

2020/3/016

S07788D

Death Sentences: Procedure

- ① Abolition proposals
- ② Commutation of Sentences

Criminal Justice Act,
1990 (No. 16 of 1990)

S07788D

START of file

ROINN AN TAOISIGH

Uimhir.....S. 7788①

CONFIDENTIAL

Personnel, Finance and Management Services Division

To: Mr & Mrs

DRAFT MEMORANDUM FOR THE GOVERNMENT

SUBJECT: Abolition of Death Penalty

FROM:

Dept. of Justice

I attach a copy of the above mentioned draft memorandum for any observations which your division may have on it.

Observations should be sent to the undersigned By 1st Feb '90

Please have regard to the general procedures laid down in Office Notice No. 20 when considering whether or not to furnish observations.

Una Meehan
Una Meehan

22
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190



An Roinn Dlí agus Cirt

72-76 Faiche Stiabhna
Baile Átha Cliath 2

☎ (01) 789711

Tagairt

Reference

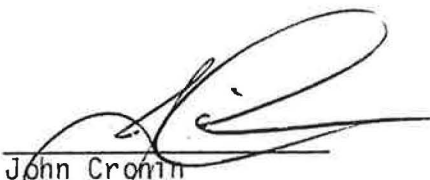
Department of Justice

72-76 St Stephen's Green
Dublin 2

Secretary,
Department of An Taoiseach.

I am directed by the Minister for Justice to enclose a draft Criminal Justice Bill, 1990 to provide for the abolition of the death penalty, together with a draft covering Memorandum for the Government.

Any observations you may wish to make in the matter should reach this Department by Friday, 2 February, 1990.



John Cronin
Law Division

19 January, 1990

MEMORANDUM FOR GOVERNMENT

Abolition of Death Penalty

Decision sought

1. The Minister for Justice requests the Government's
 - (i) approval for the attached text of a Bill (Appendix I) to abolish the death penalty, subject to certain technical amendments on the lines set out in Appendix II, and
 - (ii) authority to introduce the Bill to the Dáil/Seanad.
2. The Minister's proposals are identical in substance to those which were enshrined in the previous Criminal Justice Bill 1981 and that is the text which is attached. The proposal follows the undertaking in the Joint Programme for Government to abolish the death penalty.

Background

3. Under the Criminal Justice Act 1964 the death penalty is restricted to the following offences: treason, capital murder and certain other offences by persons subject to military law under the Defence Act 1954. Capital murder is defined in the 1964 Act as meaning -
 - (i) murder of a member of the Garda Síochána acting in the course of his duty, or
 - (ii) murder of a prison officer acting in the course of his duty, or
-

- (iii) murder done in the course or furtherance of certain offences under the Offences against the State Act 1939, or in the course of furtherance of the activities of an unlawful organisation within the meaning of that Act, or
- (iv) murder, committed within the State for a political motive, of the head of a foreign State or of a member of the Government of, or a diplomatic officer of, a foreign State.

4. In the period since the enactment of the 1964 Act, eleven persons have been convicted of capital murder although, in the case of two of them, the convictions were quashed on appeal and convictions of 'ordinary murder' substituted. In the case of the other nine persons, who were sentenced to death for the murder of members of the Garda Síochána, the sentences were commuted by the President to penal servitude for 40 years. The decision to advise the President to commute the sentences was arrived at on the understanding that the full sentences of 40 years would be served without remission in each case. In advising the President to adopt this course, the Government did so in the knowledge that such an understanding would not preclude the President, acting under Article 13 of the Constitution on the advice of the Government, from remitting the whole or any part of the punishment thus imposed at a later stage.

Previous legislative proposals to abolish the death penalty

5. In 1981 the then Coalition Government, whose programme for government included a commitment to abolish the death penalty, introduced the Criminal Justice Bill 1981 to that end. That Bill lapsed with the dissolution of the Dáil on 27 January, 1982 after having passed all stages in the Seanad. In 1984, a Private Members Bill was introduced in the Seanad by Senator Shane Ross supported by Senators Brendan Ryan and John Robb. It was in identical terms to the 1981 Bill. It lapsed without making progress following the dissolution of the Dáil in 1987.

The Senator introduced the Bill again in the last session but again it made no progress. In 1986 work was undertaken on the preparation of an abolition Bill at the direction of the then Government but was still at a preliminary stage when the Government changed.

Main features of the Bill

6. The main features of the proposed Bill are as follows:

- (a) the death penalty would be abolished for those offences for which it still exists;
- (b) in the case of the offences of treason and capital murder, a mandatory sentence of life imprisonment would be substituted for the death penalty subject to a requirement on a court, when sentencing a person, to specify a minimum period of imprisonment of not less than 40 years to be served;
- (c) the Government or the Minister would be prohibited from exercising the powers conferred by section 23 of the Criminal Justice Act 1951 to commute or remit the sentences during the specified minimum period less any remission for industry and good conduct;
- (d) the statutory power of the Minister, under the Criminal Justice Act 1960, to grant temporary release (parole) would be restricted to circumstances where there are grave reasons of a humanitarian nature (e.g. death of a spouse) and then only for such limited period as would be justified by those reasons;
- (e) a prisoner sentenced to the specified minimum period would be allowed to earn a reduction of sentence for industry and good conduct. (This would normally reduce the term to be served to 30 years);
- (f) in the case of those military offences apart from treason and 'capital' murder for which the death sentence remains, a maximum penalty of 'ordinary' life imprisonment would be substituted for the death penalty.

Penalty to be substituted for the death penalty

7. Given a decision to abolish the death penalty the only important policy issue to be decided is what penalty to replace it with. In those cases where there have been convictions of capital murder, the death sentence

has been commuted by the President to a sentence of 40 years imprisonment on the understanding that remission would not be granted.

8. The penalty under existing law for 'ordinary' (non-capital) murder is a mandatory sentence of life imprisonment. However, it is the practice at present to grant parole after a number of years to those serving life sentences. Except in the case of offenders considered to be still dangerous, subversive offenders sentenced to life and offenders convicted of particularly callous murders, parole is usually granted after about 9 or 10 years has been served and the balance of the sentence may be remitted after a prolonged period of "successful" parole. There is an increasing number of prisoners serving life sentences for 'ordinary' murder who could be expected to serve very long terms because of the seriousness or viciousness of their offences and there is also a trend towards longer sentences (20 years plus) for such offences as rape and armed robbery.
9. Short of the death sentence life imprisonment is the severest penalty that can be imposed on a person. In theory it means that a person is to be imprisoned for the rest of his natural life. In practice however, as indicated in paragraph 8 above those on life sentences for 'ordinary' murder are usually paroled after a given number of years. This has 'discredited' the life sentence in the eyes of the public to the extent that the imposition of a fixed sentence of 15 or 20 years will be generally viewed as more severe than a life sentence. To replace the death penalty as the mandatory sentence for treason and capital murder with a sentence of life imprisonment, simpliciter, would be severely criticised by those opposed to abolition, and most importantly, by the Garda and Prison Officers Associations who have voiced strong objections

in the past when abolition was mooted. To cater for such objections, something more than the ordinary life sentence would be needed.

10. The penalty proposed in the 1981 Bill was, in the case of treason and capital murder, life imprisonment subject to a minimum term of imprisonment of not less than 40 years being served. (Since remission of one quarter of the sentence for good conduct was provided for, the minimum term for practical purposes was 30 years.) To make it abundantly clear that it was intended that the full mandatory minimum term less any remission earned for good conduct would be served the 1981 Bill also proposed to prohibit the Government or the Minister from exercising the powers conferred by section 23 of the Criminal Justice Act, 1951 to commute or remit the sentence or to grant parole under the 1960 Act except for very short periods for humanitarian reasons.
11. When abolition of the death penalty was reactivated in 1986 the then Minister (Deputy Dukes) decided against the alternative penalty proposed in the 1981 Bill. His intention was to propose that in the case of the offences of treason and capital murder the death penalty should be replaced by a mandatory sentence of life imprisonment of which a minimum term of not less than 20 and not more than 40 years would have to be served, leaving it to the trial judge to decide in each case what the actual duration of the minimum sentence should be within that range. As in the 1981 Bill, it was proposed that the powers of commutation in the 1951 Act and of parole in the 1960 Act would not apply but that remission for good conduct would. That proposal was intended to meet the criticism that the very long and virtually unreviewable sentence proposed in the 1981 Bill was unduly severe.

Recent calls for review of long sentences

12. Since then a new consideration has arisen from the campaign for early review, and release where possible, of long term prisoners in Northern Ireland. This has prompted calls for a similar approach on this side of the border. The argument made is that a prisoner should not continue to be kept in prison once he has undergone a reasonable term of punishment and it is established that he is no longer a danger to the public. With the approval of the Government the Minister has recently established a sentence review group to review the sentences of prisoners serving sentences of more than seven years. That review system does not apply to prisoners serving sentences for capital murder. It was decided that the question of review for such prisoners would be decided in the context of the legislation to abolish the death penalty.

Alternative Penalty proposed

13. In the Minister's view the approach which should be adopted is that which was provided for in the 1981 Bill, i. e. that the death penalty should be replaced by a minimum sentence of 40 years imprisonment with the possibility of remission for good behaviour - in practice this would normally reduce the minimum term to 30 years. The Minister proposes also that provision should be made, as in the 1981 Bill, for release within the minimum term for strictly limited periods for humanitarian reasons. Apart from this the Minister is opposed to any provision which would allow for review and conditional release within the minimum term to be served i.e. he does not propose that there should be any formal system of review of sentences imposed for capital murder, such as now exists for other sentences. (Release would of course continue to be possible under Article 13 of the Constitution - see para. 15).

14. The Minister accepts that his proposals are likely to be criticised as being too severe but he considers that they are justified in view of the seriousness of the offences involved and he is satisfied that any lesser alternative penalty or a provision for review would be seen as a failure to provide adequate deterrence against murder of Gardai and prison officers. [As indicated in para. 11 Deputy Dukes, when Minister for Justice, envisaged cases where the minimum term would be 20 years which with remission for good conduct would mean the case could be reviewed after 15 years. As against this, Deputy Dukes is quoted in recent press reports as stressing that there is an obligation to the Garda Síochána and prison officers to ensure that the punishment to replace the death penalty should be a serious deterrent.]

Commutation or remission by the President

15. While the proposals do not provide for review of sentences with a view to release, except in very limited circumstances and for limited periods, it remains open to the President, acting on the advice of the Government, to commute or remit under Article 13 of the Constitution any punishment imposed. Thus, if circumstances were such in any case where release of a person convicted of capital murder before the minimum term was advisable, that procedure could be used.

Remission for good behaviour

16. Under the Prison Rules the general practice is to grant remission of up to one quarter of sentence to prisoners for industry and good conduct. Not providing time off for industry and good conduct might remove a possible incentive to good behaviour in the prison. From the prison authorities' point of view, it deprives them of one of the sanctions for misbehaviour, namely forfeiture or reduction of remission. The task of maintaining

security is consequently made more difficult. Under the proposals in the draft scheme, release as a result of remission earned on the minimum term for industry and good conduct would not be automatic - the sentence would be one of life imprisonment with a specified minimum period to be served and the effect of allowing remission for industry and good conduct would be to enable not require release after the expiry of three quarters of the minimum term. It would therefore remain a matter for the Minister or the Government of the day to decide whether a person should be released.

Offences to which the proposed new penalty should apply

17. As indicated in paragraph 3 above, the death penalty applies only to capital murder, treason and certain offences under military law. The Minister considers that the new penalty - life with a 40 year minimum term - should apply to all categories of capital murder as defined in section 1(1)(b) of the Criminal Justice Act 1964 (these categories are set out in para. 3 above) and to treason. Subject to the concurrence of the Minister for Defence, the new penalty will not apply to those purely military offences for which the death penalty remains but a person convicted of such an offence will be liable to a maximum penalty of 'ordinary' life imprisonment instead.

Other matters

18. Abolition of the death penalty for military offences will make it necessary to amend the Courts - Martial Appeals Act 1983 to the extent that it makes provision for persons sentenced to death under military law, i.e. to repeal of section 21 of that Act. Some further changes to the proposals in the 1981 Bill might be desirable. For example, it is suggested that the provision in section 3(2)(a) as to the mens rea

("guilty mind") in the case of the murders that are at present capital murders should be changed.

Financial implications

19. The proposals are unlikely to have any significant staffing or financial consequences.

Views of other Departments

20. The Departments of Finance, Foreign Affairs, Defence and Health and the Office of the Attorney General have been consulted and ...

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this [draft] Bill/Act
has been copied***



AN BILLE UM CHEARTAS COIRIÚIL, 1970
CRIMINAL JUSTICE BILL, 1970

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Abolition of death penalty.
2. Sentence for treason and murder.
3. Special provision in relation to certain murders.
4. Minimum period of imprisonment for treason and murder to which *section 3* applies.
5. Restrictions on power to commute or remit punishment or grant temporary release.
6. Procedure in cases of murder to which *section 3* applies.
7. Consequential amendments.
8. Transitional provision.
9. Repeals.
10. Short title.

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS

SECOND SCHEDULE

ENACTMENTS REPEALED

ACTS REFERRED TO

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Criminal Justice Act, 1951
Criminal Justice Act, 1960
Criminal Justice Act, 1964
Defence Act, 1954
Genocide Act, 1973
Offences against the Person Act, 1861
Offences against the State Act, 1939

1908, c. 67
1951, No. 2
1960, No. 27
1964, No. 5
1954, No. 18
1973, No. 28
1861, c. 100
1939, No. 13

CRUINNIÚ RIALTAIS

INTERNAL
USE ONLY -
DO NOT TAKE
OUTSIDE DEPT.

13 March

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Rialt./Comh-Air. Uimh.....7788

Death Penalty

An Bhreith:

[The Minister for Justice was encouraged to bring forward a memorandum.]

1. Secretary (Mr O hUiginn)
2. Assistant Secretary (Mr Murray)
3. Mr Hare.

*Conveyed to Paula Doyle,
Dept. Justice, 13/3/90.*

m.D.

FAOI RÚN DAINGEAN

Uimhir Thagartha

ROINN AN TAOISIGH

S.7788D

16 Márta, 1990.

Please associate the attached memorandum/aide-memoire
with the Agenda for the next Government meeting.

DERMOT NALLY

Rúnaí an Rialtais



OIFIG AN AIRE DLÍ AGUS CIRT AGUS CUMARSÁIDE
(Office of the Minister for Justice and for Communications)

BAILE ÁTHA CLIATH 2.

(Dublin 2.)

8/534

Secretary to the Government,
Government Buildings.

I am directed by the Minister for Justice, Mr. Ray Burke, T.D., to forward herewith for submission to the Government at its next appropriate meeting thirty numbered copies of a Memorandum for the Government on the abolition of the death penalty.


Private Secretary

15th March, 1990.

8/534

15 March, 1990.

MEMORANDUM FOR GOVERNMENT

Abolition of Death Penalty

Decision sought

1. The Minister for Justice requests the Government's
 - (i) approval for the attached text of a Bill (Appendix 1) to abolish the death penalty, subject to certain amendments on the lines set out in Appendix II, and
 - (ii) authority to introduce the Bill to the Dáil/Seanad.
2. The Minister's proposals are very similar to those which were in the Criminal Justice Bill, 1981 and that is the text which is attached. The proposal follows the undertaking in the Joint Programme for Government to abolish the death penalty.

Background

3. Under the Criminal Justice Act 1964 the death penalty is restricted to the following offences: treason, capital murder and certain other offences by persons subject to military law under the Defence Act 1954. Capital murder is defined in the 1964 Act as meaning -

- (i) murder of a member of the Garda Síochána acting in the course of his duty, or
- (ii) murder of a prison officer acting in the course of his duty, or

- (iii) murder done in the course or furtherance of certain offences under the Offences against the State Act 1939, or in the course of furtherance of the activities of an unlawful organisation within the meaning of that Act, or
- (iv) murder, committed within the State for a political motive, of the head of a foreign State or of a member of the Government of, or a diplomatic officer of, a foreign State.

4. In the period since the enactment of the 1964 Act, eleven persons have been convicted of capital murder although, in the case of two of them, the convictions were quashed on appeal and convictions of 'ordinary murder' substituted. In the case of the other nine persons who were sentenced to death for the murder of members of the Garda Síochána the sentences were commuted by the President to penal servitude for 40 years. The decision to advise the President to commute the sentences was arrived at on the understanding that the full sentences of 40 years would be served without remission in each case. In advising the President to adopt this course, the Government did so in the knowledge that such an understanding would not preclude the President, acting under Article 13 of the Constitution on the advice of the Government, from remitting the whole or any part of the punishment thus imposed at a later stage.

Previous legislative proposals to abolish the death penalty

5. In 1981 the then Coalition Government, whose programme for government included a commitment to abolish the death penalty, introduced the Criminal Justice Bill 1981 to that end. That Bill lapsed with the dissolution of the Dáil on 27 January, 1982 after having passed all stages in the Seanad. In 1984, a Private Members Bill was introduced in the Seanad by Senator Shane Ross supported by Senators Brendan Ryan and John Robb. It was in identical terms to the 1981 Bill. It lapsed without making progress following the dissolution of the Dáil in 1987.

The Senator introduced the Bill again in the last session but again it made no progress. He has reintroduced the Bill in the present session and it is currently on the Seanad Order Paper awaiting an order for Second Stage. In 1986 work was undertaken on the preparation of an abolition Bill at the direction of the then Government but was still at a preliminary stage when the Government changed.

Main features of the Bill now proposed

6. The main features of the proposed Bill are as follows:
- (a) the death penalty would be abolished for those offences for which it still exists;
 - (b) in the case of the offences of treason and the murder of a Garda, Prison Officer etc., a mandatory sentence of life imprisonment would be substituted for the death penalty subject to a requirement on a court, when sentencing a person, to specify a minimum period of imprisonment of not less than 40 years to be served;
 - (c) in the case of an attempt to murder a Garda, Prison Officer etc., a mandatory minimum sentence of 20 years imprisonment would apply;
 - (d) the Government or the Minister would be prohibited from exercising the powers conferred by section 23 of the Criminal Justice Act 1951 to commute or remit the sentences referred to at (b) and (c) above during the specified minimum period less any remission for industry and good conduct;
 - (e) the statutory power of the Minister, under the Criminal Justice Act 1960, to grant temporary release (parole) would be restricted to circumstances where there are grave reasons of a humanitarian nature (e.g. death of a spouse) and then only for such limited period as would be justified by those reasons;
 - (f) a prisoner serving a sentence for murder or attempted murder of a Garda, Prison Officer etc. would be allowed to earn a reduction of sentence for industry and good conduct in the normal way;
 - (g) in the case of those military offences apart from treason and 'capital' murder for which the death sentence remains, a maximum penalty of 'ordinary' life imprisonment would be substituted for the death penalty.

Penalty to be substituted for the death penalty

7. Given a decision to abolish the death penalty the most important policy

issue to be decided is what penalty to replace it with. In those cases where there have been convictions of capital murder, the death sentence has been commuted by the President to a sentence of 40 years imprisonment on the understanding that remission would not be granted.

8. The penalty under existing law for 'ordinary' (non-capital) murder is a mandatory sentence of life imprisonment. However, it has been the practice to grant parole after a number of years to those serving life sentences. Except in the case of offenders considered to be still dangerous, subversive offenders sentenced to life and offenders convicted of particularly callous murders, parole has usually been granted after about 9 or 10 years has been served and the balance of the sentence may be remitted after a prolonged period of "successful" parole.
9. The Minister recently established a special sentence review group under the chairmanship of Dr. T.K. Whitaker to advise him on an on-going basis regarding the administration of long term prison sentences, including life sentences. All offenders who have served a term of 7 years or more of a current sentence which is not a sentence for capital murder may, if they so wish, have their cases considered by the Group. The criteria by which a case will be considered by the Group are as follows:-
 - (i) Would a release constitute a threat to the community?
 - (ii) Is it reasonable to grant temporary release at this particular stage in view of the nature of the crime committed and the offender's previous criminal record?
 - (iii) Does the offender merit temporary release having regard to his behaviour while in prison?
 - (iv) Are there any compassionate grounds which warrant special consideration?

While it is too early to assess what effect the Group will have on the length of time served by long term prisoners, the likelihood is that they will reduce the time such prisoners have to spend in prison in comparison to the arrangements that applied before the Group was established.

10. Short of the death sentence life imprisonment is the severest penalty that can be imposed on a person. In theory it means that a person is to be imprisoned for the rest of his natural life. In practice however, as indicated in paragraphs 8 and 9 above, those on life sentences for 'ordinary' murder are usually paroled after a given number of years. This has 'discredited' the life sentence in the eyes of the public to the extent that the imposition of a fixed sentence of 15 or 20 years will be generally viewed as more severe than a life sentence. To replace the death penalty as the mandatory sentence for treason and capital murder with a sentence of life imprisonment, simpliciter, would be severely criticised by those opposed to abolition, and most importantly, by the Garda and Prison Officers Associations who have voiced strong objections in the past when abolition was mooted. To cater for such objections, something more than the ordinary life sentence would be needed.

11. The penalty proposed in the 1981 Bill was, in the case of treason and capital murder, life imprisonment subject to a minimum term of imprisonment of not less than 40 years being served. (Since remission of one quarter of the sentence for good conduct was provided for, the minimum term for practical purposes was 30 years.) To make it abundantly clear that it was intended that the full mandatory minimum term, less any remission earned for good conduct, would be served the 1981 Bill also proposed to prohibit the Government or the Minister from exercising the

powers conferred by section 23 of the Criminal Justice Act, 1951 to commute or remit the sentence or to grant parole under the 1960 Act except for very short periods for humanitarian reasons.

12. When abolition of the death penalty was reactivated in 1986 the then Minister (Deputy Dukes) decided against the alternative penalty proposed in the 1981 Bill. His intention was to propose that in the case of treason and capital murder the death penalty should be replaced by a mandatory sentence of life imprisonment of which a minimum term of not less than 20 and not more than 40 years would have to be served, leaving it to the trial judge to decide in each case what the minimum sentence should be within that range. As in the 1981 Bill, it was proposed that the powers of commutation in the 1951 Act and of parole in the 1960 Act would not apply but that remission for good conduct would. That proposal was intended to meet the criticism that the very long and virtually unreviewable sentence proposed in the 1981 Bill was unduly severe.

Recent calls for review of long sentences

13. Since then a new consideration has arisen from the campaign for early review, and release where possible, of long term prisoners in Northern Ireland. This has prompted calls for a similar approach on this side of the border. The argument made is that a prisoner should not continue to be kept in prison once he has undergone a reasonable term of punishment and it is established that he is no longer a danger to the public. With the approval of the Government the Minister has, as indicated in para. 9, recently established a sentence review group to review the sentences of prisoners serving sentences of more than seven years. That review system does not apply to prisoners serving sentences for capital murder. It was

decided that the question of review for such prisoners would be decided in the context of the legislation to abolish the death penalty.

Alternative Penalty proposed

14. In the Minister's view the approach which should be adopted is that which was provided for in the 1981 Bill, i. e. that the death penalty should be replaced by a minimum sentence of 40 years imprisonment with the possibility of remission for good behaviour - in practice this would normally reduce the minimum term to 30 years. The Minister proposes also that provision should be made, as in the 1981 Bill, for release within the minimum term for strictly limited periods for humanitarian reasons. Apart from this the Minister is opposed to any provision which would allow for review and conditional release within the minimum term to be served i.e. he does not propose that there should be any formal system of review of sentences imposed for capital murder, such as now exists for other sentences. (Release would of course continue to be possible under Article 13 of the Constitution - see para. 16).
15. The Minister accepts that his proposals are likely to be criticised as being too severe but he considers that they are justified in view of the seriousness of the offences involved and he is satisfied that any lesser alternative penalty or a provision for review would be seen as a failure to provide adequate deterrence against murder of Gardai and prison officers. [As indicated in para. 12 Deputy Dukes, when Minister for Justice, envisaged cases where the minimum term would be 20 years which with remission for good conduct would mean the case could be reviewed after 15 years. As against this, Deputy Dukes is quoted in recent press reports as stressing that there is an obligation to the Garda Síochána and

prison officers to ensure that the punishment to replace the death penalty should be a serious deterrent.]

Commutation or remission by the President

16. While the proposals do not provide for review of sentences with a view to release, except in very limited circumstances and for limited periods, it remains open to the President, acting on the advice of the Government, to commute or remit under Article 13 of the Constitution any punishment imposed. Thus, if circumstances were such in any case where release of a person convicted of capital murder before the minimum term was advisable, that procedure could be used.

Remission for good behaviour

17. Under the Prison Rules the general practice is to grant remission of up to one quarter of sentence to prisoners for industry and good conduct. Not providing time off for industry and good conduct might remove a possible incentive to good behaviour in the prison. From the prison authorities' point of view, it deprives them of one of the sanctions for misbehaviour, namely forfeiture or reduction of remission. The task of maintaining security is consequently made more difficult. Under the proposals in the draft scheme, release as a result of remission earned on the minimum term for industry and good conduct would not be automatic - the sentence would be one of life imprisonment with a specified minimum period to be served and the effect of allowing remission for industry and good conduct would be to enable not require release after the expiry of three quarters of the minimum term. It would therefore remain a matter for the Minister or the Government of the day to decide whether a person should be released.

Offences to which the proposed new penalty should apply

18. As indicated in paragraph 3 above, the death penalty applies only to capital murder, treason and certain offences under military law. The Minister considers that the new penalty - life with a 40 year minimum term - should apply to all categories of capital murder as defined in section 1(1)(b) of the Criminal Justice Act 1964 (these categories are set out in para. 3 above) and to treason. With the concurrence of the Minister for Defence, the new penalty will not apply to those purely military offences for which the death penalty remains but a person convicted of such an offence will be liable to a maximum penalty of 'ordinary' life imprisonment instead.

Minimum mandatory penalty for attempt to murder a Garda

19. The Garda Representative Association have informed the Minister that they are opposed to the abolition of the death penalty. However, they appear to accept that abolition is inevitable in view of the Government's commitment in this regard. They have pressed the Minister very strongly in the event of abolition to provide for a minimum mandatory sentence of 25 years for a person who is convicted of an attempt to murder a member of the Garda Síochána. They view this as a minimum measure necessary in addition to a long mandatory sentence for actual murder to ensure that abolition of the death penalty will not diminish the level of special protection which the law provides for the Force. Aside from the fact that acceptance of the Association's proposal would help to allay Garda fears about the effect of abolition the Minister can see a case for acceding to the proposal given that very often it is only purely by chance that an attempt on the life of a Garda does not result in a fatality.

Accordingly, he proposes that the Bill should provide that an attempt to murder a member of the Garda Síochána, Prison Officer etc. should be

punishable by a mandatory minimum sentence of 20 years imprisonment , i.e. half the minimum term applicable in the case of actual murder. to be served subject to all the conditions which would obtain in the case of the 40 year sentence for actual murder (e.g. temporary release to be granted for the most serious reasons and then only for such limited period as would be justified by those reasons).

Financial implications

20. The proposals have no staffing or financial consequences.

Views of other Departments

21. The Departments of Finance, Foreign Affairs, Defence and Health and the Office of the Attorney General have been consulted.
22. The proposals were welcomed by the Department of Foreign Affairs and the Department of Finance had no observations to offer. The Department of Defence indicated that a number of additional technical amendments will be required to Defence Forces legislation and arrangements will be made to incorporate these amendments in the Bill.
23. The Department of Health have proposed that specific provision should be made as to how children and young persons convicted of offences under the Bill are to be dealt with. The Minister considers that this is a matter which would be more appropriate to a Juvenile Justice Bill.
24. The Attorney General suggests that section 8 of the draft Bill which is a transitional provision be amended so as to ensure that it does not infringe Art. 15.5 of the Constitution which prohibits the Oireachtas from

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declaring acts to be infringements of the law which were not so at the time of their commission. The Minister accepts this suggestion.

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this [draft] Bill/Act
has been copied***



AN BILLE UM CHEARTAS COIRIÚIL, 1970
CRIMINAL JUSTICE BILL, 1970

Mar a tionscnaíodh
As initiated

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Section

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FAOI RÚN DAINGEAN

An tAire Thaghartha

ROINN AN TAOISIGH

S.7788D

16 Márta, 1990.

Please associate the attached memorandum/aide-memoire
with the Agenda for the next Government meeting.

DERMOT NALLY

Rúnaí an Rialtais

Oifig an Aire Dli agus Cirt

8/534

15 March, 1990.

MEMORANDUM FOR GOVERNMENT

Abolition of Death PenaltySummaryDecision sought

1. The Minister for Justice requests the Government's
 - (i) approval for the attached text of a Bill (Appendix I) to abolish the death penalty, subject to certain amendments on the lines set out in Appendix II, and
 - (ii) authority to introduce the Bill to the Dáil/Seanad.

Reason for the Bill

2. This Bill is required to give effect to the undertaking in the Joint Programme for Government to abolish the death penalty.

Main features of the proposed Bill

3. These are set out in paragraph 6 of the Memorandum and are very similar to those in the Criminal Justice Bill, 1981. Briefly, they provide that the death penalty would be abolished for the offences for which it still exists (see paragraph 3) and in the case of murder of a Garda, prison officer etc. would be replaced by a mandatory life sentence subject to a requirement that a minimum period of imprisonment of not less than 40 years should be served. In the case of an attempt to commit such a murder a mandatory minimum sentence of 20 years imprisonment would be imposed. A prisoner serving a sentence for the murder or attempted murder of a Garda, prison officer etc. could earn remission for industry and good conduct. However, the Government or Minister for Justice would be precluded from

exercising their powers under the Criminal Justice Act, 1951 to commute or remit such a sentence before the expiry of the minimum period of imprisonment imposed less any remission. Neither could temporary release be granted, except for such limited periods as would be justified by the gravest humanitarian reasons. Provision is also being made to substitute a sentence of 'ordinary' life imprisonment for the death penalty in the case of other military offences for which the death sentence remains.

Penalty to be substituted for death penalty

4. This matter is dealt with in paragraphs 7 to 14 of the Memorandum. The question of the conditions that should apply to the new penalty is discussed in paragraphs 15 and 16.

Minimum mandatory penalty for attempt to murder a Garda etc.

5. This is dealt with in paragraph 19.

Financial implications

6. The proposals have no staffing or financial implications.

Views of other Departments

7. The Departments of Finance, Foreign Affairs, Defence and Health and the Office of the Attorney General have been consulted. The Departments referred to have no objection to the proposals. An additional point was raised by the Department of Health and is dealt with in paragraph 23. A suggestion for a technical amendment to the Bill was made by the Attorney General and is accepted by the Minister (paragraph 24).

CRUINNIÚ RIALTAIS

.....22/3.....1990

Rialt./Comh-Air. Uimh.....13.....

ABOLITION OF DEATH PENALTY

An Bhreith:

✓

Paul

→

22/3

22 Márta, 1990.

An Rúnaí Príobháideach
An tAire Dlí agus Cirt

I am to refer to the memorandum ref. 8/534 dated 15 March, 1990, submitted by the Minister for Justice with the text of a Bill to abolish the death penalty and to inform you that, at a meeting held today, the Government

- (1) approved the text of the Bill, subject to certain amendments on the lines set out in Appendix II of the memorandum, and
- (2) authorised the Minister to present the Bill to Dáil Éireann and to have it circulated to Deputies.

DERMOT NALLY
Rúnaí an Rialtais

An Rúnaí Príobháideach
An tAire Airgeadais/Gnóthaí Eachtracha/Cosanta/Sláinte/Aire Stáit
ag Roinn an Taoisigh (U. Ó Brádaigh) & (M. Geoghegan-Quinn)/tArd
Aighne

Mar eolas don Aire/Aire Stáit/Ard Aighne.

DERMOT NALLY

***Newspaper
article(s)/cutting(s)
have not been copied***

***Only the first page of
this [draft] Bill/Act
has been copied***

S.7788D

1. Computer index
[copied to *the Secretary*.
..... & *Mr. P. Leahon*]
2.
To see please
3. CS

22 Márta, 1990.

An Rúnaí Príobháideach
An tAire Dlí agus Cirt

I am to refer to the memorandum ref. 8/534 dated 15 March, 1990, submitted by the Minister for Justice with the text of a Bill to abolish the death penalty and to inform you that, at a meeting held today, the Government

- (1) approved the text of the Bill, subject to certain amendments on the lines set out in Appendix II of the memorandum, and
- (2) authorised the Minister to present the Bill to Dáil Éireann and to have it circulated to Deputies.

DERMOT NALLY
Rúnaí an Rialtais

An Rúnaí Príobháideach
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Aighne

Mar eolas don Aire/Aire Stáit/Ard Aighne.

DERMOT NALLY



ACT NO.

AN BILLE UM CHEARTAS COIRIÚIL (UIMH. 2), 1990
CRIMINAL JUSTICE (NO. 2) BILL, 1990

Mar a ritheadh ag dhá Théach an Oireachtais
As passed by both Houses of the Oireachtas

ARRANGEMENT OF SECTIONS

Section

1. Abolition of death penalty.
2. Sentence for treason and murder.
3. Special provision in relation to certain murders and attempts.
4. Minimum period of imprisonment for treason and murder, and attempts, to which *section 3* applies.
5. Restrictions on power to commute or remit punishment or grant temporary release.
6. Procedure in cases of murder, and attempts, to which *section 3* applies.
7. Consequential amendments.
8. Transitional provisions.
9. Repeals.
10. Short title.

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS

SECOND SCHEDULE

ENACTMENTS REPEALED

ACTS REFERRED TO

Children Act, 1908
Courts-Martial Appeals Act, 1983
Criminal Justice Act, 1951
Criminal Justice Act, 1960

1908, c. 67
1983, No. 19
1951, No. 2
1960, No. 27

OIFIG THITHE AN OIREACHTAIS

BILLÍ A RITHEADH AG AN DÁ THEACH

Tá dhá Theach an Oireachtais tar éis an Bille seo a leanas, eadhon :—

AN BILLE UM CHEARTAS COIRIÚIL (UIMH. 2), 1990

CRIMINAL JUSTICE (NO. 2) BILL, 1990

a rith an 5u lá de Iúil 1990

J. Lyons
a/s Cléireach na Dála.

6 Iúil 1990

S.7788D

6 Iúil, 1990.

Rúnaí an Uachtaráin

Tá ordú agam ón Taoiseach an Bille seo a leanas a ritheadh ag dhá Theach an Oireachtais a thairiscint leis seo don Uachtarán, chun a lámh a chur leis agus chun é a fhógairt ina dhlí:-

Teideal an Bhille: AN BILLE UM CHEARTAS CORIÚIL.
(UIMH. 2), 1990.
(Criminal Justice (No. 2) Bill, 1990.)

Lá a rite: 5 Iúil, 1990.

Níl deimhnithe ag Cathaoirleach Dháil Éireann gur Bille Airgid do réir bhrí Airteagail 22 den Bhunreacht an Bille seo.

Rúnaí Cúnta an Rialtais

S.7788D

6 Iúil, 1990.

Rúnaí an Uachtaráin

Tá ordú agam ón Taoiseach an Bille seo a leanas a ritheadh ag dhá Theach an Oireachtais a thairiscint leis seo don Uachtarán, chun a lámh a chur leis agus chun é a fhógairt ina dhlí:-

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Rúnaí Cúnta an Rialtais



OIFIG RÚNAÍ AN UACHTARÁIN
OFFICE OF THE SECRETARY TO THE PRESIDENT

BAILE ÁTHA CLIATH 8
DUBLÍN

12 Iúil, 1990

U.8899

Rúnaí an Rialtais

Tá ordú agam ón Uachtarán a chur in iúl duit gur shínigh sé go cuí an tAcht a luaitear thíos:-

Teideal an Achta: Criminal Justice Act, 1990.
(No. 16 of 1990)

Dáta a Shínithe: 11 Iúil, 1990.

d'Uimhir Tagartha: S.7788D.

Tá an tAcht sínithe á chur chugat leis seo.

Michael J. O'Connell
Rúnaí an Uachtaráin

S.7788D

13 Iúil, 1990.

An Rúnaí Príobháideach
An tAire Airgeadais/Cosanta/Sláinte/Gnóthaí Eachtracha/Dlí agus
Cirt/Aire Stáit ag Roinn an Taoisigh (U. Ó Brádaigh) & (M.
Geoghegan-Quinn)/tArd Aighne

Tá orm a chur in iúl duit go ndearna an tUachtarán an Bille i
gcóir an Achta a luaitear thíos a shíniú de bhun an Bhunreacht
ar an dáta a luaitear.

S. 11.

Rúnaí an Rialtais

Teideal an Achta: CRIMINAL JUSTICE ACT, 1990.
(No. 16 of 1990).

Dáta a shínithe: 11 Iúil, 1990.

S.7788D

13 Iúil, 1990.

An Rúnaí Príobháideach

An tAire Airgeadais/Cosanta/Sláinte/Gnóthaí Eachtracha/Dlí agus
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S.H.

Rúnaí an Rialtais

Teideal an Achta: CRIMINAL JUSTICE ACT, 1990.
(No. 16 of 1990).

Dáta a shínithe: 11 Iúil, 1990.

S.7788D

13 Iúil, 1990.

Cléireach na Dála

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Cuirtear chugat, leis seo, téacs an Achta agus é sínithe go cuí ag an Uachtarán.

S.M.

Rúnaí an Rialtais

Teideal an Achta: CRIMINAL JUSTICE ACT, 1990.
(No. 16 of 1990).

Dáta a shínithe: 11 Iúil, 1990.

S.7788D

13 Iúil, 1990.

Cléireach na Dála

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S.7788D

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CRIMINAL JUSTICE ACT, 1990.

S.H.

Rúnaí an Rialtais

S.7788D

13 Iúil, 1990.

Rúnaí an Uachtaráin

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CRIMINAL JUSTICE ACT, 1990.

S.H.
Rúnaí an Rialtais

OIFIG THITHE AN OIREACHTAIS

Tag. D. 11/11

An Rúnaí,
Roinn an Taoisigh.

Tá orm a admháil go bhfuairas do litir dar dháta
an 13ú lá den mhí seo ina raibh cóip den Acht thiosluaite
arna shíniú ag an Uachtarán do reir Airteagail 25 den
Bhunreacht.

J. Ryan
ofs Cléireach na Dála.

16 Iúil 1990

Teideal an Achta:

CRIMINAL JUSTICE ACT, 1990
(No. 16 of 1990)

END of file