CABINET

DEATH PENALTY (ABOLITION) BILL

MEMORANDUM BY THE HOME SECRETARY AND MINISTER FOR WELSH AFFAIRS AND THE SECRETARY OF STATE FOR SCOTLAND

The purpose of this paper is to seek a decision on the attitude which the Government should take towards the amendments to the Death Penalty (Abolition) Bill. Leaving aside merely wrecking amendments, the amendments at present on the Order Paper, which are summarised in Appendix I, fall into two classes—

(i) amendments designed to retain capital punishment for certain classes of murder, and
(ii) amendments designed to amend the law of murder in the directions suggested by the Royal Commission on Capital Punishment and/or the Heald Committee.

Amendments Designed to Retain Capital Punishment for Certain Classes of Murder

2. These amendments present the Government with a difficult problem. Government spokesmen have repeatedly stated in the House that the choice lies between the retention and the abolition of capital punishment. The Lord Privy Seal and the Home Secretary both said in the debate on 16th February, 1956, that the Government did not think that the problem could be solved by attempting to define murder or degrees of murder. Once a departure is made from total abolition or total retention anomalies are bound to arise because there are no logical or moral grounds for distinguishing between one category of murder and another. Because, however, the Government would not have been prepared to initiate legislation to limit capital punishment to particular categories of murder, it does not necessarily follow that we should oppose amendments designed to except certain categories of murder from the abolition of capital punishment.

3. As Secretaries of State we are responsible for the maintenance of law and order and we have a special position in relation to the services by which law and order is maintained, the police and prison services. The members of both look to us to defend their interests, and it would be extremely undesirable, in view of the difficulty of recruiting for both these services, to give them the impression that we are indifferent to the increased danger to which the abolition of capital punishment will expose them. We feel that, in view of our special responsibilities, we cannot oppose amendments specifically intended to protect policemen and prison officers.

4. We therefore propose that the Government should support amendments designed to preserve capital punishment as the penalty for—

(i) the murder of a police constable in the execution of his duty, and
(ii) the murder of a prison officer by a prisoner.

5. We recognise that these amendments will create anomalies. There is no logical distinction between murdering a night-watchman and murdering a policeman, or between murdering a prison officer in prison or a civilian outside in the course of escape, and the public would probably not regard murdering a policeman or a prison officer as so heinous a crime as murder by poisoning. Even
poisoners, however, are not all of the same degree of wickedness; there is a wide difference between the mother who gives an overdose of aspirin to an ailing child and, for example, the nurse who kills by slow poisoning some elderly person whose money she hopes to inherit. We do not, therefore, propose that capital punishment should be retained for poisoners: we merely draw attention to the difficulty which any attempt to select particular forms of murder which attract the capital penalty is bound to create.

6. It may be observed that in relation to offences against prison officers there is already a precedent for keeping a special penalty, at any rate in England and Wales, since corporal punishment has been retained specifically for mutiny or incitement to mutiny and gross personal violence to a prison officer.

7. We feel that there may also be grounds for supporting the amendments to retain the death penalty for second or subsequent convictions of murder. Such cases have hitherto been rare: but with the general abolition of the death penalty more murderer will eventually be at large and it may be felt that society is entitled to such special protection against the risk of a repetition of their crime as the death penalty would afford. If Parliament decided not to retain the death penalty for any murder of a prison officer, the case for its retention for a second or subsequent murder would be even stronger because of the special risk to which prison officers would then be exposed from persons who are already serving a life sentence and upon whom no further sentence of imprisonment could be imposed. We feel that, on any ground, an amendment keeping the death penalty for a second or subsequent murder is one which the Government could not easily oppose.

8. The amendments which we suggest should be supported do not represent an attempt to single out crimes of particular heinousness. They would, however, provide some protection for two classes of public servant who, by the nature of their service, are specially exposed to murderous attack, and for the community at large from the risk of a further murder by a person who has shown himself by a previous conviction to be capable of such a crime.

9. We do not suggest that the Whips should be put on for these amendments, but we hope that all Ministers who can conscientiously support them will do so. As to the remaining amendments in this category, we suggest that the Government should not indicate any view upon them and that we should decide on the spot in the light of the progress of the debate whether to vote for them or to abstain.

Amendment to the Law of Murder

10. There are a number of amendments on the Order Paper designed to amend the law of murder on the test of insanity, diminished responsibility and provocation by words alone. Most of these follow the lines recommended by the Heald Committee.

11. If capital punishment is abolished, either wholly or with exceptions which will affect only a minority of cases, there is no immediate need to amend the law of murder since the penalty will normally be indefinite detention, whether the verdict is murder, manslaughter or guilty but insane or with diminished responsibility. In particular, there would be little object in amending the law of insanity or introducing the doctrine of diminished responsibility into English law except as a means of exempting abnormal persons from sentence of death. In our view, therefore, this group of amendments should be opposed on the ground that this Bill is not the appropriate instrument for amending the law of murder and that that law should be considered later in the light of the form in which the Bill is eventually passed.

Amendment to except Scotland from the scope of the Bill

12. A large group of Scottish Members have put down an amendment to except Scotland from the scope of the Bill. We think that this should be resisted. There are no arguments of principle which apply in one country and not in the other. Further it would be an absurd position if capital punishment were abolished in one part of Great Britain and retained in another so that a would-be murderer in Scotland who wanted to avoid capital punishment had only to inveigle his victim across the border in order to do so. On this matter the law must clearly be changed on both sides of the border or on neither.
13. The position of Northern Ireland is different. Law and order are a matter for the Northern Ireland Parliament on which it would not be appropriate for the Westminster Parliament to legislate.

Government Amendments

14. It will be the duty of the Government to ensure that the Bill leaves the House of Commons in a workmanlike form. Appendix 2 contains a list of amendments which it will be necessary to table at some stage. We suggest that those marked with an asterisk, which are designed to correct the draft as it now stands, should be put down in Committee and that the remainder, which add something to the Bill, should be reserved for Report.

Conclusion

15. We recommend—

(1) that the Government should support while leaving to a free vote amendments designed to retain capital punishment for—
   (a) the murder of a police constable in the execution of his duty,
   (b) the murder of a prison officer by a prisoner, and
   (c) a second conviction of murder;
(2) that the Government should not express any opinion on the remaining amendments designed to retain capital punishment for certain classes of murder and should decide how to vote in the light of the discussion in Committee;
(3) that amendments designed to exclude Scotland from the ambit of the Bill and to amend the law of murder should be opposed;
(4) that the Government should, at an appropriate stage, put down amendments on the points set out in Appendix 2 to this paper.

G. Ll.-G.
J. S.

28th March, 1956.

APPENDIX 1

SUMMARY OF PRIVATE MEMBERS' AMENDMENTS TO THE DEATH PENALTY (ABOLITION) BILL

1. Amendment designed to ensure that a life sentence means that the prisoner is actually detained for the whole of his natural life. (Mr. Rees-Davies and others.)

2. Amendment limiting the Bill to England and Wales (Major Anstruther-Gray and others in respect of Scotland; Mr. Silverman in respect of Northern Ireland).

3. Amendment postponing the operation of the Act until 1st June, 1960. (Sir Thomas Moore and others.)

4. Amendment designed to retain the death penalty for certain types of murder.

The various proposals under this heading are:

Mr. Rees-Davies and others—that the death penalty should be retained for—

(i) military offences as at present provided by the Army, Air Force and Naval Discipline Acts;
(ii) the murder of a policeman on duty;
(iii) the murder of a prison officer by a prisoner;
(iv) murder in the course of the commission of a felony or of resisting arrest or escaping from custody by a murderer using firearms or other weapons;
(v) murder after premeditation;
(vi) murder after a previous conviction of murder.
Mr. Martin Lindsay and others—that the death penalty should be kept for the murder of a policeman or prison officer on duty.

Mr. Yates and others—that the death penalty should be kept for the murder of a serving or retired policeman, prison officer, security officer or judge, and for a second conviction of murder.

Sir Hugh Lucas-Tooth and others—that the death penalty should be kept for murder committed by a lethal weapon in the course of burglary, housebreaking or robbery or by a life prisoner.

Mr. Philip Bell and others—that the death penalty should be kept for murder by poison or other destructive thing.

Mr. Turner-Samuels and others—that the death penalty should be kept for a deliberate and calculated murder or a murder resulting from the use of firearms or dangerous weapons.

5. Amendments designed to introduce the doctrine of diminished responsibility into the law of England and to enable a jury to reduce murder to manslaughter on being satisfied of provocation by words alone.

APPENDIX 2

GOVERNMENT AMENDMENTS TO THE DEATH PENALTY (ABOLITION) BILL

1. Delete references to suspension of the death penalty in the long title, in Clause 1 (1) and Clause 2 (2), converting the Bill into a simple Abolition Bill.

2. In the application of the Bill to Scotland—
   *(a)* amend Clause 1 (1) so as to refer not only to enactments requiring a court to pronounce sentence of death but to a rule of law. This is necessary because in Scotland the death penalty is not statutory and there must be a specific provision enabling the High Court to pass sentence of life imprisonment;
   *(b)* delete the reference to penal servitude in Clause 1 (3);
   *(c)* extend Clause 1 (1) to cases of shooting, stabbing, strangling, poisoning, &c., with intent to murder or disable in which, if death had resulted, the crime would have been murder. These cases attract the death penalty in Scots law, although the Lord Advocate has power to prevent it being imposed.

3. Add to Clause 1 a new sub-section providing that the Bill extend to courts-martial wherever sitting but shall not otherwise apply to courts outside Great Britain. (The death penalty will be retained for the service offences other than murder for which it is prescribed.)

4. Add a new clause empowering the Secretary of State, after considering a report by three doctors appointed for the purpose to order the removal to Broadmoor Institution of any person sentenced to imprisonment for life after conviction of murder.