Restoration of Order in Ireland Bill.

MEMORANDUM.

The general scheme of this Bill is that it authorises His Majesty in Council to issue regulations "for securing the restoration and maintenance of order in Ireland."

Under this power regulations can be made covering a very wide field, similar to the field covered by the regulations made under the Defence of the Realm Act, whose scope was defined as regulations "for securing the public safety and the defence of the realm." The regulations made under the present Bill will operate under the Defence of the Realm Consolidation Act, 1914, and may be made so as to apply generally to the whole of Ireland or to any part thereof, and indefinitely in point of time.

Express power is given to make regulations for particular purposes included in the above general purpose, the particular purposes being those to effect which immediate action is desired.

Purpose 1. Subsection (2). To enable persons committing crimes in Ireland to be tried and dealt with in the same way as persons committing offences against the Defence of the Realm Regulations, i.e., by courts-martial or courts of summary jurisdiction. Two qualifications are attached to this power:

(a) The crime is to be punishable by the same punishment as may be inflicted under the ordinary law; thus treason and murder would be punishable with death. Offences against the regulations at present are punishable by penal servitude or any lesser punishment, and it is at the discretion of the court-martial to determine the degree of punishment. A court-martial cannot at present inflict the punishment of death unless it is proved that the offence was committed with the intention of assisting the enemy.

(b) The court-martial when trying a capital charge is to include as a member of the court one person (who may but need not be a civilian) of legal knowledge and experience.

Purpose 2. Subsection (3) (a). To provide that courts of summary jurisdiction outside the Dublin metropolitan police district when trying ordinary crimes or offences against the
regulations, and courts of quarter sessions when hearing appeals, are to be specially constituted, i.e., to consist respectively of two or more resident magistrates or the county court judge sitting without any unpaid magistrates.

Purpose 3.—Subsection (3) (b). To give the courts-martial powers which justices possess for requiring persons to enter into recognisances to keep the peace or be of good behaviour, and to estreat and enforce these recognisances; also powers of compelling witnesses to attend and give evidence. These additional powers have been asked for by Sir Nevil Macready.

Purpose 4.—Subsection (3) (c). To transfer to military courts of inquiry the powers of coroners and coroners’ juries. This power has been asked for by the Irish Government.

Purpose 5.—Subsection (3) (d). To enable provision to be made for the holding of civil courts when the court houses have been destroyed—a not uncommon occurrence. Under the existing law the courts must be held in some cases in a particular court house or within a particular area, and these requirements cannot always be fulfilled in present circumstances.

Purpose 5.—Subsection (3) (d). To enable recalcitrant local authorities to be dealt with by withholding public grants which otherwise would be payable to the authorities, and for the application of the same in discharge of the local authority’s liabilities; i.e., this would enable provision to be made for the payment thereout of compensation awards or of salaries and pensions of officers of the local authority, if so desired.

There is a precedent for discharging liabilities of local authorities out of public grants payable to them, viz., section 80 (2) of the Local Government (Ireland) Act, 1898, under which debts due to the Crown or any Government department may be deducted from any payments to a local authority out of the Local Taxation (Ireland) Account. Public grants forming part of the Guarantee Fund under the Land Purchase Acts can also be diverted from the local authorities in order to meet liabilities arising under these Acts.

Subsection (6). This subsection defines “crime” as meaning, in effect, any offence against the ordinary law. A distinction is drawn by the Bill between crimes (i.e., the crimes under the ordinary law) and offences under the regulations, whether existing defence of the realm regulations or regulations made under the Bill.
With respect to crimes the Bill effects two objects: it makes them cognisable by courts-martial and preserves the existing scales of punishment.

On the other hand, offences under the regulations are without special provision triable by court-martial and subject to the penalties fixed by the Defence of the Realm Acts, i.e., penal servitude for life, or, if dealt with summarily, imprisonment for six months or a fine of 100L, or both.
DRAFT
OF A
BILL

To
Make provision for the Restoration and Maintenance of Order in Ireland:

BE it enacted by the King'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:—

1. Where it appears to His Majesty in Council that, owing to the existence of a state of disorder in Ireland, the ordinary law is inadequate for the prevention and punishment of crime or the maintenance of order, His Majesty in Council may issue regulations under the Defence of the Realm Consolidation Act, 1914, (hereinafter referred to as the principal Act) for securing the restoration and maintenance of order in Ireland, and as to the powers and duties for that purpose of the Lord Lieutenant, the Chief Secretary, and of members of His Majesty's forces and other persons acting on His Majesty's behalf, and in particular regulations for the special purposes hereinafter mentioned.

2. Regulations as so issued may extend the provisions of the principal Act with respect to the trial by courts-martial or courts of summary jurisdiction and punishment of persons committing offences against the Defence of the Realm Regulations, to the trial and punishment of persons committing crimes in Ireland, whether before or after the passing of this Act, including persons committed for trial or against whom bills of indictment have been found, so, however, as to provide that—

(a) any crime when so tried shall be punishable with the punishment assigned to the crime by statute or common law;
(b) a court-martial when trying a person charged with a crime punishable by death shall include as a member of the court one person (who need not be an officer) nominated by the Lord Lieutenant, being a person certified by the Lord Chancellor of Ireland or the Lord Chief Justice of England to be a person of legal knowledge and experience.

(3) Regulations so issued may also—

(a) provide that a court of summary jurisdiction, when trying a person charged with a crime or with an offence against the regulations, shall, except in the Dublin metropolitan police district, be constituted of two or more resident magistrates, and that a court of quarter sessions, when hearing and determining an appeal against a conviction of a court of summary jurisdiction for any such crime or offence, shall be constituted of the recorder or county court judge sitting alone;

(b) confer on a court martial the powers and jurisdiction exercisable by justices at petty sessions or any other civil court for binding persons to keep the peace or be of good behaviour, for estreating and enforcing recognisances, and for compelling persons to attend as witnesses, to give evidence and to produce documents before the court;

(c) provide for any of the duties of a coroner and coroner's jury being performed by a court of inquiry constituted under the Army Act instead of by the coroner and jury;

(d) provide that where the court house or other building in which any civil court is usually held has been destroyed or rendered unfit for the purpose, the court may be held in such other court house or building as may be directed by the Lord Lieutenant;

(e) in the case of a local authority which has in any respect refused or failed to perform its duties, provide for the retention of sums payable to the authority from the Local Taxation (Ireland) Account, or from any Parliamentary grant, or from any fund administered by any Government department or public body, and for the application of funds so retained in or towards the discharge of compensation awarded against the local authority for criminal injuries, or other liabilities of the local authority.
(4) Any such regulations may be issued at any time, whether before or after the termination of the present war, and may apply either generally to the whole of Ireland or to any part thereof, and shall have effect as if enacted in this Act, and may include such adaptations of any enactment and such incidental, supplementary, and consequential provisions as may be necessary for carrying out all or any of the purposes of this Act.

(5) In this Act, unless the context otherwise requires—

The expression "crime" means any treason, treason felony, felony, misdemeanor, or other offence punishable, whether on indictment or on summary conviction, by imprisonment or by any greater punishment other than offences against the Defence of the Realm Regulations.

2. This Act may be cited as the Restoration of Order in Ireland Act, 1920.
Restoration of Order in Ireland.

DRAFT OF A BILL

To make provision for the Restoration and maintenance of Order in Ireland.

EXCIV. (2.)

30th July 1920.