2nd August, 1966

CABINET

CRIMINAL JUSTICE BILL

Memorandum by the Secretary of State for the Home Department

Introduction

In this memorandum I set out the provisions which, with the agreement of the Home Affairs Committee, I propose to include in the Criminal Justice Bill. This Bill will be a major measure which will make a number of significant reforms in the penal system and in the criminal law and the procedure of the criminal courts. I hope that it will be possible to take Second Reading before Christmas.

Release on licence

2. On 2nd December, 1965 (CC(65) 67th Conclusions, Minute 3) the Cabinet approved the publication of a White Paper on the Adult Offender. The central proposal in the White Paper (Cmd. 2852), which the Bill will implement, is that a prisoner who has served one-third of his sentence or one year, whichever is the longer, may be released on licence subject to suitable conditions. Prisoners will be carefully selected for this privilege in the light of their response to training and general progress in prison, and the over-riding consideration will always be whether early release is likely to involve any appreciable risk to the public. Any prisoner released on licence will be subject to recall to prison until the date on which he would have left it under the existing law.

Persistent offenders

3. The Bill will also implement the White Paper’s proposal that the sentences of preventive detention and corrective training should be abolished, and that the courts should be empowered instead to impose a persistent offender a longer sentence, subject to a statutory maximum, than that appropriate for the offence of which he was convicted. To offset this, prisoners in this category will be eligible to benefit by the arrangements for release on licence.

4. There has been widespread support in principle for these proposals, particularly for the concept of release on licence - though we may expect some debate on questions such as the minimum qualifying period for release.
Short terms of imprisonment

5. Many people are sent to prison unnecessarily for short terms. In my view this blunts rather than sharpens the deterrent effect of imprisonment. It also overcrows our gaols with prisoners for whom no worthwhile remedial treatment can be provided. I propose to tackle this problem in four ways.

(a) Suspended sentences

6. The Bill will introduce the suspended sentence into our penal system, by empowering courts to suspend any sentence of imprisonment of two years or less. A substantial body of informed opinion supports the principle of the suspended sentence, and will welcome its introduction.

7. I also propose that, where an offender is dealt with for an offence which is not one involving violence against the person or a sexual assault, and the court imposes a sentence of imprisonment of six months or less, it shall be required to suspend the sentence if the offender has not previously been sentenced to imprisonment or borstal training. The restriction on the powers of the courts will not be welcomed by all sentencing authorities, but in my view it is essential if we are to make a substantial impact on the problem of short sentences; and the exception for offences of violence should meet most objections of substance.

(b) Offenders sentenced for drunkenness

8. When the development of hostels and other institutions has advanced far enough to secure sufficient accommodation of the right type, imprisonment will not in my view be necessary as a direct penalty for the offence of being drunk and disorderly. I therefore propose that the Bill should provide that, when the Secretary of State is satisfied that sufficient suitable accommodation is available for the treatment and care of those convicted of drunkenness offences, he may make an order providing that the offence of being drunk and disorderly is no longer punishable with imprisonment.

(c) Enforcement of Fines

9. The Bill will empower courts to attach the earnings or other income of fine defaulters and will restrict the present powers of the courts to commit the defaulter to prison. In my paper to the Home Affairs Committee I proposed that courts should have power to commit a defaulter to prison without giving him time to pay only if it appeared that either -

(a) he was able to pay straight away, or
(b) he was likely to disappear without paying;

and that once a court had given time to pay it should not commit a defaulter unless it had tried and failed to extract the fine by attachment of earnings or income. The Home Affairs Committee asked
me to consider further whether the courts needed the power at (a) above, bearing in mind, among other things, that it might result in some offenders under the Prices and Incomes Bill being committed to prison forthwith. My proposals already represent a considerable restriction on the present powers of the courts (indeed the Secretary of State for Scotland is disposed to think that they go too far in this direction) and we do not want the law to become too difficult to enforce against a defaulting offender. On the other hand, I fully recognise the need to take full account of the position under the Prices and Incomes Bill and I am considering the matter urgently in consultation with my colleagues primarily concerned.

(c) Remands in custody

10. With the object of eliminating unnecessary detention before trial I propose to restrict the present unlimited powers of magistrates' courts to remand or commit accused persons in custody rather than on bail by requiring bail to be offered, save in special defined circumstances, in specified categories of minor offences. I am particularly anxious that those who are most unlikely to be sent to prison, even if convicted, should not be kept in prison before trial.

The Jury System

11. There has lately been strong criticism of abuses which are possible under the present jury system. There has been a growing number of cases, involving serious crimes, in which there have been attempts to bribe or intimidate jurors. There have been other cases where a verdict of guilty has not been reached because one member of the jury, from a general dislike of the police or some similar prejudice, was not prepared in any circumstances to see a person convicted.

12. I propose, as an immediate measure to meet these criticisms, that the Bill should provide for juries to be able to convict by majorities of 10 to 2 instead, as at present, of requiring unanimity. The Lord Chief Justice has told me that the judges are unanimously in favour of majority verdicts. In addition, because of public anxiety about the present volume of crime and the need for effective enforcement of the law, I have reached the view that this proposal would be generally acceptable to lay public opinion. But a concession could be made during the passage of the Bill if it became clear that majority verdicts would be acceptable only if reached by eleven to one. As a safeguard against the too hastily reached majority verdict I propose to provide that a verdict which is not unanimous may be reached after not less than two hours' discussion. In accordance with the conclusion of the Home Affairs Committee, I am giving some further thought to the suggestion that a jury should be instructed to seek to reach a majority verdict only after it has reported to the judge its failure to reach a unanimous verdict after not less than two hours' deliberation; and also to the question of how the judge should ensure that the verdict has been reached by an adequate majority.
13. We have yet to introduce the legislation to which we are committed to implement the recommendations of the Departmental Committee on Jury Service. This also concerns civil juries and would not be suitable for implementation in a Criminal Justice Bill. I am preparing a separate Bill - which can be taken in a Second Reading Committee - to deal with the Committee's recommendations but I propose to act in the Criminal Justice Bill on the Committee's recommendation that persons convicted of serious crime should be disqualified from serving on criminal juries, since this is a measure specifically aimed at the mischiefs described in paragraph 11 above. The Committee's recommendation was that conviction for serious crime should disqualify for five years. I propose to extend this to disqualify for life those sentenced to five or more years' imprisonment.

Legal aid

14. I propose to include in the Bill the provisions necessary to give effect to the recommendations - which have been generally welcomed - of the Widgery Committee on Legal Aid in Criminal Proceedings. The three main proposals requiring legislation are (a) the introduction of a contributions scheme; (b) the introduction of arrangements to enable persons convicted on indictment to obtain legal advice on grounds of appeal and (c) the adaptation of the statutory Legal Advice Scheme to make it more accessible to persons charged with a criminal offence.

15. Whereas the proposed contribution scheme involves legislation, the Committee's recommendations as to the circumstances in which courts should grant legal aid, which are likely to entail additional public expenditure, could be implemented by the courts under their present powers. I therefore propose, when announcing the Government's acceptance of the Committee's recommendations, to emphasise the desirability of viewing them as parts of a single scheme to be put into effect at the same time.

Preliminary proceedings before examining justices

16. Early in 1965 the Government announced their intention to give effect to the Byrne report (which recommended a limited use of written evidence in committal proceedings) and the Tucker report (which recommended restrictions in the reporting of these proceedings). It is now clear, however, that there is considerable support for going much further than the limited changes recommended by the Byrne report. I propose that committal proceedings shall be held only if the prosecution or the defence want them (the defence will have had an opportunity to study the written statements of prosecution witnesses in advance) and that, where they are held, oral evidence should be given only by those witnesses from whom either side want it; the remainder of the evidence will be in writing.

17. As regards the Tucker recommendations, the case for restricting press reports rests at present on no more than a balance of opinion, but if committal proceedings in their present form are to be the exception rather than the rule it would be wrong for pre-trial publicity to be given only to the exceptional case. I therefore propose
to restrict press reports of such proceedings as shall be held, reserving to the accused the right to require that the restriction should not apply if he thinks publicity would help him (e.g. by dispelling rumour or bringing in witnesses who would not otherwise have known of the case). I also propose to accept a recommendation of the Criminal Law Revision Committee that accused persons should be required to give notice before the trial of any defence of alibi they propose to raise.

Other amendments to court procedure

18. I consider that the time has come to modify the procedure for bringing those charged with trivial offences (e.g. parking offences) before the court by (i) allowing trials to proceed in the absence of the accused even if the summons has not been acknowledged, and giving a new trial to those who claim ignorance of the summons; and (ii) prohibiting the use of warrants of arrest to bring trivial offenders before the court in the first instance. Following recommendations of the Criminal Law Revision Committee I propose to allow greater scope for written evidence in all criminal proceedings and the use of formal admissions of facts that would otherwise have to be strictly proved. Most of these proposals (and certain other minor ones) are directed to improving efficiency and saving time.

Amendments to the Prison Act 1952

19. The Bill will make various amendments to the Prison Act 1952. The most important is the abolition of corporal punishment for disciplinary offences in prison. This may be opposed by the prison officers, but it is a degrading form of punishment out of keeping with the aims and methods of modern penology.

Increase of maximum fines

20. The Bill will increase the maximum fines which may be imposed for a number of offences. Many of these fines were fixed years ago, and have become inadequate with the fall in the value of money. Consequential changes will be made in the tariff of terms of imprisonment to be served in default of fines.

Fingerprints and palmprints

21. At present, when a person not less than 14 who has been taken into custody is charged with an offence before a magistrates' court, the court may order him to be fingerprinted. I propose that this power should be extended to include palmprints, and to cover cases where an offender appears in answer to a summons for any offence punishable with imprisonment. I think that public opinion generally will approve this comparatively minor extension, which will be of considerable assistance to the police - and would indeed be prepared to go further if it could be shown that this would be useful.
Probation and after-care

22. The Bill will make a number of changes on points of detail related to probation and after-care. Most of these changes implement recommendations made by the Departmental Committee on the Probation Service (the Morison Committee) in 1962 and by the Advisory Council on the Treatment of Offenders.

Minor and miscellaneous provisions

23. I shall also take the opportunity to make various minor and technical improvements in the administration of the criminal law.

Conclusion

24. I seek the approval of the Cabinet to the proposals for the Criminal Justice Bill set out in this paper, subject to my reaching agreement with the First Secretary of State and the Attorney-General on the extent of the courts' powers to commit fine defaulters to prison (paragraph 9 above).

R. H. J.

Home Office, S. W. 1.

1st August, 1966