

MEMORANDUM FOR THE CABINET BY THE
HON. PRIME MINISTER

Disciplinary action against Public Officers granted
a conditional discharge under the Probation
of Offenders Act, 1957

Section 12 (1) of the Probation of Offenders Act, 1957, provides that "a conviction of an offence for which an order is made under this Act placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose whatsoever other than the purposes of the proceedings in which the Order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act."

2. Regulation 7 of the Public Service Commission (Disciplinary Procedure) Regulations, 1961 provides, inter alia, that "a public officer acquitted of a criminal charge in any court shall not be dismissed or otherwise punished on any charge upon which he has been acquitted."

3. The Public Service Commission have expressed their doubts as to whether a conditional discharge under the Probation of Offenders Act should be interpreted other than as an outright acquittal for the purposes of disciplinary proceedings under the Public Service Commission (Disciplinary Procedure) Regulations, 1961. The Attorney-General has advised that "the position is anomalous. A conditional discharge is not an acquittal for the purposes of Regulation 7 of the P.S.C. (Disciplinary Procedure) Regulations, nor, in view of the provisions of the Probation of Offenders Act, can it be deemed to be a conviction. It is reasonable to say, however, that a person who has been conditionally discharged should not be in a better position than a person who has been acquitted and, until other provision is made, it would be proper to assimilate him to a person who has been acquitted."

4. In the circumstances, the Public Service Commission have recommended that, in the case of conditional discharge, there must be some means of examining the effect on the offender's position as a public officer which is beyond challenge under the law. The need for such a provision will of course be readily appreciated. The idea behind the modern concept of conditional discharge and probation is to give a deserving offender a new lease of life as an unblemished citizen. On the other hand, a public officer is in a position of special trust, and it would be quite reasonable to expect Government not to take any chances with an officer who may have been repeatedly bribed or may have embezzled money.

5. While stressing that the decision on this is one of policy, the Attorney-General states that on the whole, he does not think that he "would regard any such amendment (as is proposed) as outrageous". To attain the desired end, he advises that Section 12(1) of the Probation of Offenders Act be amended by the addition of the underlined words, reading as follows:-

/"12.

"12. (1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Act placing the offender on probation or discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose whatsoever other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act, and, in the case of a public officer or servant, the purposes of any disciplinary proceedings which may be taken against, or any disciplinary punishment which may be imposed upon, such public officer or servant in consequence of any such conviction under the provisions of any law applicable to him".

6. The Cabinet's advice on this recommendation is invited.

20th January, 1964.