

EXPLANATORY NOTES.

Clause 1: The purpose of the new section 202A is to divide murder into two kinds, capital and non-capital. There is no change in the law in so far as concerns the delineation of those things which constitute the crime of murder itself; these remain as set out in sections 201 and 202, which read as follows:

“201. Culpable homicide is murder

- (a) where the person who causes the death of a human being
 - (i) means to cause his death, or
 - (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;
- (b) where a person meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or
- (c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.”

“202. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

- (a) he means to cause bodily harm for the purpose of
 - (i) facilitating the commission of the offence, or
 - (ii) facilitating his flight after committing or attempting to commit the offence,and the death ensues from the bodily harm;
- (b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;
- (c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or
- (d) he uses a weapon or has it upon his person
 - (i) during or at the time he commits or attempts to commit the offence, or
 - (ii) during or at the time of his flight after committing or attempting to commit the offence,and the death ensues as a consequence.”

What is provided by the new section 202A is that of all those crimes which may be murder as defined, only murder of a calculated and deliberate nature shall be capital, or murder committed in the course of carrying out any of the crimes mentioned in section 202—generally speaking a crime itself involving the use of force or stealth, thus importing the element of deliberation. Under the latter alternative, however, only the person who actually committed the act or applied the force causing death, or counselled the doing of it, would be guilty of capital murder.

All other murder is made non-capital.