

PRIME MINISTER

PROSECUTION APPEALS

— Play A.

WMB
12.00
3/4

The Home Secretary and Lord Chancellor want to reinstate Section 22 of the Prosecution of Offenders Bill (Annex A) which was thrown out by the Lords. The Lords will still oppose it and though it could be whipped through the Commons our lawyers will speak against and the press may reflect this. Lawyers see this as being the first occasion in history that the prosecution has become involved in sentencing in England.

If you do not want a constitutional wrangle but wish to do something bearing in mind the 1983 Conference pledge, there is an alternative course which is sensible.

(i) The Government could re-enact the old rule that where a criminal appeals, he stands a chance of having his sentence increased if he appeals unnecessarily. This is likely to pass easily and was in the 1907 Act which was repealed in 1967 (Annex B).

(ii) Legislate to allow the Attorney General to obtain "sentencing guidelines" which would influence Courts.

On Parliamentary grounds we recommend the two options above rather than perservering with Section 22.

Prime Minister.

The Home Secretary is seeking a meeting early next week to discuss what he should say during the Second Reading of the Prosecution of Offenders Bill (soon after Easter).

JL

pp. HARTLEY BOOTH
28 March 1985

Consent for me to fix a short (1/2 hour) meeting
Yes as the Home Secretary suggests?
or consent that the Policy Unit proposals should also
Yours be on the agenda?

Mark Addison 2/13

PART II

accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and

(b) enable the Lord Chancellor to enforce those directions in cases to which they apply. 5

1979 c. 55.

(5) Subsection (4) of section 61 of the Justices of the Peace Act 1979 (regulations as to accounts of justices' clerks) shall apply in relation to sums payable to the Lord Chancellor by virtue of regulations made under subsection (2) above as it applies in relation to sums payable to the Secretary of State under that section. 10

(6) Any regulations under this Part may contain such incidental and supplemental provisions as the Lord Chancellor considers appropriate.

(7) Before making any regulations under section 19(1) of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules. 20

(8) In this section "costs order" means an order for the payment of costs made under or by virtue of this Part.

Annex A

Interpretation, etc.

21.—(1) In this Part—

"defendant's costs order" has the meaning given in section 15 of this Act; 25

"legal aid order" means an order under any provision of section 28 of the Legal Aid Act 1974 and includes, in relation to proceedings in a Divisional Court of the Queen's Bench Division, any certificate or other instrument under which legal aid is given; 30

"legally assisted person" means a person to whom aid is ordered to be given by a legal aid order;

"proceedings" includes—

(a) proceedings in any court below; and

(b) in relation to the determination of an appeal by any court, any application made to that court for leave to bring the appeal; and 35

"witness" means any person properly attending to give evidence, whether or not he gives evidence or is called at the instance of one of the parties or of the court, but does not include a person attending as a witness to character only unless the court has certified that the interests of justice required his attendance. 40

1974 c. 4.

PART II

(2) Except as provided by or under this Part no costs shall be allowed on the hearing or determination of, or of any proceedings preliminary or incidental to, an appeal—

(a) to the Court of Appeal under Part I of the Criminal Appeal Act 1968; or

(b) to the House of Lords under Part II of that Act.

(3) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (power by rules to distribute business of Court of Appeal between its civil and criminal divisions), the jurisdiction of the Court of Appeal under this Part, or under regulations made under this Part, shall be exercised by the criminal division of that Court; and references in this Part to the Court of Appeal shall be construed as references to that division. 1981 c. 54.

(4) For the purposes of sections 15 and 16 of this Act, the costs of any party to proceedings shall be taken to include the expense of compensating any witness for the expenses, trouble or loss of time properly incurred in or incidental to his attendance.

(5) Where, in any proceedings in a criminal cause or matter or in either of the cases mentioned in subsection (6) below, an interpreter is required because of the accused's lack of English, the expenses properly incurred on his employment shall not be treated as costs of any party to the proceedings.

(6) The cases are—

(a) where an information charging the accused with an offence is laid before a justice of the peace for any area but not proceeded with and the expenses are incurred on the employment of the interpreter for the proceedings on the information; and

(b) where the accused is committed for trial but not tried and the expenses are incurred on the employment of the interpreter for the proceedings in the Crown Court.

PART III

MISCELLANEOUS

35

22.—(1) The Attorney General may refer to the Court of Reference to Appeal any case in which a person has been tried on indictment and convicted of an offence before the Crown Court for their opinion as to—

(a) whether, having regard to all the circumstances of the case which were known to the Crown Court, a sentence different to that imposed by that court ought to have been imposed on the offender; and Crown Court sentences.

PART III

(b) if so, what that sentence should have been ;
and it shall be the duty of the Court of Appeal to consider the
case and give their opinion.

(2) For the purposes of their consideration of a case referred
to them under this section the Court of Appeal shall hear argu- 5
ment—

(a) by, or by counsel on behalf of, the Attorney General ;
and

(b) if the offender desires to present any argument to the
court, by counsel on his behalf or, with the leave of 10
the court, by the offender himself.

(3) Where, on a reference to the Court of Appeal under this
section, the offender appears by counsel for the purpose of
presenting any argument to the court, he shall be entitled to the
payment out of central funds of such sums as are reasonably 15
sufficient to compensate him for expenses properly incurred by
him for the purpose of being represented on the reference.

(4) Any amount recoverable under subsection (3) above shall
be ascertained, as soon as practicable, by the registrar of criminal
appeals. 20

1981 c. 54.

(5) Subject to rules of court made under section 53(1) of the
Supreme Court Act 1981 (power by rules to distribute business
of Court of Appeal between its civil and criminal divisions), the
jurisdiction of the Court of Appeal under this section shall be
exercised by the criminal division of the court ; and references 25
in this section to the Court of Appeal shall be construed as
references to that division.

1973 c. 62.

(6) For the purposes of this section, an order under Part I
of the Powers of Criminal Courts Act 1973 placing a person on
probation or discharging him absolutely or conditionally shall, 30
notwithstanding anything in section 13 of that Act, be deemed
to be a conviction of the offence for which the order was made.

(7) This section shall apply in relation to any case—

(a) in which a person has been sentenced by the Crown
Court ; and 35

(b) which falls within a class of case specified for the pur-
poses of this section by order made by the Secretary
of State ;

as it applies in relation to a case falling within subsection (1)
above. 40

(8) The power to make orders under subsection (7) above
shall be exercisable by statutory instrument subject to annulment
in pursuance of a resolution of either House of Parliament.

PART III

(9) In this section "sentence", in relation to an offence, in-
cludes any order made by a court when dealing with an offender
(including a recommendation for deportation but not an interim
hospital order under Part III of the Mental Health Act 1983). 1983 c. 20.

5 (10) Nothing done under this section shall affect the sentence
imposed by the Crown Court.

23.—(1) The Secretary of State may by regulations make pro-
vision, with respect to any specified preliminary stage of pro-
ceedings for an offence, as to the maximum period—

10 (a) to be allowed to the prosecution to complete that stage ;
(b) during which the accused may, while awaiting comple-
tion of that stage, be—
(i) remanded in custody in accordance with section
128 of the Magistrates' Courts Act 1980 ; or
15 (ii) committed in custody for trial under section 6
of that Act ;
in relation to that offence.

(2) The regulations may, in particular—

20 (a) be made so as to apply only in relation to proceedings
instituted in specified areas ;
(b) make different provision with respect to proceedings in-
stituted in different areas ;
(c) make such provision with respect to the procedure to be
followed in criminal proceedings as the Secretary of
25 State considers appropriate in consequence of any other
provision of the regulations ;
(d) provide for the Magistrates' Courts Act 1980 and the
Bail Act 1976 to apply in relation to cases to which 1976 c. 63.
30 custody or overall time limits apply subject to such
modifications as may be specified (being modifications
which the Secretary of State considers necessary in
consequence of any provision made by the regula-
tions) ; and
35 (e) make such transitional provision in relation to pro-
ceedings instituted before the commencement of any
provision of the regulations as the Secretary of State
considers appropriate.

(3) The appropriate court may, at any time before the expiry
of a time limit imposed by the regulations, extend, or further
40 extend, that limit if it is satisfied—

(a) that there is good and sufficient cause for doing so ; and
(b) that the prosecution has acted with all due expedition.

Ance B

(5) Unless the court direct to the contrary in cases where in the opinion of the court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the court, the judgment of the court shall be pronounced by the president of the court or such other member of the court hearing the case as the president of the court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the court.

(6) If in any case the Director of Public Prosecutions or the prosecutor or defendant obtains the certificate of the Attorney General that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, he may appeal from that decision to the House of Lords, but subject thereto the determination by the Court of Criminal Appeal of any appeal or other matter which it has power to determine shall be final, and no appeal shall be from that court to any other court.

(7) The Court of Criminal Appeal shall be a superior court of record, and shall, for the purposes of and subject to the provisions of this Act, have full power to determine, in accordance with this Act, any questions necessary to be determined for the purpose of doing justice in the case before the court.

(8) Rules of court shall provide for securing sittings of the Court of Criminal Appeal, if necessary, during vacation.

(9) Any direction which may be given by the Lord Chief Justice under this section may, in the event of any vacancy in that office, or in the event of the incapacity of the Lord Chief Justice to act from any reason, be given by the senior judge of the Court of Criminal Appeal.

Registrar of the Court of Criminal Appeal.

2. There shall be a Registrar of the Court of Criminal Appeal (in this Act referred to as the Registrar) who shall be appointed by the Lord Chief Justice from among the Masters of the Supreme Court acting in the King's Bench Division, and shall be entitled to such additional salary (if any), and be provided with such additional staff (if any), in respect of the office of Registrar as the Lord Chancellor, with the concurrence of the Treasury, may determine.

The senior Master of the Supreme Court shall be the first registrar.

RIGHT OF APPEAL AND DETERMINATION OF APPEALS.

Right of appeal in criminal cases.

3. A person convicted on indictment may appeal under this Act to the Court of Criminal Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone; and
(b) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or

question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal; and

- (c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

4.—(1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Determination of appeals in ordinary cases.

Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Act, the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

Powers of court in special cases.

5.—(1) If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the court may either confirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the court consider that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

Repealed Criminal Appeal Act 1918 511(3)

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Criminal Appeal consider that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) If on any appeal it appears to the Court of Criminal Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the court may quash the sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic under the Trial of Lunatics Act, 1883, in the same manner as if a special verdict had been found by the jury under that Act.

46 & 47 Vict.
c. 38.

Re-vesting and
restitution of
property on
conviction.
56 & 57 Vict.
c. 71.

6. The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, of the provision of subsection (1) of section twenty-four of the Sale of Goods Act, 1893, as to the re-vesting of the property in stolen goods on conviction, shall (unless the court before whom the conviction takes place direct to the contrary in any case in which in their opinion, the title to the property is not in dispute) be suspended—

- (a) in any case until the expiration of ten days after the date of the conviction; and
- (b) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order or of the said provisions.

(2) The Court of Criminal Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed, and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

PROCEDURE.

Time for
appealing.

7.—(1) Where a person convicted desires to appeal under this Act to the Court of Criminal Appeal, or to obtain the leave of that court to appeal, he shall give notice of appeal or notice

of his application for leave to appeal in such manner as may be directed by rules of court within ten days of the date of conviction: Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the court.

Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Criminal Appeal.

(2) In the case of a conviction involving sentence of death or corporal punishment—

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and
- (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

8. The judge or chairman of any court before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence, or in the case of an application for leave to appeal under this Act, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and shall also furnish to the Registrar in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

Judge's notes
and report to
be furnished on
appeal.

9. For the purposes of this Act, the Court of Criminal Appeal may, if they think it necessary or expedient in the interest of justice,—

Supplemental
powers of
court.

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case; and
- (b) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any judge of the court or before any officer of the court or justice of the peace or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court; and
- (c) if they think fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant