

STRAND ONE: JUSTICE ISSUES

Paper by the British Government

Introduction

1. In this paper the Government addresses the "Justice Issues" agenda item in terms of the criminal justice system in Northern Ireland. If other participants wish to raise other issues which they believe should be addressed under this heading, we shall of course be ready to consider these.

The System

2. A broad definition of the criminal justice system would include organisations and procedures concerned with reducing crime and managing the outcomes of criminal behaviour. The key statutory agencies and institutions making up this system are the police, the Department of the Director of Public Prosecutions, the courts, the judiciary, probation and the prisons. Increasingly, some of these organisations work in partnership with other statutory agencies as well as the voluntary, community and private sectors in seeking to achieve their aims. The legal profession, barristers and solicitors, also of course constitute an integral part of the criminal justice system.

3. The Government is committed to a fair and just system, responsive to the community, which protects the public, brings those accused of crime to justice, acquits the innocent and convicts the guilty. There should be prompt, just and proportionate treatment of those suspected, accused and convicted of crime and the process needs to be effective and efficient. All of the agencies aim to respect and be supportive of victims of crime. There is also emphasis on

reducing crime and the fear of crime and on diverting those at risk of offending away from such behaviour and from the criminal justice system.

4. The basic elements of the criminal justice process are:

A: Investigation - crime is reported to the police who investigate and seek to identify suspects. In certain circumstances where a crime is admitted, for example a first and minor offence, the police may caution the offender; otherwise the next stage in the process is prosecution.

B: Prosecution - under current arrangements the Attorney General for England and Wales is also appointed Attorney General for Northern Ireland. He appoints the Director of Public Prosecutions for Northern Ireland, who exercises independently the function of directing whether or not prosecutions should be brought, but under the superintendence of the Attorney General. The police may prosecute less serious offences.

C: Adjudication - the more serious cases are heard by the Crown Court, while a professional cadre of magistrates try the less serious. The administration of the courts and arrangements for judicial appointments are the responsibility of the Lord Chancellor. Appointments are made impartially, on merit and in a way that ensures judicial independence.

D: The Sentence - for less serious offending behaviour the courts have such options as a conditional discharge or fine. But they also have at their disposal a community sentence, including the Probation Order and the Community Service Order. Seeing that these sentences are carried out is the responsibility of the Probation Board, a non Departmental Public Body. Custodial sentences for adults and young people over 17

are served in establishments run by the Northern Ireland Prison Service, an executive agency of the Northern Ireland Office.

E: The Criminal Law - this is the body of law which defines criminal offences, sets out the sentencing options available to the courts and governs criminal procedure and the overall process outlined in A to D above. Since Direct Rule the criminal law in Northern Ireland has been developed by extending England and Wales legislation to Northern Ireland or through separate Order in Council.

F: The Emergency Legislation - as far as possible, terrorism in Northern Ireland is dealt with under the normal criminal law, but some enhancements of that law are necessary to meet the special challenges posed by organised terrorist campaigns. These are contained in the Northern Ireland (Emergency Provisions) Act 1996 (EPA) and the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA), the latter of which applies throughout the UK. Both Acts are temporary and subject to annual renewal by Parliament (and the current EPA expires in August 1998). The Government intends to consult in the New Year on proposals for permanent legislation to replace the PTA and EPA and to deal with terrorism of all kinds. Meanwhile, the Government's view is that it is too soon to allow the emergency legislation to lapse; some terrorist groups, on both sides, remain active. To ensure that the criminal justice system and the security forces in Northern Ireland can continue to deal effectively with terrorism beyond August 1998, and pending the introduction of permanent legislation, the Government has introduced legislation to extend the life of the EPA, subject to a number of changes.

G: Security Policy and the Role of the Armed Forces - the Secretary of State has overall responsibility for security policy in Northern Ireland,

with the objective of eradicating terrorism, from whatever source it comes, through the even-handed enforcement of the law. The Chief Constable has operational responsibility for dealing with terrorism (and other forms of crime), and exercises his operational functions independent of any Government direction. The General Officer Commanding (GOC) commands the armed forces and provides military support to the RUC, to the extent that the security situation makes that necessary. Wherever and whenever possible, the police operate without military support, and the aim is to dispense with this altogether when the security situation permits. However, although the ceasefires have enabled armed forces activity to be significantly scaled down, a number of organisations have not declared ceasefires and the threat level at present requires the continuance of military support to the RUC, albeit at a reduced level.

5. In order to ensure public confidence and impartiality, the Government believes that certain key components of the criminal justice decision-making process need to be kept independent of each other and free from the possibility of political interference:- eg the operational independence of the police, decisions of the DPP on whether to prosecute, and judicial decisions. At the same time it is important that the agencies co-operate to ensure that the process works efficiently and effectively.

6. Outside the formal criminal justice process, the police and probation in particular have a role in working in partnership with others (eg education, social services, the voluntary, community and private sectors) to reduce crime and the fear of crime and divert those at risk of offending.

Some issues for discussion

7. The last Government's 1995 paper *A Framework for Accountable Government* envisaged that the role of local institutions in law and order matters would depend to a large extent on the level of terrorist threat. On this basis, once the active support of the armed forces for the police, and emergency legislation, were no longer deemed necessary, then the Government's direct responsibility for these matters could reduce and the likelihood would increase that responsibility for matters such as policing (principally funding and the setting and monitoring of police objectives) could be transferred.

The Government believes that this is still a soundly-based approach - but we are of course prepared to consider seriously any other proposals which carry the necessary support from the parties.

8. On policing, the Government recognises the diversity of views which participants hold. We are committed to talks which can cover all the issues of concern to participants, with no limitations as to the outcome beyond the need for agreement. Policing is, of course, a large subject. It is about problems in society and how they can be dealt with in a way that is acceptable to the vast majority of citizens, as well as about what the police can and cannot do, how they carry out their work, how they are organised and financed and to whom and how they should be accountable. The Government therefore proposes that discussions take place in manageable sections - beginning with an address to the principles which should underpin the policing of a peaceable society. As agreed by participants, we could then move on to the discussion of other areas in due course.

Do participants agree that we should proceed in this way?

9. There are a number of models for organising criminal justice responsibilities. Relevant considerations include the size of the jurisdiction, the continuing need to safeguard the independence of constituent elements of the system, and other institutional issues (eg the fact that the Prison Service, which is responsible for managing prisons and advising the Secretary of State on prisons policy, is an executive Agency).

Are the existing organisational arrangements and relationships about right? Is there scope for change?

10. In recent years the tendency has been to extend elements of the criminal law in England and Wales to Northern Ireland, sometimes after a period to assess their applicability here and sometimes modified to meet local needs.

Is there a case for developing an approach more specific to Northern Ireland's needs? What about an independent Law Commission tasked with proposing criminal law reform in Northern Ireland?

11. The community has a key interest, not just in process, but also in how the system deals with those aspects of criminal behaviour which most frequently impinge upon local people, and in the interface between the public and the criminal justice system and agencies.

How can the system and its component parts be more responsive to local communities and win over and/or sustain their confidence?

Conclusion

12. This paper gives an initial survey of a wide-ranging and complex area. The Government stands ready to facilitate full discussion of these issues in Strand One. In addition, the Liaison Sub-Committee on Confidence Building Measures provides a separate forum for participants to discuss a range of topical and non-systemic matters related to policing and other justice issues.

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