24th September, 1956

CABINET

DEFECTS IN THE DEATH PENALTY (ABOLITION) BILL

Memorandum by the Secretary of State for the Home Department and Minister for Welsh Affairs and the Secretary of State for Scotland

1. The Death Penalty (Abolition) Bill, if it became an Act in its present form, would be defective in the following particulars:—

(i) Scotland. It is doubtful what the penalty, if any, for murder would be in Scotland. The first part of clause 1(1) abolishes the death penalty for murder, and the second part provides that every enactment requiring a court to pronounce or record a sentence of death in any case of murder shall be construed as requiring the court to sentence the offender to imprisonment for life. In Scotland the penalty of death for murder rests not on any enactment but on the common law; and while the Bill abolishes the death penalty in Scotland it is arguable that no other penalty is substituted. Alternatively, the courts might hold that it was within their discretion to impose any penalty other than death; or even that the Bill was not operative in Scotland.

(ii) Courts-Martial. It is doubtful whether or not the Bill applies to courts-martial sitting overseas. The promoters said that it was intended to apply to all courts-martial and expressed the view that it did so apply, but this is not certain.

If the promoters are wrong and the Bill applies to courts-martial only in Great Britain there is an anomaly in relation to courts-martial sitting in Northern Ireland. Northern Ireland is expressly excluded from the scope of the Bill and courts-martial held there would be able to sentence to death for murder committed overseas or in naval ships and establishments, although courts-martial in Great Britain would not.

In either event the issue is of such importance that it ought to be clear on the face of the Bill whether it applies to courts-martial overseas or not.
(iii) **Visiting Force Courts-Martial.** Section 2(4) of the Visiting Forces Act, 1952, read with section 17(1), provides that the sentence of death passed by a visiting force court-martial shall not be carried out in the United Kingdom unless under the law of the United Kingdom or any part thereof a sentence of death could have been passed in a similar case. If the death penalty for murder is abolished in Great Britain but not in Northern Ireland it will not be clear whether sentences of death for murder passed by visiting force courts-martial can or cannot be carried out in Great Britain, and it is desirable that it should be made clear that they cannot.

2. These defects are serious and would have to be corrected either by an amendment of the Bill itself or by immediate subsequent ad hoc legislation. During the progress of the Bill in its second session the House of Commons may, under the Parliament Act, suggest amendments without inserting them in the Bill ("scheduled" amendments), and if these are agreed to by the House of Lords they are inserted in the Bill as presented for the Royal Assent. Amendments proposed by the House of Lords in the second session and agreed to by the House of Commons are similarly inserted.

G. L.L.-G.
J. S.

24th September, 1956