At its meeting on 11th July, 1956 (C.M.(56) 55th Conclusions, Minute 3) Cabinet appointed a Committee under my Chairmanship to consider and report on the possibility of framing a Government measure to amend the law of murder and to restrict thereby the scope of capital punishment. We have discussed the form such legislation might take and we have considered, in consultation with the Lord President and the Lord Privy Seal, the advantages and disadvantages of introducing a Government Bill on this subject.

2. We think that if legislation were introduced it should be on the lines of the Bill which is being circulated separately (C.F.(56) 215). The first part of this Bill (which is a preliminary draft) gives effect to the undertakings which the Government gave in the House of Commons on 15th February last to amend the law of murder by:

(i) abolishing the doctrine of constructive malice;

(ii) providing that provocation by words alone may be sufficient to reduce murder to manslaughter;

(iii) providing that the survivor of a suicide pact shall be guilty of manslaughter and not murder.

In addition, the Bill introduces into English law the Scottish doctrine of diminished responsibility which the Government undertook to consider without entering into any definite commitment.

3. The second part of the Bill confines capital punishment to certain types of murder, i.e.:

(a) murder in the course of theft;

(b) murder by shooting or causing an explosion;

(c) murder for the purpose of avoiding arrest or escaping from custody;

(d) murder of a constable acting in the execution of his duty or of a person assisting him;

(e) murder by a prisoner of a member of the staff of a prison acting in the execution of his duty; and
two or more murders committed on different occasions.

The Bill does not seek to introduce degrees or categories of murder which distinguish some murders from others on the basis of moral heinousness, but to retain capital punishment for those forms of murder which most clearly strike at the maintenance of law and order and are most likely to be amenable to the deterrent effect of the death penalty. It is aimed at the professional criminal, the person who carries a gun, the killer of the agents of law and order, and the rare but dangerous multiple killers of the type of Christie and Heath.

4. The Bill also includes minor provisions to give effect to some of the recommendations of the Royal Commission on the form and execution of the sentence of death and the form of the verdict of guilty but insane.

5. We consider that a Bill on these lines will be a workable middle way between the retention of capital punishment and its total abolition. The Lord Chief Justice and the Lord President of the Court of Session have been consulted on the proposals and have not dissented from them. There remains the question whether it is politically wise to introduce a Government Bill at this juncture. The arguments for and against doing so may be summarised as follows:

Arguments in favour of Government Legislation

(1) The Bill expresses the present state of public opinion which, though not abolitionist, would like to see some amendment of the law to reduce the number of capital sentences and, in particular, to avoid the passing of the capital sentence in cases where it will clearly not be executed.

(2) The Bill is something like what the Government was asked to do by middle opinion in the House of Lords.

(3) Legislation will enable the Government to regain the initiative and will satisfy the expectation of the country that the Government will not be content to stand aside and let the Silverman Bill go through.

(4) The Bill is consistent with the Government’s stated views on the need to retain the death penalty for certain forms of murder as an instrument in maintaining law and order.

(5) A decision to introduce legislation will enable the Government spokesman at the Party Conference to accept the resolution advocating legislation.

(6) There is no doubt that the only alternative to the introduction of a Government Bill is complete abolition, because the Silverman Bill will go through under the Parliament Act.

(7) If the Silverman Bill is passed unamended, immediate Government legislation will be necessary in any event to remove ambiguities and defects which in a matter of this importance cannot be allowed to remain on the Statute Book.
Arguments against Legislation

(1) The Bill will take up a considerable amount of Parliamentary time and possibly necessitate abandoning one of the Government's major projects, such as House of Lords reform or amendment of the Rent Acts.

(2) The attitude of the Conservative abolitionists is doubtful. They may not vote for a Second Reading; they may support an amendment to convert the Bill into an abolition Bill; if a Government Bill is passed, they may nevertheless subsequently support the Silverman Bill.

(3) The Government may be accused of bad faith if it refuses facilities for the Silverman Bill and introduces one of its own.

(4) To allow the Silverman Bill to go through under the Parliament Act would create less acerbity and controversy than to introduce a Government Bill.

5. The arguments against legislation turn on the difficulty, controversy, and possibility of bitterness that it may involve at a time when both the Suez crisis and the Government's intention to reform the House of Lords and amend the Rent Acts make it desirable to avoid other sources of conflict and, in particular, to avoid charges of ill-faith. Controversy and expenditure of time cannot, however, be altogether avoided because of the necessity to amend the Silverman Bill either by the "scheduled" amendment procedure described in the Home Secretary's memorandum (C.F. (56) 215) or by introducing separate legislation which would have to be pushed through immediately the Silverman Bill received the Royal Assent.

6. Charges of breach of faith will no doubt be made whatever we do, short of giving the Silverman Bill facilities for a second passage. The Committee were however impressed by the view that the charge would not be well-founded if, having given the abolitionists a free run last session, we brought forward in all good conscience next session a Bill designed to give effect to what middle opinion in the country, as reflected in the House of Lords and in some of the amendments put down in the Commons, appears to consider right. It would be understood that, although the Whips were on, Members with a genuine conscientious objection to capital punishment would be free to follow their consciences, and the existence of the Whip might make it easier for those Conservative abolitionists who stop short of conscientious objection to retreat from the position which they have taken up.

7. It is desirable that a decision on the question whether Government legislation is to be introduced should be taken before the Party Conference where the Home Secretary will be in some embarrassment if he can say nothing of the Government's intentions. If it is decided to go ahead with legislation the drafting of the Bill can be completed in time for its introduction at the beginning of the session.

K.

House of Lords, S.W.1.
21st September, 1956.