

SCHEDULES

SCHEDULE 4

Section 98.

MISCELLANEOUS AMENDMENTS OF ENACTMENTS RELATING TO CRIMINAL APPEAL.

THE CRIMINAL APPEAL ACT 1907 (C. 23)

- 1 In section 4(2) (consequence of appeal being allowed), the words " and direct a judgment and verdict of acquittal to be entered " shall be omitted, and the following shall be added at the end of the subsection:—

“An order of the criminal division of the Court of Appeal quashing a conviction shall, except when under section 1 of the Criminal Appeal Act 1964 the appellant is ordered to be retried, operate as a direction to the court before whom the appellant was convicted to enter, instead of the record of conviction, a judgment and verdict of acquittal.”
- 2 In section 5 (powers of court in special cases of wrong conviction, etc.) the following subsection shall be substituted for subsection (1):—

“(1) Where a person appeals under this Act against conviction on an indictment containing two or more counts, and the criminal division of the Court of Appeal allow the appeal in respect of part of the indictment, they may in respect of any count on which he remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as they think proper and is authorised by law for the offence of which he remains convicted on that count, subject however to section 4(2) of the Criminal Appeal Act 1966 (which restricts the power to increase sentence on appeal).”
- 3 In section 6 (re-vesting and restitution of property), for the word " after ", where occurring in paragraph (a) and (b) there shall be substituted the word " from " ; and in paragraph (b) for the words " leave to appeal " there shall be substituted the words " of application for leave to appeal ".
- 4 In section 7(1) (time for appealing and applying for leave to appeal), for the words from " within twenty-eight days " to " considered by the court " there shall be substituted the words " within twenty-eight days from the date of the conviction, verdict or finding appealed against, or in the case of appeal against sentence, from the date on which sentence was passed, or in the case of an order made or treated as made on conviction, from the date of the making of the order ".
- 5 In section 9 (supplemental powers of court),
 - (a) for the words " at the trial " where first occurring in paragraph (b) of the section there shall be substituted the words " in the proceedings from which the appeal lies ", and for those words where occurring for the second time in that paragraph there shall be substituted the words " in those proceedings ";
 - (b) for the words " at the trial " in paragraph (c) of the section there shall be substituted the words " in the proceedings from which the appeal lies "; and

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(c) the words from " and exercise in relation to " to the end of the section shall be omitted.

6 In section 11(1) (right of appellant to be present at hearing), the words " rules of court provide that he shall have the right to be present, or where " shall be omitted.

7 In section 15 (duties of registrar with respect to appeals), the following subsection shall be substituted for subsections (3) and (4):

“(3) Rules of court may enable an appellant to obtain from the registrar any documents or things, including copies or reproductions of documents, required for his appeal and may authorise the registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury.”

8 For section 21 (definitions) there shall be substituted the following section:—

“**21** In this Act, unless the context otherwise requires.—

' appellant ' includes a person who has given notice of application for leave to appeal; and

' sentence ' in relation to an offence, includes any order made by a court when dealing with an offender (including a hospital order under Part V of the Mental Health Act 1959, with or without an order restricting discharge) and also includes a recommendation for deportation made under Part II of the Commonwealth Immigrants Act 1962 or under any order made under the Aliens Restriction Act 1914”.

THE CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1930 (C. 45)

9 In section 3(2) (consequences of appeal against conviction being allowed) for the words " direct a judgment and verdict of acquittal to be entered " there shall be substituted the words " an order of the Court quashing a conviction shall, except when under section 17 of the Criminal Justice Act (Northern Ireland) 1966 the appellant is ordered to be retried, operate as a direction to the clerk of the Crown and peace acting for the court before whom the appellant was convicted to enter, instead of the record of conviction, a judgment and verdict of acquittal ".

10 In section 4 (powers of court on appeal in special cases) the following shall be substituted for subsection (1) :—

“(1) Where a person appeals under this Act against conviction on an indictment containing two or more counts and the Court allow the appeal in respect of part of the indictment, they may in respect of any count on which he remains convicted pass such sentence, in substitution for the sentence passed thereon at the trial, as they think proper and is authorised by law for the offence of which he remains convicted on that count”.

11 In section 5(1) (re-vesting and restitution of property) for the words (in paragraph (a)) " ten days after " there shall be substituted the words " twenty-eight days from ";

and for the words (in paragraph (b)) " leave to appeal is given within ten days after " there shall be substituted the words " of application for leave to appeal is given within twenty-eight days from ".

12 In section 7(1) (time for appealing or applying for leave to appeal), the word " convicted " shall be omitted and for the words from " within ten days " to " against

sentence " there shall be substituted the words " within twenty-eight days from the date of the conviction, verdict or finding appealed against or, in the case of appeal against sentence, from the date on which sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order. "

- 13 In section 12 (costs of appeal)—
- (a) the following shall be substituted for subsection (1):—
- “(1) Except as may be provided by any enactment of the Parliament of Northern Ireland, no costs shall be allowed on the hearing or determination of an appeal under this Act, or of any proceedings preliminary or incidental to such an appeal”;
- (b) in subsection (2), for the words " in the same manner as the expenses of a prosecution in cases of felony " there shall be substituted the words " by the Ministry ".
- 14 In section 13(4) (time spent on bail pending appeal not to count as part of sentence) for the words from " and subject to " to the end of the subsection there shall be substituted the words " shall not count as part of any term of imprisonment under his sentence ".
- 15 In section 20 (definitions) for the words " a person who has been convicted and desires to appeal under this Act " there shall be substituted the words " a person who has given notice of application for leave to appeal ".

THE COURTS-MARTIAL (APPEALS) ACT 1951 (C. 46)

- 16 In section 3 (right of appeal) the following shall be added as a proviso to subsection (2):—
- “Provided that if a person presents a petition for the purposes of paragraph (a) of this subsection but fails to do so within the period prescribed for those purposes, and subsequently applies for leave to appeal, the Court may direct that he be treated as not having thereby lost his right of appeal if they think there is a reasonable explanation of the failure and that it is in the interests of justice that he should be so treated”.
- 17 In section 11 (appeal to be heard in absence of appellant) the words " rules of court provide that he shall have the right to be present or " shall be omitted.
- 18 In section 17 (removal of prisoners for purposes of appeal from courts-martial) the following shall be substituted for paragraph (f):—
- “(f) section 13 of the Prison Act (Northern Ireland) 1953”.
- 19 In section 21 (powers of single judge of Courts-Martial Appeal Court), the following paragraph shall be inserted after paragraph (a):—
- “(aa) to give a direction under the proviso to section 3(2) of this Act that a person be treated as not having lost his right of appeal”.

THE COSTS IN CRIMINAL CASES ACT 1952 (C. 48)

- 20 (1) In section 3 (costs on appeal to criminal division of Court of Appeal), the following shall be inserted at the end of subsection (1):—

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“Any amount ordered to be paid under this subsection shall, except where it is a specific amount ordered to be paid towards the said costs as a whole, be ascertained as soon as practicable by the registrar of criminal appeals and shall be payable to such person as may be named in the order.”

- (2) In section 3(2) after the word " payment " there shall be inserted the words " to the appellant " and for the words from " The amount " to the end of the subsection there shall be substituted the following:—

“Any amount ordered to be paid under this subsection shall, except where it is a specific amount ordered to be paid towards the appellant's expenses as a whole, be ascertained as soon as practicable by the registrar of criminal appeals”;

- (3) For section 3(3) there shall be substituted the following subsection—

“(3) Where an appellant who is not in custody appears before the criminal division of the Court of Appeal, either on the hearing of his appeal or in any proceedings preliminary or incidental thereto, the Court may direct that there be paid to him out of local funds the expenses of his appearance; and any amount ordered to be paid to him under this subsection shall be ascertained as soon as practicable by the registrar of criminal appeals.”

- 21 In section 4 (costs on appeal to House of Lords in criminal cases)—

- (a) in subsection (1), after the word " payment " there shall be inserted the words " to the accused "; and
- (b) in subsection (2), for the words from the beginning to " shall " there shall be substituted the words " Any amount ordered to be paid under this section shall, except where it is a specific amount ordered to be paid towards the accused's expenses as a whole ".

- 22 In section 8 (payment of costs from local funds), at the end of subsection (1) there shall be added the following:—

“In relation to costs ordered to be paid out of local funds under section 3(2) of this Act, ' the proper officer ' in this subsection means the registrar of criminal appeals.”

- 23 In section 16 (savings, with exclusion of Act in relation to offence of highway obstruction etc.) subsection (3) shall be omitted.

THE ADMINISTRATION OF JUSTICE ACT 1960 (C. 65)

- 24 In section 4 (power to grant bail pending appeal to the House of Lords) as it applies to England and Wales.—

- (a) in subsection (1), after the word " appellant " there shall be inserted the words " under section 1 of this Act, or a person applying for leave to appeal thereunder "; and
- (b) in subsection (2) for the words " an appellant pending an appeal under section one of this Act in such proceedings " there shall be substituted the words " an appellant under section 1 of this Act, or a person applying for leave to appeal thereunder, pending the appeal ".

- 25 In section 4, as it applies to Northern Ireland—

- (a) in subsection (1) after the word " appellant ", there shall be inserted the words " under section 1 of this Act, or a person applying for leave to appeal thereunder "; and
- (b) in subsection (2)—
- (i) for the words " seeking to appeal " there shall be substituted the words " appealing or applying for leave to appeal ";
 - (ii) for the words " section three of the Summary Jurisdiction Act 1857 " there shall be substituted the words " section 148 of the Magistrates' Courts Act (Northern Ireland) 1964 "; and
 - (iii) for the words " section twenty-six of the Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935 " there shall be substituted the words " section 4 of the County Courts Appeals Act (Northern Ireland) 1964 ".
- 26 In section 5 (power to order detention of defendant pending appeal by Crown) as it applies to England and Wales and also as it applies to Northern Ireland.—
- (a) in subsection (1) after the word " bail " there shall be inserted the words " (which may be granted by the court as under section 4 above) "; and
 - (b) subsection (2) shall be omitted.
- 27 In section 5(4) as it applies to Northern Ireland, for the reference to the enactments for the time being in force in Northern Ireland with respect to prisoners or other persons suffering from mental illness or other mental disorder there shall be substituted a reference to the Mental Health Act (Northern Ireland) 1961.
- 28 In section 8(3) (costs on application for leave to appeal to House of Lords), as it applies to England and Wales, after the word " payment " in paragraph (a) there shall be inserted the words " to the defendant " ; and the following shall be added at the end of the subsection:—
- “Any amount ordered to be paid under this subsection shall, except where it is a specific amount ordered to be paid towards the defendant's expenses as a whole or, as the case may be, towards the costs of his application as a whole, be ascertained as soon as practicable—
- (i) where the order is made by the criminal division of the Court of Appeal, by the registrar of criminal appeals ; and
 - (ii) where it is made by the House of Lords, by such officer or officers, and in such manner, as may be prescribed by order of that House ;
- and, in the case of an order under paragraph (b), the said amount shall be payable to such person as may be named in the order.”
- 29 In section 8, as it applies to Northern Ireland by virtue of section 18(4) of, and Schedule 2 to, the Act.—
- (a) for subsection (3) there shall be substituted the following subsection:—
- “(3) Where the Court of Criminal Appeal in Northern Ireland or the House of Lords dismiss an application for leave to appeal from that Court, that Court or the House may, if it thinks fit—
- (a) where the application was made by the prosecutor, order the payment to the defendant by the Ministry of Home Affairs of such sums as appear to it reasonably sufficient to compensate the defendant for any expenses properly incurred by him in resisting the application ;

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- (b) where the application was made by the defendant, order him to pay the whole or any part of the costs of the application.

Any amount ordered to be paid under this subsection shall, except where it is a specific amount ordered to be paid towards the defendant's expenses as a whole or, as the case may be, towards the costs of his application as a whole, be ascertained as soon as practicable—

- (i) where the order is made by the Court of Criminal Appeal in Northern Ireland, by that court; and
(ii) where it is made by the House of Lords, by such officer or officers, and in such manner, as may be prescribed by order of that House ;

and, in the case of an order under paragraph (b), the said amount shall be payable to such person as may be named in the order.”

- (b) at the end of subsection (3A) there shall be added the following:—

“The amount of any costs ordered to be paid under this subsection shall, except where it is a specific amount ordered to be paid towards the costs as a whole, be ascertained as soon as practicable by such officer or officers, and in such manner, as may be prescribed by order of the House of Lords”.

30 In section 9(3) (provision as to presence of defendant on hearing of appeal), as it applies to England and Wales, for the words " or rules of court as the case may be authorise " there shall be substituted the word " authorises ".

31 In section 10 (application of provisions giving right of appeal to House of Lords from decisions of Courts-Martial Appeal Court), after the words " provisions of this Act " there shall be inserted the words " except section 4 " ; and at the end of the section there shall be added the following three subsections:—

“(2) When a person to whom this subsection applies appeals, or applies for leave to appeal, under section 1 of this Act to the House of Lords from a decision of the Courts-Martial Appeal Court or is the subject of an order of that Court under section 5(1) of this Act as applied by this section, the Court shall have power to grant him bail pending the appeal.

(3) Subsection (2) above applies to any person who.—

- (a) not being subject to the Naval Discipline Act 1957, to military law or to air force law, is liable by virtue of any provision of the said Act of 1957, or the Army Act 1955 or the Air Force Act 1955 to be tried as if he were so subject; or
(b) is subject to the said Act of 1957 by virtue only of section 119(1) of it (sentenced offenders).

(4) In sections 1 to 9 of this Act as applied by this section ' the accused ' means, in relation to an appeal from the Courts-Martial Appeal Court, the person who was the accused in the court-martial proceedings from which the appeal lay to that court”.

32 In Schedule 1 (modifications of sections 1 to 9 in relation to appeals from courts-martial).—

- (a) the following paragraphs shall be substituted for paragraph 1 :—

- “1 (1) In section 1(1), for the words ' at the instance of the defendant or the prosecutor' there shall be substituted the words ' at the instance of the accused or the Defence Council'.
- (2) In sections 2(3) and 5(3) and (5), for the words ' the defendant' there shall be substituted the words 'the accused'.
- (3) In section 9(3), for the words ' A defendant who is detained pending an appeal under section one of this Act' there shall be substituted the words ' Where the accused is detained pending an appeal under section 1 of this Act, he'.
- 1A (1) In section 5, the following shall be substituted for subsection (1):—
- “(1) Where the accused would, but for the decision of the Courts-Martial Appeal Court, be liable to be detained and immediately after that decision the Defence Council are granted, or give notice that they intend to apply for, leave to appeal, the Court may make an order providing for the detention of the accused or directing that he shall not be released except on bail (which may in the case of a person to whom section 10(2) of this Act applies, be granted as under that subsection) so long as any appeal under section 1 of this Act is pending.
- (2) In section 5(4), for the words " a defendant " there shall be substituted the words " a person " , and the references to any provision of the Mental Health Act 1959 shall include references to any provision of the Mental Health (Scotland) Act 1960 or the Mental Health Act (Northern Ireland) 1961”
- (b) in paragraph 2(3), for the words " the Admiralty " there shall be substituted the words " the Defence Council "; and
- (c) in paragraph 3(3), for the words " the defendant " (wherever occurring) there shall be substituted the words " the accused " ,
- and for the words from the beginning of paragraph (a) to " may require " there shall be substituted the words " where the application was made by the Secretary of State, direct the payment by him " .

THE CRIMINAL PROCEDURE (INSANITY) ACT 1964 (C. 84)

- 33 In section 3 (sentence where appeal against verdict of not guilty by reason of insanity is allowed).—
- (a) in subsection (1)(a), for the words " and shall have " there shall be substituted the words " and, subject to subsection (1A) below, shall have ";
- (b) the proviso to subsection (1) shall be omitted ; and
- (c) the following subsections shall be added after subsection (1): —
- “(1A) The criminal division of the Court of Appeal shall not by virtue of subsection (1)(a) of this section sentence any person to death; but where under that paragraph they substitute a verdict of guilty of an offence for which apart from this subsection they would be

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required to sentence the appellant to death, their sentence shall (whatever the circumstances) be one of imprisonment for life.

(1B) An order of the criminal division of the Court of Appeal allowing an appeal in accordance with section 2 of this Act shall operate as a direction to the court before which the appellant came for trial to amend the record to conform with the order.”

34 In section 4(6) (application of appeal provisions in section 2 to finding of unfitness to plead), after the words " such a finding " there shall be inserted the words " and references to a person's trial were references to the determination of a question of his fitness to be tried ".

THE CRIMINAL APPEAL ACT 1966 (C. 31)

35 In section 4 (powers of Court of Appeal on determination of appeals) the following shall be substituted for subsection (2) :—

“(2) Section 5(1) of the 1907 Act shall not authorise the Court of Appeal to pass any sentence such that the appellant's sentence on the indictment as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all offences of which he was convicted on the indictment.”

36 In section 5 (duty to admit evidence on appeal) for the words " at the trial " where they occur in paragraph (a) of the section there shall be substituted the words " in the proceedings from which the appeal lies "; and for those words where they occur in paragraph (b) of the section there shall be substituted the words " in those proceedings ".

37 In section 7 (record of proceedings at trial)—

- (a) in subsection (1) the words " at assizes or quarter sessions " shall be omitted ; and
- (b) in subsection (3) for the words " at a court of assize or quarter sessions " there shall be substituted the words " at any court ".

38 In section 8(2) (ascertainment of witnesses' expenses) for the words " the proper officer " there shall be substituted the words " the registrar of Criminal appeals ".

39 In section 12(5) (construction of Act as applying to Northern Ireland), after the word " Ireland " there shall be inserted the words " and proceedings from which such appeals lie ".

40 In paragraph 8(2) of Schedule 1 (witnesses' costs on appeal to Courts-Martial Appeal Court), for the words " the proper officer " there shall be substituted the words " the registrar ".

THE CRIMINAL JUSTICE ACT (NORTHERN IRELAND) 1966 (C. 20)

41 At the end of section 16 (provisions relating to disposal of appeal against verdict of not guilty on the ground of insanity) there shall be added the following subsection—

“(5) An order of the Court of Criminal Appeal allowing an appeal in accordance with subsection (4) shall operate as a direction to the clerk of the Crown and peace acting for the court before which the appellant was tried to amend the record to conform with the order”.