this with the Governor of the Bank of England who had dissuaded him on the grounds that, in current economic circumstances, his duty was to concentrate full-time on the affairs of the National Westminster Bank.

The Home Secretary then ran through alternative names such as Lord Runciman, Sir Robin Day and Lord Windlesham. The two then cast around for other names but without success.

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The Prime Minister said he thought Lord Alexander clearly better than any other name so far identified. He was seeing the Governor of the Bank of England later in the day and would press him on his objections.

Summing up the discussion, the Prime Minister asked the Home Secretary to prepare a minute for colleagues on his proposals and the terms of reference of the inquiry. Meanwhile an urgent search for candidates for the chairmanship should be put in hand.

I am copying this letter to Jenny Rowe (Lord Chancellor's Office), Colin Pipe (Attorney General's Office), John Gieve (HM Treasury), Tony Pawson (Northern Ireland Office), Jim Gallagher (Scottish Office), Tim Sutton (Privy Council Office), Gillian Kirton (Lord Privy Seal's Office) and Sonia Phippard (Cabinet Office).

Yours sincerely

Andrew Turnbull

Andrew Turnbull

Colin Walters Esq
Home Office

Fils

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

PERMANENT UNDER-SECRETARY OF STATE
SIR CLIVE WHITMORE GCB CVO

18 February 1991

Dear Robin,

PROPOSED CRIMINAL JUSTICE INQUIRY: LEAK INVESTIGATION

Thank you for your letter of 6 February – at flag – agreeing that a formal leak investigation should be held into the disclosure of the proposal that a major criminal justice inquiry should be set up.

Royd Barker came to see me last week to give me his preliminary findings. A copy of my Private Secretary's note of the meeting is attached. As you pointed out in your letter, the chances of a successful outcome of the investigation are likely to be slim, and the purpose of our meeting was, as you suggested, to take stock before embarking on a protracted inquiry. Having now discussed this with Royd, I should like to see the next step taken, even though we will probably not identify the culprit in the end: this would involve the circulation of a questionnaire to all who have seen the papers. The Home Secretary, with whom I have discussed the matter, agrees. He remains perturbed at the leak and is still of the view that it should not be allowed to pass without action. The fact that there has been only a limited amount of publicity since the leak, including the Home Secretary's interview reported in the Daily Telegraph of 14 February, does nothing to offset the sensitivity of the disclosure of the proposed inquiry.

If a questionnaire is to be circulated, the Home Secretary believes that it should go to the Ministers as well as to officials in the Departments involved, for reasons explained in the note of my meeting with Royd Barker. If you agree that further inquiries should be made on these lines and that Ministers should be included in the investigation, I should be grateful if Andrew Turnbull could establish that the Prime Minister is content.

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I think that when we have the replies to the questionnaire, Royd Barker and I should consider again whether the inquiry should be taken any further.

I am sending copies of this letter to Tom Legg, Juliet Wheldon, the Director General of the Security Service and Andrew Turnbull.

Yours ever,

Sir Robin Butler KCB CVO

SECURITY: Misc Leaks Pt 3

From: THE PRIVATE SECRETARY

SECRET

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

15 February 1991

Dear Andrew

CRIMINAL JUSTICE INQUIRY

When the Home Secretary wrote to the Prime Minister on 3 December to let him know of the decision to refer to the Court of Appeal the case of Enghin Raghip, one of the persons convicted of the killing of Police Constable Blakelock in the Broadwater Farm disturbances, he indicated that he hoped to write the Prime Minister again about the consultations which his predecessor and he had with the Lord Chancellor and the Attorney General about the need for a wide ranging inquiry into the criminal justice system. We are now in a position to put forward our agreed proposals.

The Court of Appeal is due to begin its full hearing of the case of the Birmingham Six on 25 February. It is not possible to estimate how long the hearing will last; it could be over quickly or last beyond Easter. We would expect the Court to give its verdict soon after the hearing is complete, possibly straight away, although a reasoned judgement may take longer. We cannot make any public comment before the verdict, as the case is sub-judice, and there might be an awkward period between the verdict and reasoned judgement; but once the reasoned judgement is available it will be essential for the government to announce its response quickly as there is certain to be a great deal of concern expressed arising not only from this case, but also from others in which justice has not been seen to be done. A response will be necessary whatever the Court's verdict.

The Home Secretary and his predecessor have held detailed consultations with the Lord Chancellor and the Attorney General about the form of the government's response. They are agreed that an inquiry of some stature, with wide terms of reference, will be necessary, reflecting the range of issues requiring attention. The proposals are below. If the Prime Minister is content, the Home Secretary will circulate a paper to Cabinet colleagues seeking agreement to the proposals and to the statement he and the Lord Chancellor and would propose to make in Parliament.

Andrew Turnbull Esq CB
10 Downing Street
London SW1

/Background

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Background

The Birmingham Six case cannot be seen in isolation. In itself it raises some very troubling issues, but it comes hard on the heels of the quashing of the convictions of the Guildford Four and the concession by the Director of Public Prosecutions to the May Inquiry, albeit on one ground only, that the convictions of the Maguire family appeared to be unsafe and unsatisfactory. That case has not yet been heard by the Court of Appeal. In addition, the Home Secretary has recently decided to refer back to the Court of Appeal the convictions of two men in South Wales of murder in 1982 in respect of which a police inquiry has revealed irregularities in the recording of alleged confessions. The doubts in this case were brought to light by a television programme and consequently we can expect considerable publicity.

All of these cases have their origins in the period before the major reforms of the criminal justice system of the mid nineteen eighties and there is consequently a great deal that we can say in response. Indeed the Home Secretary considers that it will be most important that we are able to point to these reforms and emphasise that any further action should be seen in the context of building on rather than undermining them.

Other grounds for concern, however, post-date these reforms. An investigation now being carried out under the supervision of the Police Complaints Authority into the West Midlands Police Serious Crime Squad concerns cases which have occurred since the implementation of the Police and Criminal Evidence Act 1984 and the establishment of the Crown Prosecution Service. A number of worrying cases have already come to light and it seems clear there will be more to emerge. So far two convictions have been quashed by the Court of Appeal and a further sixteen cases are awaiting hearing.

Issues involved

The cases as a whole raise a number of issues which require fresh examination to see whether further improvement can be made. These include supervision of police investigations by their senior officers, particularly in the case of serious crime; the reliability of uncorroborated confessions and the circumstances in which they should be admitted in evidence; the manner in which forensic science evidence is obtained, evaluated, and disclosed to the parties to a prosecution and given to the trial court; the role of the prosecutor in assessing the sufficiency of the evidence, deciding to prosecute, and deciding on the disclosure of material to the defence; the role of the trial court in hearing evidence and requiring further inquiries to be undertaken; the role of the Court of Appeal in assessing new evidence and reaching a view on it or ordering a retrial; and the role of the Home Secretary in considering claims that a miscarriage of justice has occurred.

/This is

This is a wide-ranging list of problems, but the Home Secretary, the Lord Chancellor and the Attorney General are satisfied that they need to be the subject of careful review. They are, however, anxious to avoid setting up an inquiry which simply takes the view that further safeguards are needed for the rights of suspects and puts forward recommendations which restrict the police and prosecuting authorities. It appears that such a result would be most likely if the inquiry were given narrow terms of reference, such as focusing on the failings in any of the specific cases, or on the role of confession evidence. They believe that wider terms of reference will help to direct the inquiry's attention to other issues, such as the "right of silence" and the desirability of suspected persons having a duty to assist criminal investigations. This would then open the way to a balanced package of reforms being put forward which will assist the police and prosecution as well as improving the safeguards for suspects. I enclose a copy of the terms of reference which they propose. The inquiry team would have a major task, but the Home Secretary thinks it would be right to set them the target of reporting within two years.

May Inquiry

As you know, the Home Secretary's predecessor and the Attorney General appointed Sir John May in October 1989 to conduct an inquiry into the circumstances surrounding the Guildford Four and Maguires cases following the quashing by the Court of Appeal of the Guildford Four's convictions. A judicial inquiry of this sort would not be appropriate for the sort of inquiry we are now proposing. Sir John still has, however, an important task to complete in inquiring into the facts of the two cases. The Home Secretary and the Attorney General believe it is essential that he should see this work through to its conclusion. The nature of the task is well suited to the form of his inquiry. They do not think it could be subsumed into the wider inquiry as it would sit ill with the rest of its work and would prove an unnecessary distraction. However, co-ordination between the two would be essential and they propose to achieve this by inviting Sir John May to become a member of the wider inquiry. They would write to him to explain how they wished him to proceed once the wider inquiry had been set up. They would make it clear that his membership was intended to enable him to contribute any conclusions he or his team may have drawn on the wider issues from their investigation, in addition to any lessons already covered in his own reports.

Form of inquiry

The proposed inquiry will in the judgement of the Home Secretary, the Lord Chancellor and the Attorney General need to be of the highest stature in order to measure up to the task and carry weight with those who will be affected by its recommendations,

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including the judiciary. Its work would be appropriate to that of a Royal Commission. They recognise that appointment of such a Commission would be a departure from recent practice. If such a departure is acceptable at this time, the Home Secretary can think of no subject more appropriate for inquiry by a Royal Commission than this. The alternative would be an inter-departmental committee.

Next steps

The Prime Minister may wish to discuss these proposals with the Home Secretary. The Home Secretary has been considering the question of membership of the inquiry and will be ready to come forward with his proposals when the form of the inquiry and its terms of reference has been settled. I am copying this letter, which has been agreed in terms with the Lord Chancellor and the Attorney General, to Jenny Rowe (Lord Chancellor's Office), Colin Pipe (Attorney General's Office), John Gieve (Chancellor of the Exchequer's Office), Tony Pawson (NIO), Jim Gallagher (Scottish Office), Tim Sutton (Privy Council Office), Gillian Kirton (Lord Privy Seal's Office) and Sonia Phippard.

Yours ever

C J WALTERS

CRIMINAL JUSTICE INQUIRY

Draft terms of reference

To examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who are innocent, having regard to the efficient use of resources, and in particular to consider whether changes are needed in

i. the conduct of police investigations and their supervision by senior police officers, and in particular the degree of control that is exercised by those officers over the conduct of the investigation and the gathering and preparation of evidence;

ii. the role of the prosecutor in supervising the gathering of evidence and deciding whether to proceed with a case, and the arrangements for the disclosure of material, including unused material, to the defence;

iii. the role of experts in criminal proceedings, their responsibilities to the court, prosecution, and defence, and the relationship between the forensic science services and the police;

iv. the arrangements for the defence of accused persons, access to legal advice, and access to expert evidence;

v. the opportunities available for an accused person to state his position on the matters charged and the extent to which the courts might draw proper inferences from primary facts, the conduct of the accused, and any failure on his part to take advantage of an opportunity to state his position;

vi. the powers of the courts in directing proceedings, the possibility of their having an investigative role both before and during the trial, and the role of pre-trial reviews; the courts' duty in considering evidence, including uncorroborated confession evidence;

vii. the role of the Court of Appeal in considering new evidence on appeal, including directing the investigation of allegations;

viii. the arrangements for considering and investigating allegations of miscarriages of justice when appeal rights have been exhausted.

CJI19

Should I send Key

out on May 7.

2 Security: Terrorist Activity in GB

Home Affs: Sentencing PKs

From: THE PRIVATE SECRETARY

CC ~~GAB~~.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

17 December 1990

Dear Tim

CAPITAL PUNISHMENT - TREASON

... I enclose a passage from the speech the Home Secretary will be delivering this afternoon which deals with the amendment to disapply capital punishment for treason. This has been cleared with the Lord Chancellor.

Copies of this go to Andrew Turnbull, Private Secretaries to Members of the Cabinet and Ministers in charge of Departments, Murdo Maclean and Sonia Phippard (Cabinet Office). I understand from Murdo that the Chief Whip has asked that all Commons Ministers and Parliamentary Private Secretaries should see the Home Secretary's speech before tonight's vote and I should be grateful if Private Offices could try to ensure that this is done.

Yours ever

C J WALTERS

Tim Sutton Esq
Lord President of the Council
Privy Council Office
Whitehall
London SW1

TREASON

The amendment that stands in the name of the Rt Honourable Member for Warley West would make life imprisonment the mandatory sentence for treason and for piracy with violence. It would mean that the death penalty would still remain for some offences under the Armed Forces Act of 1971.

I am advised that the amendments as they stand are defective in that they do not cover one of the statutes relating to treason, but I would not wish to rest my views on this particular amendment on such a point. Should the House pass this motion tonight it would be the responsibility of the Government to remove the defect of the amendment.

I have some sympathy with the view that the death penalty should be abolished for piracy, especially as there is some doubt about the circumstances in which it would apply. Life imprisonment is the maximum penalty for the equivalent offence of hijacking an aircraft. However, this is all somewhat academic since the last execution for piracy was in 1830.

The question relating to the penalty for treason is, however, more complex. In 1977 the Law Commission's working paper on treason, sedition and allied offences pointed out that apart for some cases in wartime, there had been no modern instance of prosecution in English courts for the offence of treason. In practical terms, therefore, the law of treason is important only in time of war. The paper concluded that the present statutes dealing with treason and treason felony should be repealed and that there should be an offence of treason applicable only during the existence of a state of war. The deficiencies were recognised during the last war through the passing of a special Act.

Clearly what is needed is a complete revision of the law relating to treason and the appropriate penalties that would attach to any new provision. It would therefore be inappropriate at this stage to amend solely the penalty without consideration of the offence giving rise to that penalty. I have discussed this with the Lord Chancellor, who considers that it would be appropriate for the Law Commission to continue their examination of this law

in the context of their work on the codification of the criminal law. This will allow Parliament in due course to consider the complex matters surrounding the law of treason. Simply to amend the present law by substituting a mandatory sentence of life imprisonment would be to give the wholly erroneous impression that apart from that change Parliament was content with it.

There is, of course, a free vote on this clause tonight, but I think that it would be much more sensible to leave the penalty as it is until the wider consideration of the law of treason is completed.

PRIME MINISTER

I attach notes from the Lord President and his office on the handling of the debate on the 'treason' amendment in the Capital Punishment Bill on Monday.

The first note sets out the conclusion of the Lord President and colleagues that it is not possible to take Labour's proposed amendment off the agenda for Monday, nor would it be practical to whip the payroll vote. His conclusion is that the Government should: give a strong steer to all payroll colleagues on Monday about the inappropriateness of deciding this question in a half baked way in the vote on Monday night; work on the press to put this argument across; and to remit the matter to the Law Commission (who have the advantage of being independent of Government, likely to look simply at legal aspects of the current treason clauses rather than at the wider policy issues, though with the disadvantage that their preliminary conclusion in 1977 was that the treason clauses should in due course be repealed).

The second note from the Lord President's office records the Lord President's briefing of the Sunday Times on the line the Home Secretary will take in Monday's debate, which reflects the above.

I think all this broadly reflects the view that you set out in Cabinet on Thursday.

DOMINIC MORRIS
14 December 1990

c:\parly\treason.eam

TJS/AG

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

14 December 1990

Dear Dominic,

CAPITAL PUNISHMENT: TREASON

We had a word this morning about the Lord President's minute of 13 December. This is to record that the Lord President spoke to David Hughes of the Sunday Times this morning to guide him on the line that the Home Secretary would be taking in Monday's debate.

The Lord President confirmed that there would be a completely free vote on new clause 4, as on all the other new clauses on the death penalty, in accordance with past practice. But he pointed out that new clause 4 was really in a different category because it raised wider questions about the state of the law of treason. The Law Commission had prepared a working paper on the law of treason in 1977; although this was not a formal report it did provisionally recommend the repeal of the treason laws. The Home Secretary would be indicating in his speech on Monday his view that it was therefore inappropriate, premature and indeed wrong to seek to change the penalties for treason when it appeared that the statutes themselves needed careful review. The correct time to consider the appropriate penalty for treason would be in the context of a proper consideration of the whole law of treason and related offences. The Law Commission's considered views on this would clearly be desirable before decisions were taken.

The Lord President also pointed out that, as the Law Commission's paper had noted, there had been no modern instance of prosecution in English courts for the offence of treason. Unlike all the other offences for which Monday's debate would consider whether the death penalty was appropriate, this was not an offence that would arise in current circumstances in peace time and there was no urgent need to deal with it now.

Asked about how Cabinet would vote, the Lord President said he was confident that senior Ministers, and certainly a majority of the Cabinet, whatever their views on the death penalty as such, would be voting against this particular amendment for the reasons he had indicated.

The Lord President also indicated that we thought that not all the new clauses on Thursday's Order Paper would be selected for debate and votes, although he stressed that selection was entirely a matter for the Chairman of Ways and Means and we could not be sure whether our current understanding was the last word on this.

I understand from Colin Walters that it will not be possible to circulate to Cabinet a cleared version of the Home Secretary's speech in time for weekend boxes. Since Ministers may find it helpful to have some further guidance over the weekend, I enclose (with their agreement) a copy of Jenny Rowe's letter today to Peter Storr which contains further background about the Law Commission paper in 1977.

I am copying this letter to the Private Secretaries to members of Cabinet, the Attorney General, the Chief Whip (Lords) and the Chief Whip (Commons), and to Sonia Phippard and Sir Henry de Waal.

T J SUTTON
Principal Private Secretary

Dominic Morris Esq
PS/Prime Minister
10 Downing Street

16311

14 December 1990

Peter Storr
Private Secretary to the
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

TREASON

I am writing to confirm our conversation about a line to take on the proposed amendment to the Criminal Justice Bill, abolishing the death penalty for the offence of treason.

The Lord Chancellor's view is that the Law Commission considered the law of treason in a Working Paper published in 1977. The Paper was entitled "Treason, Sedition and Allied Offences" and was issued as part of the Law Commission's work on the Codification of the Criminal Law. The Working Paper pointed out that, apart from some cases in wartime, there had been no modern instance of prosecution in English courts for the offence of treason. In practical terms therefore the law of treason is important only in time of war. Indeed during World War II Parliament passed the Treachery Act 1940, which created a capital offence of treachery, and which remained in force for the period of the emergency.

The Paper concluded, inter alia, that the present statutes dealing with treason and treason felony should be repealed and that there should be an offence of treason applicable only during the existence of a state of war. To amend a body of law which is so out of date, and which should apply only in time of war, would be a grave error. The correct time at which to consider the appropriate sentence for treason is the context of a proper consideration of the whole law of treason and related offences. Simply to amend the present law by substituting a mandatory sentence of life imprisonment would be to give the wholly erroneous impression that, apart from that change, Parliament was content with it.

Miss J Rowe

TEG/AG

PRIME MINISTER

CAPITAL PUNISHMENT: TREASON

Following Cabinet this morning I discussed with James Mackay, David Waddington, Kenneth Baker, Paddy Mayhew, Bertie Denham, Richard Ryder, Greg Knight and Parliamentary Counsel how we should deal with Peter Archer's new clause 4, which would abolish the death penalty for treason and piracy under the Acts of 1790, 1814 and 1837.

We agreed that it is important that the clause be defeated, because it is inappropriate to change the law on so important an issue by means of a back bench amendment, and without time for proper consideration of all the wider implications. It is also, as we noted in Cabinet, a particularly inopportune moment to raise this subject, when our troops are deployed and may see action in the Gulf. This minute reports how we propose to proceed.

We concluded that it would not be possible to ensure that there is no discussion or vote on new clause 4. Selection of new clauses is for the Chairman of Ways and Means, who takes the chair because the Bill is still in Committee; we have no realistic prospect of influencing his choice. (Counsel have since confirmed with the Clerk to the House that this clause will be selected).

We considered the idea of whipping the payroll, apart from those who object on conscience grounds (as we have done throughout for the War Crimes Bill). On Richard Ryder's advice, we rejected this course. The principle of a completely free vote on capital punishment is not one we would wish to breach on an issue such as treason which raises difficulties of its own.

We then considered how Kenneth Baker should respond in Monday's debate so as to maximise the likelihood that the clause will be defeated. On balance we were strongly opposed to remitting the treason laws to the Home Affairs Select Committee or some other committee, such as an ad hoc committee of Privy Councillors, on the ground that this would keep the subject in the public eye and highlight the political difficulties on which we touched in Cabinet.

James Mackay and Paddy Mayhew recalled that the Law Commission had prepared a working paper on treason in 1977. This was not a formal report although it did provisionally recommend the repeal of the treason laws. We concluded that Kenneth could draw attention in his speech to the need for a considered view from the Law Commission on the law in this area and stress that it would be inappropriate and premature to change the penalties when there is reason to believe that the statutes themselves are no longer workable in their present form. James is working out with Kenneth a detailed form of words on this, which I understand will need to take account also of the report the Law Commission have produced about the law on piracy.

We considered it important that as many colleagues as possible should be given guidance on the issues and have a clear idea of how you and other senior colleagues, including Kenneth and myself, were going to vote on this clause. We intend to give guidance to the weekend press. If by Monday the line that is emerging in the media is not sufficiently clear, Kenneth will circulate his speech to as many of the payroll as possible, so that even if they are not in the Chamber to hear him, they will still be aware of the issues and, hopefully, vote accordingly.

Finally, I should record that since our meeting Counsel have learnt from the Clerk to the House that two of the seven amendments will <u>not</u> be selected for debate and voting on Monday. These are, as listed in today's Order Paper, new clause 2 which proposes the death penalty for an act of terrorism, and new

clause 6 which proposes the death penalty for the murder of a prison officer. The House authorities have however confirmed that the fact that the House is not voting separately on these two categories, which are anyway covered by the more general amendments that have been selected, will not change the Speaker's intention that further debate on capital punishment at subsequent stages of the Bill's passage should be ruled out of order. Counsel have also advised that, if new clause 4 were passed, it would be essential to correct its drafting at Report Stage.

I am copying this minute to Cabinet colleagues, Paddy Mayhew. Bertie Denham, Richard Ryder and Greg Knight, and to Robin Butler and First Parliamentary Counsel.

JM

13 December 1990

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

28 November 1990

Dear Murdo

CRIMINAL JUSTICE BILL:
CAPITAL PUNISHMENT

I am sorry that the letter I sent you yesterday slightly misrepresented the Home Secretary's position. He does not want the capital punishment debate to take place before the Christmas recess. He does want the motion committing the debate to the floor of the House to refer to any amendments or New Clauses tabled before the House rises, with a view to a debate after Christmas.

Regrets for the confusion.

Copies as before.

C J WALTERS

Murdo Maclean Esq
12 Downing Street
London SW1

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

27 November 1990

Dear Murdo

CRIMINAL JUSTICE BILL

Thanks for your letter of 26 November.

I think Martin Brandon-Bravo has now had a word with you and has cleared up the little misunderstanding which existed. It was never the Home Secretary's intention to restrict debate to capital punishment for the murder of police officers by procedural means - instead he hopes that Mr Greenway and the other leading advocates of capital punishment can be persuaded to limit themselves voluntarily to a New Clause restricted to the murder of police officers. Martin has, I believe, been in touch with Greg Knight about how this might be achieved.

It follows that the Home Secretary is content with a procedural motion in the terms you suggest. He hopes that arrangements can be made for the capital punishment debate to take place before the Christmas recess.

I am copying this letter to the recipients of yours.

Yours ever

C J WALTERS

Murdo Maclean, Esq.
No 12 Downing Street
LONDON, S.W.1.

HOME AFFAIRS: Capital Punishment Pt 5.

Government Chief Whip
12 Downing Street London SW1A 2AA

From the Private Secretary

26 November 1990

Dear Colin,

CRIMINAL JUSTICE BILL

I undertook to write to you about the handling of a new clause on capital punishment to be taken in Committee of the Whole House.

Under S.O.61, unless the House otherwise orders, Bills are committed to Standing Committee. The Criminal Justice Bill has been now so committed.

We will therefore need to table a motion (debatable) inviting the House to commit a new clause (or new clauses) on that subject to a committee of the whole House.

The 1973 precedent suggests a motion on the following lines:-

"Mr. Secretary Waddington

That any new Clause relating to 'capital punishment' (or whatever) of which notice may be given not later than January in respect of the Criminal Justice Bill be committed to a Committee of the whole House; and that, when the Committee of the whole House have reported with respect to any such new Clause and the Standing Committee on the Bill have reported the Bill, the Bill be proceeded with as if it had been reported as a whole from the Standing Committee".

In the meantime it will be open to Members to table new clauses on this subject in Standing Committee which would be both in order and selectable.

As I understand it, the Home Secretary has it in mind to restrict the terms of the new clause e.g. "to the murder of a police officer". I have discussed this possibility, briefly, with the Clerk of the House. His initial reaction is that it might be regarded as provocative if the Government sought to confine the scope of debate on its own initiative and that it would be difficult to prevent amendments being tabled to the motion. In addition, it would not be possible to stop other categories being considered in Standing Committee.

/ continued over.....

I am not clear whether the 'pros' or 'antis' would be opposed to what the Home Secretary is proposing, but I believe that if the Government try to be too restrictive, it might be counter productive and would almost certainly lead to a debate on the motion.

In 1973, the motion which the House considered was "any new clause relating to punishment for murder....." (OR 18 April 1973 Col.627).

In the light of this the Home Secretary may wish to consider with the business managers how best to take this further.

I am sending a copy of this letter to Dominic Morris (No. 10), Tim Sutton (Lord President's Office) Douglas Slater (Chief Whip's Office, House of Lords) and Sonia Phippard (Sir Robin Butler's office), for information to Greg Knight MP and Martin Brandon Bravo MP.

Yours sincerely,

Murdo Maclean

MURDO MACLEAN

Colin Walters Esq
Private Secretary to the Home Secretary
Home Office
50 Queen Anne's Gate
London SW1 9AT

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

7 November 1990

Dear Mr Saunders

CRIMINAL JUSTICE BILL

As you know, the Bill was considered by the Legislation Committee on 6 November. The Committee approved introduction in the House of Commons. I should be grateful if you would arrange for notice of presentation to be Tabled today in readiness for the Bill's introduction on **Thursday 8 November** at the commencement of public business. We should like the Bill **to be published at 10.00am on Friday 9 November.**

The Bill should be presented by Mr Secretary Waddington, supported by:

The Prime Minister
The Lord President of the Council
The Chancellor of the Exchequer
Mr Secretary Rifkind
Mr Secretary Hunt
Mr John Patten

I understand that there will not be a Lobby Conference but a press briefing instead, at the time of publication. I should be grateful if you would arrange for 150 copies of the Bill, addressed to the Home Secretary, to be delivered to the Vote Office on the morning of 9 November, ready for collection at 8.30am. We would wish to have the Bill **embargoed** until the time of publication.

I am sending copies of this letter to Dominic Morris (Prime Minister's Office), Joan Bailey (Cabinet Office), Tim Sutton (Lord President's Office), Murdo Maclean (Chief Whips Office, Commons) and Ralph Hulme (Chief Whips Office, Lords).

Yours sincerely

B E KINNEY
Parliamentary Clerk

D W Saunders Esq

PART 4. ends:-

SS/NIO to HOMS SGC. 30.9.90

PART 5 begins:-

HO to D.W.SAUNDERS. 7.11.90.