CABINET

CAPITAL PUNISHMENT

Memorandum by the Secretary of State for the Home Department

I circulate for the information of my colleagues the draft Homicide Bill referred to in paragraph 2 of C.P. (56) 214.

G.LL.-G.

Home Office, S. W. 1.

25th September, 1956.
Homicide Bill

ARRANGEMENT OF CLAUSES

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AMENDMENTS OF LAW OF ENGLAND AND WALES AS TO FACT OF MURDER

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4. Suicides.

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SCHEDULE—Supplementary provisions as to procedure, appeals, etc.
DRAFT OF A BILL

Make for Great Britain amendments of the law relating to murder and the trial and punishment of murder, and to alter the form of verdict in England and Wales where a person is acquitted of an offence on the ground of insanity.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

AMENDMENTS OF LAW OF ENGLAND AND WALES AS TO FACT OF MURDER

1.—(1) Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder without the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence.

(2) For the purposes of the foregoing subsection, a killing in the course of resisting an officer of justice, or of resisting a lawful arrest, or of an escape or rescue from legal custody, shall be treated as a killing in the course or furtherance of an offence.

2.—(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from a defect of reason or disorder of emotion due in either case to disease or disorder of the mind or to arrested or incomplete development of mind, and of such a nature and degree as to produce serious abnormality and substantially diminish his responsibility for his action [from want either of understanding or of control].
(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

3. Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

4.—(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to his killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

PART II

LIABILITY TO DEATH PENALTY

5.—(1) Subject to subsection (2) of this section, the following murders shall be capital murders, that is to say, —

(a) any murder done in the course of, or immediately before or after and in connection with, theft or attempted theft; or entry or attempted entry into enclosed premises with intent to steal;

(b) any murder by shooting or by causing an explosion;
(c) any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody;

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

(e) in the case of a person who was a prisoner at the time when he did or was a party to the murder, any murder of a person acting, or assisting a person acting, in the execution of his duty as an officer or other member of the staff of a prison.

(2) If, in the case of any murder falling within the foregoing subsection, two or more persons are guilty of the murder, it shall be a capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used force on that person in the course or furtherance of an attack on him; but the murder shall not be a capital murder in the case of any other of the persons guilty of it.

(3) A person guilty of capital murder, if convicted thereof on an indictment charging his offence as capital murder, shall be liable to the same punishment for the murder as heretofore.

(4) In this section "prison" includes any institution to which the Prison Act, 1952, or the Prison (Scotland) Act, 1952, applies, "prisoner" means a person who is undergoing detention in a prison or who, while liable to detention in a prison, is unlawfully at large, and "theft" includes any offence which involves stealing or an intent to steal.

6.—(1) Subject to subsection (3) of this section, a person convicted of murder shall be liable to the same punishment as heretofore, if before conviction of that murder he has been convicted by a court in Great Britain of another murder done on a different occasion.

(2) Where a person is charged with the murder of two or more persons, no rule of law or practice shall prevent the murders being charged in the same indictment or (unless separate trials are desirable in the interests of justice) prevent them being tried together; and where a person is convicted of two murders tried together, subsection (1) of this section shall apply as if one conviction had preceded the other.

(3) The provisions of the Schedule to this Act shall have effect with respect to the convictions which may be taken into account under subsection (1) of this section, and with respect to procedural and other matters arising out of this Part of this Act.
7.—(1) After the commencement of this Act no person shall be sentenced by a court to death for murder, in any case not falling within section five or six of this Act.

(2) Where by virtue of this section a court is precluded from passing sentence of death on a person convicted of murder, the court shall sentence him to imprisonment for life.

(3) In the following enactments (which prohibit the passing of sentence of death against a person under the age of eighteen years, and require the court in lieu thereof to sentence him to be detained during Her Majesty's pleasure), that is to say,—

(a) section fifty-three of the Children and Young Persons Act, 1933 (as amended by section sixteen of the Criminal Justice Act, 1948); and

(b) section fifty-seven of the Children and Young Persons (Scotland) Act, 1937 (as amended by section seventeen of the Criminal Justice (Scotland) Act, 1949);

the reference to sentence of death shall include a reference to sentence of imprisonment for life under this section.

8. In this Part of this Act “court” does not include a court-martial under the Army Act, 1955, the Air Force Act, 1955, or the Naval Discipline Act, or a service court exercising jurisdiction in accordance with section two of the Visiting Forces Act, 1952.

PART III

AMENDMENTS AS TO FORM OF SENTENCE OR VERDICT AND AS TO EXECUTION OF SENTENCE IN ENGLAND AND WALES

9. Where a person convicted of murder is sentenced to death, the form of the sentence shall be to the effect only that he is to “suffer death in the manner prescribed by law”, and accordingly sections two and three of the Offences against the Person Act, 1861, are hereby repealed.

10.—(1) Sections seven and ten of the Capital Punishment Amendment Act, 1868, shall cease to have effect, and are hereby repealed, in so far as they require provision to be made for the purpose of making known without the prison walls the fact that execution of sentence of death for murder is taking place, or require any document relating to such an execution to be exhibited on or near the prison.

(2) Where sentence of death for murder is to be executed in accordance with that Act, it shall be the duty of the Secretary of State, as early as he conveniently can, to publish in such manner as he thinks fit the time and place fixed for the execution.
3. Where sentence of death for murder has been executed in accordance with that Act, it shall be the duty of the Secretary of State, as early as he conveniently can, to publish the fact that the execution has taken place, and to cause to be published in the London Gazette a copy of the coroner's inquisition required by the Act.

11. Where two or more persons sentenced to death for murder are confined in the same prison, the Secretary of State may, with a view to avoiding the execution of more than one such sentence in that prison on the same day, direct that any of those persons shall be removed to and confined in some other prison specified in the direction; and the sentence on that person may lawfully be executed in the prison so specified, and the sheriff charged with the execution shall for that purpose have the same jurisdiction in that prison and over the officers of it, and be subject to the same responsibilities and duties in it, as though the prison were that in which the sentence would have been executed but for the direction.

12. Where a jury is required by the Trial of Lunatics Act, 1883, to return a special verdict, the form of the verdict shall be to the effect that the accused did the act or made the omission charged against him, but is not guilty on the ground of his insanity at the time in question; and accordingly subsection (1) of section two of that Act is hereby repealed from the words "to the effect that the accused was guilty" onwards.

PART IV
APPLICATION TO, AND SPECIAL PROVISIONS FOR, SCOTLAND

13.—(1) Parts I and III of this Act shall not extend to Scotland, except as provided by the following provisions of this section.

(2) Section four of this Act shall extend to Scotland with the substitution of a reference to culpable homicide for the reference to manslaughter, and with the omission in subsection (1) of the words "his killing himself or ".

(3) Section ten of this Act shall extend to Scotland, with the omission of subsection (2) and with the substitution in subsection (3) of a reference to the Edinburgh Gazette for the reference to the London Gazette and of a reference to the report or deliverance of the sheriff or sheriff substitute for the reference to the coroner's inquisition.
PART IV—cont.

Amendment as to penalty for attempted murder.

The Criminal Law (Scotland) Act, 1829 (which provides for the passing of a sentence of death on a person found guilty of certain acts of violence which, if death had ensued, would have amounted to murder), shall have effect with the substitution for any reference to a sentence of death of a reference to a sentence of imprisonment for life.

PART V

COMMENCEMENT, ETC.

Application to past offences.

This Act shall not have effect in relation to any offence, where an indictment for that offence has been signed before the date of the commencement of this Act; but (subject to that) this Act shall have effect in relation to offences committed wholly or partly before that date as it applies in relation to offences committed after that date.

Short title and extent.

(1) This Act may be cited as the Homicide Act, 1956.

(2) This Act shall not extend to Northern Ireland.
SCHEDULE

SUPPLEMENTARY PROVISIONS AS TO PROCEDURE, APPEALS, ETC.

PART I

ENGLAND AND WALES

1.—(1) On an indictment charging a person with capital murder, he may be found not guilty of capital murder but guilty of murder.

(2) Capital murder shall be treated as a distinct offence from murder for the purposes of any appeal against conviction; but where on an appeal against conviction of capital murder the court substitute a verdict of guilty of murder for the verdict of guilty of capital murder, the court shall nevertheless confirm the sentence of death if the sentence is warranted by section six of this Act.

(3) Subject to the foregoing sub-paragraphs, capital murder shall not be treated as a different offence from murder for any purpose.

2.—(1) Where a person is convicted of murder, no account shall be taken under subsection (1) of section six of this Act of any previous conviction of murder unless either—

(a) he is convicted of both murders at the same assizes; or

(b) at least three days before the trial notice is given to him and to the clerk of assize that it is intended to prove the previous conviction.

(2) Where notice is so given, and he does not admit the previous conviction, the question shall be determined by the verdict of a jury.

(3) Where the jury find the previous conviction proved, he shall have the like right of appeal under the Criminal Appeal Act, 1907, against a sentence of death passed on the later conviction as if the appeal were against a conviction involving sentence of death:

Provided that he shall not by virtue of this paragraph have a right of appeal against a sentence passed on a conviction of capital murder, unless he appeals against that conviction.

(4) On any such appeal against sentence, the court shall have the same powers as to allowing or dismissing the appeal as on an appeal against a conviction; and where the court allow the appeal, and it appears to the court that having regard to the decision on the appeal the sentence is not warranted in law, the court shall quash the sentence and pass the appropriate sentence in substitution for it.

3.—(1) Where a person is sentenced to death on being convicted of murder after a previous conviction of murder, and afterwards the previous conviction is quashed on appeal, he may (not later than ten days thereafter) apply to the Court of Criminal Appeal to set aside the sentence of death on the ground that it is no longer warranted in law having regard to the decision on the appeal; and the court if satisfied that the sentence is no longer warranted in law shall set it aside and pass the appropriate sentence in substitution for it.
(2) Where a person is sentenced to death as aforesaid, then (unless he is so sentenced on being convicted of capital murder) the sentence shall not in any case be executed until the previous conviction can no longer be quashed on appeal.

(3) No application to extend the time for giving notice of appeal or of an application for leave to appeal against a person's conviction of murder shall be entertained if he has been sentenced to death on a later conviction of murder and the time for giving notice of appeal against the later conviction has expired.

(4) References in this paragraph to a previous or later conviction include a conviction in Scotland.

4. Where sentence of death is passed on a person convicted of two murders tried together, it shall be treated as passed in respect of each of the convictions; but if one of the convictions is and the other is not quashed on appeal, the court allowing the appeal in respect of the first-mentioned conviction, unless satisfied that the sentence remains warranted in law in respect of the other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.

5. The power to make rules of court conferred by section eighteen of the Criminal Appeal Act, 1907, shall include power to make rules for the purpose of carrying into effect this Schedule, so far as relates to appeals and applications to the Court of Criminal Appeal.

6. This Part of this Schedule shall extend to England and Wales only.

PART II

SCOTLAND
CONFIDENTIAL

Homicide

DRAFT
OF A
BILL

To make for Great Britain amendments of the law relating to murder and the trial and punishment of murder, and to alter the form of verdict in England and Wales where a person is acquitted of an offence on the ground of insanity.

XLV-L (5)

25th September, 1956

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