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SCHEDULES

SCHEDULE 1

Section 26.

CERTIFICATES AS TO PROOF OF CERTAIN ROUTINE MATTERS

1	2	3
Enactment	Persons who may purport to sign certificate	Matters which may be certified
<p>THE ROAD TRAFFIC REGULATION ACT 1967 (c. 76) The enactments specified in section 78A(3) (speeding offences generally).</p>	<p>Two police officers who have tested the apparatus.</p>	<p>The accuracy of any particular— (a) speedometer fitted to a police vehicle; (b) odometer fitted to a police vehicle; (c) radar meter; or (d) apparatus for measuring speed, time or distance, identified in the certificate by reference to its number or otherwise.</p>
<p>THE MISUSE OF DRUGS ACT 1971 (c. 38) Sections 4, 5, 6, 8, 9, 12, 13, 19 and 20 (various offences concerning controlled drugs).</p>	<p>Two analysts who have analysed the substance and each of whom is either a person possessing the qualifications (qualifying persons for appointment as public analysts) prescribed by regulations made under section 89 of the Food and Drugs Act 1955 (c. 16), or section 27 of the Food and Drugs (Scotland) Act 1956 (c. 30), or a person authorised by the Secretary of State to make analyses for the purposes of the provisions of the Misuse of Drugs Act 1971 mentioned in column 1.</p>	<p>The type and classification of any particular substance, identified in the certificate by reference to a label or otherwise, which is alleged to be a controlled drug within the meaning of section 2 of the Act referred to in column 1.</p>
<p>THE IMMIGRATION ACT 1971 (c. 77) Section 24(1)(a) in so far as it relates to entry in breach of a deportation order,</p>	<p>An officer authorised to do so by the Secretary of State.</p>	<p>In relation to a person identified in the certificate— (a) the date, place or means of his arrival in, or any removal of him from, the United Kingdom;</p>

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1 Enactment	2 Persons who may purport to sign certificate	3 Matters which may be certified
<p>section 24(1)(6) and section 26(1)(f) in so far as it relates to a requirement of regulations (various offences concerning persons entering, or remaining in, the United Kingdom).</p> <p>THE SOCIAL SECURITY ACT 1975 (c. 14) Section 146(3)(c) (false statements etc. to obtain payments).</p>	<p>An officer authorised to do so by the Secretary of State.</p>	<p>(b) any limitation on, or condition</p> <p>(c) the date and method of service of any notice of, or of variation of conditions attached to, such leave.</p> <p>In relation to a person identified in the certificate—</p> <p>(a) the assessment, award, or nature of any benefit applied for by him;</p> <p>(b) the transmission or handing over of any payment to him.</p>
<p>THE CHILD BENEFIT ACT 1975 (c. 61) Section 11 (false statements etc. to obtain child benefit).</p>	<p>An officer authorised to do so by the Secretary of State.</p>	<p>In relation to a person identified in the certificate—</p> <p>(a) the assessment, award, or nature of any benefit applied for by him;</p> <p>(b) the transmission or handing over of any payment to him.</p>
<p>THE SUPPLEMENTARY BENEFITS ACT 1976 (c. 71) Section 21 (false statements).</p>	<p>An officer authorised to do so by the Secretary of State.</p>	<p>In relation to a person identified in the certificate—</p> <p>(a) the assessment, award, or nature of any benefit applied for by him;</p> <p>(b) the transmission or handing over of any payment to him.</p>

SCHEDULE 2

Section 33.

SOLEMN APPEALS

In the 1975 Act—

1 For section 228 (right of appeal), there shall be substituted the following section—

“228 Rights of appeal.

(1) Any person convicted on indictment may appeal in accordance with the provisions of this Part of this Act, to the High Court—

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- (a) against such conviction ;
- (b) against the sentence passed on such conviction ; or
- (c) against both such conviction and such sentence:

Provided that there shall be no appeal against any sentence fixed by law.

- (2) By an appeal under subsection (1) of this section, a person may bring under review of the High Court any alleged miscarriage of justice in the proceedings in which he was convicted, including any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.".

2 Section 229 (certificate by judge that case appealable) shall cease to have effect

3 For section 231 (time for appealing), there shall be substituted the following section—

“231 Intimation of intention to appeal.

- (1) Subject to section 236B(2) of this Act, where a person desires to appeal under section 228(1)(a) or (c) of this Act, he shall, within two weeks of the final determination of the proceedings, lodge with the Clerk of Justiciary written intimation of intention to appeal and send a copy to the Crown Agent
- (2) Such intimation shall identify the proceedings and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.
- (3) On such intimation being lodged by a person in custody, the Clerk of Justiciary shall give notice thereof to the Secretary of State.
- (4) For the purposes of subsection (1) above and section 270(2) of this Act, proceedings shall be deemed finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 228(1)(a) of this Act sentence is deferred under section 219 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.”.

4 Section 232 (calculating days of appeal etc.) shall cease to have effect.

5 For section 233 (forms of appeal) there shall be substituted the following section—

“233 Note of appeal.

- (1) Subject to section 236B(2) of this Act, within six weeks of lodging intimation of intention to appeal or, in the case of an appeal against sentence alone, within two weeks of the passing of the sentence in open court, the convicted person may lodge a written note of appeal with the Clerk of Justiciary who shall send a copy to the judge who presided at the trial and to the Crown Agent : Provided that the first mentioned period may be extended, before expiry thereof, by the Clerk of Justiciary.
- (2) Such a note shall identify the proceedings, contain a full statement of all the grounds of appeal and be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

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(3) Except by leave of the High Court on cause shown it shall not be competent for an appellant to found any aspect of his appeal on a ground not contained in the note of appeal.

(4) On a note of appeal against sentence alone being lodged by an appellant in custody the Clerk of Justiciary shall give notice thereof to the Secretary of State.”.

6 In section 234 (presentation of appeal in writing), in each of subsections (1) and (3) the words "or an applicant for leave to appeal" and " or application for leave to appeal" shall cease to have effect.

7 In section 236 (proceedings in sheriff court to be furnished) the words " or application for leave to appeal" shall cease to have effect.

8 After section 236 there shall be inserted the following sections—

“236A Judge's report.

(1) As soon as is reasonably practicable after his receipt of the copy note of appeal sent to him under section 233(1) of this Act, the judge who presided at the trial shall furnish the Clerk of Justiciary with a report in writing giving the judge's opinion on the case generally and on the grounds contained in the note of appeal; and the Clerk of Justiciary shall send a copy of the report to the convicted person or his solicitor, to the Crown Agent, and, in a case referred under section 263(1) of this Act, to the Secretary of State.

(2) Where the judge's report is not furnished as mentioned in subsection (1) above, the High Court may call for such report to be furnished within such period as it may specify or, if it thinks fit, hear and determine the appeal without such report.

(3) Subject to subsection (1) above, the report of the judge shall be available only to the High Court and the parties.

236B Computation of periods.

(1) Where the last day of any period mentioned in sections 231(1) and 233(1) of this Act falls on a day which the office of the Clerk of Justiciary is closed, such period shall extend to and include the next day on which such office is open.

(2) Any period mentioned in section 231(1) or 233(1) of this Act may be extended at any time by the High Court in respect of any convicted person ; and application for such extension may be made under this subsection and shall be in as nearly as may be the form prescribed by Act of Adjournal under this Act.

236C Signing of documents.

Any intimation of intention to appeal, note of appeal or application in terms of section 236B(2) of this Act shall be signed by the convicted person or by his counsel or solicitor.”.

9 For section 237 (judge's notes and report to be furnished), there shall be substituted the following section—

“237 Note of Proceedings.

The High Court where hearing an appeal under this Part of this Act may require the judge who presided at the trial to produce any notes taken by him of the proceedings at the trial.”.

10 In section 238 (admission of appellant to bail)—

- (a) in subsection (2), after the words " determine it or " there shall be inserted the words " without prejudice to section 3 of the Bail etc. (Scotland) Act 1980 "; and
- (b) after subsection (2) there shall be inserted the following subsection—

“(3) For the purposes of subsections (1) and (2) above, ' appellant' includes not only a person who has lodged a note of appeal but also one who has lodged an intimation of intention to appeal.”.

11 In section 239(1) (clerk to give notice of date of hearing), for the words from " for leave to appeal or " to " by the court" there shall be substituted the words " under section 236B(2) of this Act ".

12 In section 240 (appellant may be present at hearing), the words " and on an application for leave to appeal" shall cease to have effect.

13 For section 244 (abandonment of appeal), there shall be substituted the following section—

“244 Abandonment of appeal.

- (1) An appellant may abandon his appeal by lodging with the Clerk of Justiciary a notice of abandonment in as nearly as may be the form prescribed by Act of Adjournal under this Act; and on such notice being lodged the appeal shall be deemed to have been dismissed by the court.
- (2) A person who has appealed against both conviction and sentence may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone.”.

14 Iii section 245(3) (quorum and sitting of High Court) the words " from the sheriff court" shall cease to have effect.

15 In section 247 (powers which may be exercised by a single judge)—

- (a) the words " to give leave to appeal", shall cease to have effect;
- (b) for the words " notice of appeal", there shall be substituted the words " intimation of intention to appeal and note of appeal "; and
- (c) the words " or of an application for leave to appeal" shall cease to have effect.

16 For section 252 (supplemental powers of High Court), there shall be substituted the following section—

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“252 Powers of High Court.

Without prejudice to any existing power of the High Court, that court may for the purposes of an appeal under section 228(1) of this Act—

- (a) order the production of any document or other thing connected with the proceedings ;
- (b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose ;
- (c) take account of any circumstances relevant to the case which were not before the trial judge ;
- (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
- (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case.”.

17 Section 253(2) (evidence on commission) shall cease to have effect.

18 For section 254 (determination of appeals) there shall be substituted the following section—

“254 Disposal of appeals.

(1) The High Court may, subject to subsection (4) below, dispose of an appeal against conviction by—

- (a) affirming the verdict of the trial court;
- (b) setting aside the verdict of the trial court and either quashing the conviction or substituting therefor an amended verdict of guilty:

Provided that an amended verdict of guilty must be one which could have been returned on the indictment before the trial court; or

- (c) setting aside the verdict of the trial court and granting authority to bring a new prosecution in accordance with section 255 of this Act.

(2) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the indictment, and—

- (a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside ; or
- (b) in any other case, where the sentence did not so relate,

may pass another (but not more severe) sentence in substitution for the sentence so quashed.

(3) The High Court may, subject to subsection (4) below, dispose of an appeal against sentence by—

- (a) affirming such sentence ; or
- (b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 228(2) of this Act, a different sentence should have been passed, quashing the sentence and passing another sentence whether more or less severe in substitution therefor.

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- (4) In relation to any appeal under section 228(1) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—
- (a) setting aside the verdict of the trial court and substituting therefor a verdict of acquittal on the ground of insanity ; and
 - (b) quashing any sentence imposed on the appellant as respects the indictment and ordering that he be detained in a state hospital or such other hospital as for special reasons the court may specify.
- (5) The provisions of subsection (4) of section 174 of this Act shall apply to an order under subsection (4)(b) above as they apply to an order under that section.”.

19 For section 255 (substitution of verdict) there shall be substituted the following section—

“255 Supplementary provisions where High Court authorises new prosecution.

- (1) Where authority is granted under section 254(1)(c) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts ; and the proceedings out of which the appeal arose shall not be a bar to such new prosecution:

Provided that no sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

- (2) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (3) below), for the commencement of such proceedings has elapsed.
- (3) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted; and for the purposes of this subsection proceedings shall, in a case where such warrant is executed without unreasonable delay, be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, and shall in any other case be deemed to be commenced on the date on which the warrant is executed.
- (4) Where the two months mentioned in subsection (3) above elapse and no new prosecution has been brought under this section, the order under section 254(1)(c) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.”.

20 In section 256 (frivolous appeals) for the word " notice " there shall be substituted the word " note ".

21 In section 257 (failure to appear at hearing), the words " or applicant" and, in both places where they occur, the words " or application for leave to appeal" shall cease to have effect.

22 In section 263(1) (prerogative of mercy)—

- (a) the words " or an application for leave to appeal" shall cease to have effect; and

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- (b) for the words from " either " to the end there shall be substituted the words " refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under this Part of this Act. ".
- 23 In Section 264 (disqualification, forfeiture etc.), in each of subsections (1) and (2) for the words " ten days", " a note of appeal or of application for leave to appeal" and " the determination thereof" there shall be substituted, respectively, the words " two weeks " , " an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal)" and " such appeal, if it is proceeded with, is determined ".
- 24 In section 265 (fines and caution)—
- (a) in subsection (3) the words "either upon grounds of law alone, or with the certificate of the said judge upon any grounds mentioned in section 228(6) of this Act," shall cease to have effect; and
- (b) in subsection (5), for the words from " a note " to " days " there shall be substituted the words " an intimation of intention to appeal within two weeks ".
- 25 In section 269 (extract convictions) for the words " ten days " , " a note of appeal or of application for leave to appeal", and " the determination thereof" there shall be substituted, respectively, the words " two weeks " , " an intimation of intention to appeal (or in the case of an appeal under section 228(1)(6) of this Act a note of appeal)" and " such appeal, if it is proceeded with, is determined ".
- 26 In section 270 (custody of trial documents etc.)—
- (a) in subsection (2)—
- (i) for the words " ten days " , in both places where they occur, there shall be substituted the words " two weeks " ;
- (ii) for the words " actual day on which the conviction took place" there shall be substituted the words " final determination (as construed in accordance with section 231(4) of this Act) of the proceedings " ;
- (iii) for the words " a note of appeal or application for leave to appeal" there shall be substituted the words " an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal) " ;
- (iv) for the words " a note of appeal or of application for leave to appeal has been lodged " there shall be substituted the words " there has been such lodgement " ; and
- (v) for the words " determination thereof " there shall be substituted the words " appeal, if it is proceeded with, is determined " ;
- (b) in subsection (3), for the words " an appellant or applicant who has lodged a note of appeal or of application for leave to appeal" there shall be substituted the words " a person who has lodged an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b) of this Act a note of appeal) " ; and
- (c) in subsection (4)—
- (i) for the words "note of appeal or application for leave to appeal" there shall be substituted the words " intimation of intention to appeal (or, in the case of an appeal under section 228(1)(b) of this Act, note of appeal) " ;

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- (ii) for the words " ten days " there shall be substituted the words " two weeks "; and
 - (iii) at the end there shall be added the words " ; and they shall be so dealt with if, there having been such intimation, the appeal is not proceeded with. ".
- 27 In section 271 (Clerk of Justiciary to furnish forms etc.) for the words " notices of appeal" there shall be substituted the words " intimations of intention to appeal, notes of appeal ".
- 28 In section 272 (note to be kept of appeal) the words " or of application for leave to appeal ", the words " or application for leave to appeal" in the three places where they occur, and the words " or application " in the fourth place where they occur, shall cease to have effect.
- 29 In section 273(1) (register of appeals) for the words " a note of appeal or note of application for leave to " there shall be substituted the words " intimation of intention to appeal or, in the case of an appeal under section 228(1)(b) of this Act, note of ".
- 30 In section 274(1) (shorthand notes of trial) the words " or may be authorised " and " or application for leave to appeal " shall cease to have effect.
- 31 In section 277 (non-compliance with certain provisions)—
- (a) in subsection (1), the words " and applications for leave to appeal", and the words " or application " in both places where they occur, shall cease to have effect;
 - (b) in subsection (2), the words " section 229 ", " section 232 " and " section 233 " shall cease to have effect; and
 - (c) in subsection (2), the words " section 236B " and " section 236C" shall be added at the appropriate places to the provisions mentioned in the subsection.
- 32 In section 280 (appeals against hospital orders etc.) for the words " a conviction " there shall be substituted the word " sentence ".

SCHEDULE 3

Section 10(1).

SUMMARY APPEALS

In the 1975 Act—

- 1 For section 442 (appeal by stated case), there shall be substituted the following sections—

“442 Right of appeal.

- (1) Without prejudice to any right of appeal under section 453A of this Act
 - (a) any person convicted in summary proceedings may appeal under this section to the High Court—
 - (i) against such conviction ;
 - (ii) against the sentence passed on such conviction ; or
 - (iii) against both such conviction and such sentence ;

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- (b) the prosecutor in such proceedings may so appeal on a point of law—
 - (i) against an acquittal in such proceedings ; or
 - (ii) against a sentence passed in such proceedings.
- (2) By an appeal under subsection (1)(a) of this section or, as the case may be, against acquittal under subsection (1)(b) of this section, an appellant may bring under review of the High Court any alleged miscarriage of justice in the proceedings, including, in the case of an appeal under the said subsection (1) (a), any alleged miscarriage of justice on the basis of the existence and significance of additional evidence which was not heard at the trial and which was not available and could not reasonably have been made available at the trial.

442A Method of appeal against conviction or conviction and sentence.

- (1) Where a person desires to appeal under section 442(1)(a)(i) or (iii) or (b) of this Act, he shall pursue such appeal in accordance with the provisions of sections 444 to 453, 453D and 453E of this Act.
- (2) A person who has appealed against both conviction and sentence, may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone, subject to such procedure as may be prescribed by Act of Adjournal under this Act.

442B Method of appeal against sentence alone.

Where a person desires to appeal against sentence alone, under section 442(1)(a)(ii) of this Act, he shall pursue such appeal in accordance with the provisions of sections 453B to 453E of this Act:

Provided that nothing in this section shall prevent a convicted person from proceeding by way of a bill of suspension in respect of any alleged fundamental irregularity relating to the imposition of the sentence.”.

2 In section 443 (appeals against hospital orders etc.), for the words " a conviction" there shall be substituted the word " sentence ".

3 In section 444 (manner and time of appeal)—

- (a) for subsection (1) there shall be substituted the following subsections—

“(1) An appeal under section 442(1)(a)(i) or (iii) or (b) of this Act shall be by application for a stated case, which application shall—

- (a) be made within one week of the final determination of the proceedings ;
- (b) contain a full statement of all the matters which the appellant desires to bring under review and where the appeal is also against sentence, a statement of that fact; and
- (c) be signed by the appellant or his solicitor and lodged with the clerk of court;

and a copy of the application shall within the period mentioned in paragraph (a) above be sent by the appellant to the respondent or the respondent's solicitor.

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- (1A) The clerk of the court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.
- (1B) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 448 of this Act, or within any further period afforded him by virtue of subsection (6) of that section, amend any matter stated in his application or add a new matter ; and he shall intimate any such amendment, or addition, to the respondent or the respondent's solicitor.”; and
- (b) in subsection (5), after the word " under" there shall be inserted the words " subsection (3) of ".
- 4 Section 445 (caution by appellant) shall cease to have effect.
- 5 In section 446 (procedure where appellant in custody), for subsection (1) there shall be substituted the following subsection—
- “(1) If an appellant under section 444 of this Act is in custody, the court may—
- (a) grant bail;
- (b) grant a sist of execution ;
- (c) make any other interim order.”.
- 6 For subsection (1) of section 447 (draft stated case to be prepared), there shall be substituted the following subsection—
- “(1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 444 of this Act—
- (a) where the appeal is taken from the district court and the trial was presided over by a justice of the peace or justices of the peace, the justice, or justices, with such assistance from the clerk of court as may be required ; or
- (b) in any other case the judge who presided at the trial,
- shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.”.
- 7 In section 448 (adjustment and signature of case)—
- (a) for subsections (1) and (2) there shall be substituted the following subsections—
- “(1) Subject to subsection (6) below, within three weeks of the issue of the draft stated case under section 447 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal :
- Provided that adjustments proposed shall relate to evidence heard (or purported to have been heard) at the trial and not to such additional evidence as is mentioned in section 442(2) of this Act.
- (2) Subject to subsection (6) below, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments

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to propose, he shall be deemed to have abandoned his appeal; and subsection (4) of section 446 of this Act shall apply accordingly.

- (2A) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under subsection (6) below, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.
- (2B) Where a party neither attends nor secures that he is represented at a hearing under subsection (2A) above, the hearing shall nevertheless proceed.
- (2C) Where at a hearing under subsection (2A) above—
- (a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge ; or
 - (b) any alteration to the draft case proposed by the judge is not accepted by all the parties,
- that fact shall be recorded in the minute of the proceedings of the hearing.
- (2D) Within two weeks of the date of the hearing under subsection (2A) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in subsection (1) above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—
- (a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that adjustment and the reasons for his rejection of that adjustment and evidence ; and
 - (b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (2A) above.”;
- (b) for subsections (3) to (5) there shall be substituted the following subsections—
- “(3) As soon as the case is signed under subsection (2D) above the clerk of court—
- (a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and
 - (b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.
- (4) Subject to subsection (6) below, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.
- (5) Subject to subsection (6) below, if the appellant or his solicitor fails to comply with subsection (4) above the appellant shall be deemed

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- to have abandoned the appeal; and subsection (4) of section 446 of this Act shall apply accordingly.”;
- (c) in subsection (6), after the word " subsection " there shall be inserted the words " (1) or "; and
- (d) in subsection (8), after the word " under" there shall be inserted the words " subsection (6) of ".
- 8 In section 449 (abandonment of appeal)—
- (a) in subsection (1)—
- (i) for the words " under section 442 ", there shall be substituted the words " in an appeal such as is mentioned in section 444(1) "; and
- (ii) after the word " respondent" there shall be inserted the words " or the respondent's solicitor "; and
- (b) in subsection (2) at the beginning there shall be inserted the words " Subject to section 453A of this Act, ".
- 9 In section 450 (record of procedure on appeal), for the words " being taken under section 442 of this Act" there shall be substituted the words " such as is mentioned in section 444(1) of this Act being taken ".
- 10 For section 451 (computation of time), there shall be substituted the following section—

“451 Computation of time.

- (1) If any period of time specified in any provision of this Part of this Act relating to appeals expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.
- (2) Where a judge against whose judgment an appeal is taken is temporarily absent from duty for any cause, the sheriff principal of the sheriffdom in which the court at which the judgment was pronounced is situated may extend any period specified in sections 447(1) and 448(2A) and (2D) of this Act for such period as he considers reasonable.
- (3) For the purposes of sections 444(1)(a) and 447(1) of this Act, summary proceedings shall be deemed to be finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 442(1)(a)(i) or (b)(i) of this Act sentence is deferred under section 432 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.”.
- 11 For section 452 (hearing of appeal), there shall be substituted the following sections—

“452 Hearing of appeal.

- (1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix.
- (2) For the avoidance of doubt, where an appellant, in his application under section 444(1) of this Act (or in a duly made amendment or addition to that application), refers to an alleged miscarriage of justice, but in stating a case under section 448(2D) of this Act the inferior court is unable to take the

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allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.

- (3) Except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a matter not contained in his application under section 444(1) of this Act (or in a duly made amendment or addition to that application).
- (4) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—
 - (a) order the production of any document or other thing connected with the proceedings ;
 - (b) hear any additional evidence relevant to any alleged miscarriage of justice or order such evidence to be heard by a judge of the High Court or by such other person as it may appoint for that purpose;
 - (c) take account of any circumstances relevant to the case which were not before the trial judge;
 - (d) remit to any fit person to enquire and report in regard to any matter or circumstance affecting the appeal;
 - (e) appoint a person with expert knowledge to act as assessor to the High Court in any case where it appears to the court that such expert knowledge is required for the proper determination of the case;
 - (f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection ;
 - (g) take account of any evidence contained in a note of evidence such as is mentioned in section 448(2D) of this Act.
- (5) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.

452A Disposal of stated case appeal.

- (1) The High Court may, subject to section 453D(1) of this Act, dispose of a stated case by—
 - (a) remitting the cause to the inferior court with their opinion and any direction thereon ;
 - (b) affirming the verdict of the inferior court ;
 - (c) setting aside the verdict of the inferior court and either quashing the conviction or substituting therefor an amended verdict of guilty :

Provided that an amended verdict of guilty must be one which could have been returned on the complaint before the inferior court; or
 - (d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 452B of this Act.
- (2) In an appeal against both conviction and sentence the High Court shall, subject to section 453D(1) of this Act, dispose of the appeal against sentence by exercise of the power mentioned in section 453C(1) of this Act.
- (3) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, and—

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- (a) in a case where it substitutes an amended verdict of guilty, whether or not the sentence related to the verdict set aside ; or
 - (b) in any other case, where the sentence did not so relate,
- may pass another (but not more severe) sentence in substitution for the sentence so quashed.

- (4) Where an appeal against acquittal is sustained, the High Court may—
- (a) convict and sentence the respondent;
 - (b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the inferior court for such purpose; or
 - (c) remit the case to the inferior court with their opinion thereon:

Provided that the High Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

- (5) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.
- (6) Where, following an appeal (other than an appeal under section 442(1)(a) (ii) or 442(1)(b) of this Act), the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have power where at the time of disposal of the appeal the appellant—
- (a) was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment (or detention) specified in the sentence brought under review which remained unexpired at the date of liberation;
 - (b) is serving a term or terms of imprisonment (or detention) imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

452B Supplementary provisions where High Court authorises new prosecution.

- (1) Where authority is granted under section 452A(1)(d) of this Act, a new prosecution may be brought charging the accused with the same or any similar offence arising out of the same facts; and the proceedings out of which the stated case arose shall not be a bar to such prosecution:

Provided that no sentence may be passed on conviction under the new prosecution which could not have been passed on conviction under the earlier proceedings.

- (2) A new prosecution may be brought under this section, notwithstanding that any time limit (other than the time limit mentioned in subsection (3) below) for the commencement of such proceedings has elapsed.

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(3) Proceedings in a prosecution under this section shall be commenced within two months of the date on which authority to bring the prosecution was granted; and for the purposes of this subsection proceedings shall, in a case where such warrant is executed without unreasonable delay, be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, and shall in any other case be deemed to be commenced On the date on which the warrant is executed.

(4) Where the two months mentioned in subsection (3) above elapse and no new prosecution has been brought under this section, the order under section 452A(1)(d") of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.”.

12 In section 453 (consent by prosecutor to set aside conviction)—

- (a) in subsection (1) for the words " section 442" there shall be substituted the words " section 442(1)(a)(i) or (iii) ";
- (b) in subsection (2) after the word " appellant" where it first occurs there shall be inserted the words " or his solicitor ";
- (c) in each of paragraphs (a) and (b) of subsection (5), for the words " 10 days" there shall be substituted the words " 2 weeks ".

13 After section 453 of the 1975 Act there shall be inserted the following sections—

“453A Appeal by bill of suspension or advocacy on ground of miscarriage of justice.

(1) Notwithstanding section 449(2) of this Act, a party to a summary prosecution may, where an appeal under section 442 of this Act would be incompetent or would in the circumstances be inappropriate, appeal to the High Court, by bill of suspension against a conviction, or as the case may be by advocacy against an acquittal, on the ground of an alleged miscarriage of justice in the proceedings:

Provided that where the alleged miscarriage of justice is referred to in an application, under section 444(1) of this Act, for a stated case as regards the proceedings (or in a duly made amendment or addition to that application) an appeal under subsection (1) above shall not proceed without the leave of the High Court until the appeal to which the application relates has been finally disposed of or abandoned.

(2) Sections 452(4)(a) to (a), 452A(1)(d), 452A(3) and 452B of this Act shall apply to appeals under this section as they apply to appeals such as are mentioned in section 444(1) of this Act.

(3) The foregoing provisions of this section shall be without prejudice to any rule of law relating to bills of suspension or advocacy in so far as such rule of law is not inconsistent with those provisions.

453B Appeals against sentence only.

(1) An appeal under section 442(1)(a)(ii) of this Act shall be by note of appeal, which shall state the ground of appeal.

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- (2) The note of appeal shall, within one week of the passing of the sentence, be lodged with the clerk of the court from which the appeal is to be taken.
- (3) The clerk of court on receipt of the note of appeal shall—
 - (a) send a copy of the note to the respondent or his solicitor; and
 - (b) obtain a report from the judge who sentenced the convicted person.
- (4) The clerk of court shall within two weeks of the passing of the sentence against which the appeal is taken—
 - (a) send to the Clerk of Justiciary the note of appeal, together with the report mentioned in subsection (3)(b) above, a certified copy of the complaint, the minute of proceedings and any other relevant documents; and
 - (b) send copies of that report to the appellant and respondent or their solicitors:

Provided that the sheriff principal of the sheriffdom in which the judgment was pronounced may, where a judge is temporarily absent from duty for any cause, extend the period of two weeks specified in this subsection for such period as the sheriff principal considers reasonable.

- (5) Where the judge's report is not furnished within the period mentioned in subsection (4) above, the High Court may extend such period or, if it thinks fit, hear and determine the appeal without such report.
- (6) Subsections (3), (4) and (5) of section 444 of this Act shall apply where an appellant fails to comply with the requirement of subsection (2) above as they apply where an applicant fails to comply with any of the requirements of subsection (1) of that section.
- (7) An appellant under section 442(1)(a)(ii) of this Act may at any time prior to the hearing of the appeal abandon his appeal by minute, signed by himself or his solicitor, lodged—
 - (a) in a case where the note of appeal has not yet been sent under subsection (4)(a) above to the Clerk of Justiciary, with the clerk of court;
 - (b) in any other case, with the Clerk of Justiciary,
and intimated to the respondent.
- (8) Sections 446, 450 and 452(4)(a) to (e) of this Act shall apply to appeals under section 442(1)(a)(ii) of this Act as they apply to appeals under section 442(1)(a)(i) or (iii) of this Act.

453C Disposal of appeal by note of appeal.

- (1) An appeal against sentence by note of appeal shall be heard by the High Court on such date as it may fix, and the High Court may, subject to section 453D(1) of this Act, dispose of such appeal by—
 - (a) affirming the sentence ; or
 - (b) if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 442(2) of this Act, a different sentence should have

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been passed, quashing the sentence and passing another sentence, whether more or less severe, in substitution therefor:

Provided that the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

- (2) The High Court shall have power in an appeal by note of appeal to award such expenses both in the High Court and in the inferior court as it may think fit.
- (3) Where, following an appeal under section 442(1) (a)(ii) of this Act, the appellant remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the High Court shall have power where at the time of disposal of the appeal the appellant—
 - (a) was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment (or detention) specified in the sentence brought under review which remained unexpired at the date of liberation ; or
 - (b) is serving a term or terms of imprisonment (or detention) imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

453D Disposal of appeal where appellant insane.

- (1) In relation to any appeal under section 442(1)(a) of this Act, the High Court shall, where it appears to it that the appellant committed the act charged against him but that he was insane when he did so, dispose of the appeal by—
 - (a) setting aside the verdict of the inferior court and substituting therefor a verdict of acquittal on the ground of insanity ; and
 - (b) quashing any sentence imposed on the appellant as respects the complaint and ordering that he be detained in a state hospital or such other hospital as for special reasons the court may specify.
- (2) The provisions of subsection (4) of section 174 of this Act shall apply to an order under subsection (1)(b) above as they apply to an order under that section.

453E Failure of appellant who has been granted bail to appear personally.

Where an appellant has been granted bail, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court at the diet appointed for the hearing of the appeal. If he does not appear the High Court shall either—

- (a) dispose of the appeal as if it had been abandoned (in which case subsection (4) of section 446 of this Act shall apply accordingly); or
- (b) on cause shown permit the appeal to be heard in his absence.”.

- 14 Section 454(2) (which provides in relation to summary proceedings that no conviction or sentence etc. shall be quashed except on certain specified grounds) shall cease to have effect.

SCHEDULE 4

Section 12.

ABOLITION OF MANDATORY FIRST DIET

In the 1975 Act—

- 1 In section 68(3) (notice of previous convictions)—
- (a) the words " where the accused pleads not guilty at the first diet" shall cease to have effect;
 - (b) for the words " second diet" in each of the three places where they occur, there shall be substituted the words " trial diet "; and
 - (c) for the words " the first diet", in the second place where they occur, there shall be substituted the words " any diet ".
- 2 In section 69 (warrants for citation) for the words " second diet " there shall be substituted the words " trial diet ".
- 3 In section 74 (proceedings against bodies corporate)—
- (a) subsection (3) shall cease to have effect; and
 - (b) in subsection (4), for the words " second diet" there shall be substituted the words " trial diet ".
- 4 For section 75 there shall be substituted the following section—

“75 Notice of trial diet.

Except where the indictment is served under section 102(1) of this Act, the notice served on the accused with the indictment shall call upon him to appear and answer to such indictment at a trial diet (either in the High Court or in the sheriff court) not less than 29 clear days after the service of such indictment and notice.”.

- 5 For section 76 (notice for first diet) there shall be substituted the following sections—

“76 Preliminary diet.

- (1) Subject to section 20B(2) of this Act and to subsections (4) and (5) below, where a party within the appropriate period gives written notice to the court before which the trial is to take place and to the other parties—
- (a) that he intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act, the court shall order that there be a diet before the trial diet;
 - (b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials or to make an application under section 151(2) of this Act, the court may make such order as is mentioned in paragraph (a) above;

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- (c) that there is some point, as regards any matter not mentioned in paragraph (a) or (b) above, which could in his opinion be resolved with advantage before the trial and that he therefore applies for a diet to be held before the trial diet, the court may make such order as is mentioned in paragraph (a) above.

A party giving notice under this subsection shall specify in the notice the matter (or, as the case may be, the grounds of submission or the point) to which the notice relates.

- (2) A diet ordered under subsection (1) above is in this Act referred to as a "preliminary diet".
- (3) The fact that a preliminary diet has been ordered on a particular notice under subsection (1) above shall not preclude the court's consideration at that diet of any other such notice as is mentioned in that subsection, which has been intimated to the court and to the other parties at least 24 hours before that diet.
- (4) Subject to subsection (5) below, the court may on ordering a preliminary diet postpone the trial diet for a period not exceeding 21 days; and any such postponement (including postponement for a period which by virtue of the said subsection (5) exceeds 21 days) shall not count towards any time limit applying in respect of the case.
- (5) Any period mentioned in subsection (4) above may be extended by the High Court in respect of the case.
- (6) Where a preliminary diet is ordered the accused (or all the accused as the case may be) shall attend it; and he (or they as the case may be) shall be required at the conclusion thereof to state how he pleads (or they plead) to the indictment:

Provided that if the court so permits the diet may proceed notwithstanding the absence of an accused.

- (7) In subsection (1) above, "appropriate period" means as regards notice—
- (a) under paragraph (a) of that subsection, the period of 15 clear days after service of the indictment;
 - (b) under paragraph (b) of that subsection, the period from service of the indictment to 10 clear days before the trial diet; and
 - (c) under paragraph (c) of that subsection, the period from service of the indictment to the trial diet.

76A Appeal in connection with preliminary diet.

- (1) Without prejudice to any right of appeal under section 228 or 280A of this Act, a party may, with the leave of the court of first instance (granted either on the motion of that party or *ex proprio motu*) and in accordance with such procedure as may be prescribed by Act of Adjournal under this Act, appeal to the High Court against a decision at a preliminary diet; but any such appeal must be taken not later than 2 days after such decision.
- (2) Where an appeal is taken under subsection (1) above, the High Court may postpone the trial diet for such period as appears to them to be appropriate

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and may, if they think fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.

- (3) In disposing of an appeal under subsection (1) above the High Court may affirm the decision of the court of first instance or may remit the case to it with such directions in the matter as they think fit; and where the court of first instance has dismissed the indictment or any part of it, may reverse that decision and direct that the court of first instance fix a trial diet (if it has not already fixed one as regards so much of the indictment as it has not dismissed).”.

6 For section 77 (alteration of diet) there shall be substituted the following section—

“77 Alteration of trial diet.

Where an indictment is not brought to trial at the trial diet and a warrant for a subsequent sitting of the court, on a day within—

- (a) in the case of the High Court, two months; or
- (b) in the case of the sheriff court, one month,

after the date of the aforesaid trial diet has been issued under section 69 of this Act by the clerk of court it shall be lawful for the court to adjourn the trial diet to the subsequent sitting; and the warrant shall have effect as if the trial diet had originally been fixed for the date of the subsequent sitting.”.

7 After section 77, there shall be inserted the following section—

“77A Application for postponement of trial diet.

- (1) At any time before the trial diet, a party may apply to the court before which the trial is to take place for postponement of the trial diet.
- (2) Subject to subsection (3) below, after hearing all the parties, the court may discharge the trial diet and either fix a new trial diet or give leave to the prosecutor to serve a notice fixing a new trial diet.
- (3) Where all the parties join in an application to postpone the trial diet, the court may proceed under subsection (2) above without hearing the parties.
- (4) Where there is a hearing under this section the accused (or all the accused as the case may be) shall attend it:

Provided that if the court so permits the hearing may proceed notwithstanding his (or their) absence.”.

8 For section 78 there shall be substituted the following section—

“78 Record copy of indictment and list of witnesses.

- (1) Except in a case to which section 102 of this Act applies, the record copy of the indictment shall on or before the date of service of the indictment be lodged with the clerk of the court before which the trial is to take place ; and a copy of the list of witnesses and a copy of the list of productions shall be lodged with him not less than 10 clear days before the trial diet.

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(2) The list of productions shall include the record, made under section 20B of this Act (with any rectification, authorised under subsection (4) of that section, incorporated), of proceedings at the examination of the accused.”.

9 For section 80 there shall be substituted the following section—

“80 Objection to witness.

(1) Any objection in respect of misnomer or misdescription of—

- (a) any person named in the indictment; or
- (b) any witness in the list of witnesses,

shall be intimated in writing to the court before which the trial is to take place, to the prosecutor and to any other accused not less than 10 clear days before the trial diet; and, except on cause shown, no such objection shall be admitted at the trial diet unless so intimated.

(2) Where such intimation has been given or cause is shown and the court is satisfied that the accused making the objection has not been supplied with sufficient information to enable him to identify the person named in the indictment or to find such witness in sufficient time to precognose him before the trial, the court may grant such remedy by postponement, adjournment or otherwise as appears to it to be appropriate.”.

10 In section 82(2) and (3) (written notice of witnesses and productions) for the words " second diet" in each of the four places where they occur there shall be substituted the words " trial diet " .

11 In section 83 (accused to see productions) for the words " second diet", in both places where they occur, there shall be substituted the words " trial diet " .

12 In section 84 (proof as to productions) for the words " second diet", in each of the four places where they occur, there shall be substituted the words " trial diet " .

13 In section 96 (notice of jury list) for the words from " Clerk of Justiciary " to " sheriff court " .there shall be substituted the words " clerk of the court before which the trial is to take place," and for the words " second diet" where they occur for the fourth time, there shall be substituted the words " trial diet " .

14 For section 103, there shall be substituted the following section—

“103 Pleas of guilty.

(1) Where at any diet the accused tenders a plea of guilty to the indictment or any part thereof he shall be required to sign a written copy of the plea (if he is able to do so); and the judge shall countersign such copy.

(2) Where the plea is to part only of the charge and the prosecutor does not accept such plea, such non-acceptance shall be recorded.

(3) Where a person charged on indictment with any offence tenders a plea of guilty to any other offence of which he could competently be found guilty on the trial of such indictment, and that plea is accepted by the prosecutor, it shall be competent to convict such person of the offence to which he has so pled guilty and to sentence him accordingly.

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(4) Nothing in subsection (1) above shall require a plea by or on behalf of a company to be signed.”.

15 For section 104 there shall be substituted the following section—

“104 Remit to High Court for sentence.

(1) Where at any diet in proceedings on indictment in the sheriff court, sentence falls to be imposed but the sheriff holds that any competent sentence which he can impose is inadequate so that the question of sentence is appropriate for the High Court, he shall—

- (a) endorse upon the record copy of the indictment a certificate of the plea or the verdict (as the case may be);
- (b) by interlocutor written on such record copy remit the convicted person to the High Court for sentence ; and
- (c) append to such interlocutor a note of his reasons for such remit;

and such remit shall be sufficient warrant to bring the accused before the High Court for sentence and shall remain in force until the convicted person is sentenced.

(2) When the Clerk of Justiciary receives the record copy of the indictment he shall send a copy of the note of reasons to the convicted person or his solicitor and to the Crown Agent,

(3) Subject to subsection (2) above, the note of reasons shall be available only to the High Court and the parties.”.

16 Section 105 (High Court case) shall cease to have effect.

17 Section 106 (pleas of guilty) shall cease to have effect.

18 Section 107 (solicitor of place of second diet may defend at both diets) shall cease to have effect.

19 Section 108 (certain objections competent only at first diet) shall be amended as follows—

- (a) for the words " unless the same be stated to the sheriff at the first diet before the accused is called upon to plead " there shall be substituted the words " except by leave of the court on cause shown, unless his intention to raise the objection is stated in a notice under section 76(1)(a) of this Act ";
- (b) the words of section 108 as amended by sub-paragraph (a) of this paragraph shall be subsection (1) of that section and after that subsection there shall be inserted the following subsection—

“(2) Except by leave of the court on cause shown—

- (a) no matter relating to the competency or relevancy of the indictment shall be raised;
- (b) no plea in bar of trial shall be submitted; and
- (c) no application for separation or conjunction of charges or trials shall be submitted,

unless the intention to do so has been stated in a notice under section 76(1) of this Act.”.

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- 20 In section 110 (where sentence delayed, original warrant of commitment stands) for the words "the first" there shall be substituted the word " any ".
- 21 In section 115 (sittings dispensed with) for the words "sheriff at the first", there shall be substituted the word " trial ".
- 22 In section 116 (adjournment of second diet)—
- (a) for the words " the second "—
 - (i) where they occur for the first time there shall be substituted the words " the trial "; and
 - (ii) where they occur for the second time there shall be substituted the words " any further "; and
 - (b) for the words " at the first diet" there shall be substituted the words " before that diet ".
- 23 In section 117 (sitting transferred where few cases) for the words " at the first" there shall be substituted the words " before the trial " ; and for the words " the second diets " there shall be substituted the words " any further diets in ".
- 24 Section 120 (notification after first diet of intention to plead guilty) shall cease to have effect.
- 25 Section 121 (second diet—transcript of procedure at first diet) shall cease to have effect.
- 26 Section 122 (review at second diet in High Court) shall cease to have effect.
- 27 In section 127(1) (procedure where trial does not take place)—
- (a) for the words " second diet" in each of the three places where they occur there shall be substituted the words " trial diet "; and
 - (b) for the words " of the causes set forth in section 122 of this Act," there shall be substituted the word " cause ; ".

SCHEDULE 5

Section 45(2).

YOUNG OFFENDERS

In the Criminal Justice (Scotland) Act 1963—

- 1 In section 10(3), at the end, there shall be added the following proviso—
- “Provided that section 12 of this Act and section 212, or as the case may be 421, of the Criminal Procedure (Scotland) Act 1975 shall continue to apply to a person so transferred to prison.”.
- 2 For section 12 there shall be substituted the following section—

“12 Supervision of person released from young offenders institution.

- (1) This section applies in relation to persons sentenced under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975.
- (2) Subject to sections 212 and 421 of the said Act of 1975 (which relate to recall of young offenders on re-conviction) and to subsections (4) to (6) and (9) below, a person in relation to whom this section applies may where he has

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been sentenced to a period of (or, as the case may be, periods totalling) 6 months or more be required, by notice of the Secretary of State given to the person on his release from that detention, both to be under the supervision of such officer as may be specified in the notice and to comply, while under the supervision, with such conditions as may be so specified ; and the supervision shall continue—

- (a) in a case where such release is on licence under section 60(1) or section 61 of the Criminal Justice Act 1967, until the expiry of the period of 12 months from the date of such release or until the expiry of the licence, whichever is the later;
 - (b) in any other case—
 - (i) where the term was less than 18 months, until the expiry of the period of 6 months from the date of such release; or
 - (ii) where the term was 18 months or more, until the expiry of the period of 12 months from the date of such release.
- (3) In a case such as is mentioned in paragraph (a) of subsection (2) above, the requirement and conditions specified by the Secretary of State under that subsection shall be in addition to any conditions specified in the licence mentioned in that paragraph.
- (4) Without prejudice to subsection (7) below, a period of supervision required under subsection (2) above shall not extend beyond the date on which the person under supervision attains the age of 23 years.
- (5) The Secretary of State may by order extend the provisions of subsection (2) above to persons in relation to whom this section applies whose detention is for less than 6 but not less than 3 months.
- (6) The Secretary of State may, on giving notice to the person concerned, at any time modify or cancel a requirement, or condition, which is specified under subsection (2) above.
- (7) Subject to subsections (8) and (9) below where, before the expiration of the period for which a person is required under this section to be under supervision, the Secretary of State is satisfied that the person has failed to conform to the requirement or has failed to comply with a condition for the time being specified in the notice given to him under subsection (2) above, he may (except in a case such as is mentioned in paragraph (a) of subsection (2) above) recall the person to a young offenders institution ; and thereupon the person shall be liable to be detained in that institution for a period not exceeding 3 months, and if at large shall be deemed to be unlawfully at large.
- (8) A recall under subsection (7) above shall cease to have effect at the expiration of the first period mentioned in that subsection unless the person to whom it relates is then in custody thereunder.
- (9) The Secretary of State may at any time release a person who is, by virtue of subsection (7) above, detained ; and the provisions of this section shall apply to that person as if, following the release mentioned in subsection (2) above, neither the recall under the said subsection (7) nor the subsequent release under this subsection had taken place, except that the period of detention between the recall and the subsequent release shall be deducted from the

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period for which the person would otherwise be liable to be detained were he again to be recalled.”.

- 3 In section 51(5) (interpretation) for the words from " section 1 " to " of age)" there shall be substituted the words " section 205, 206, 207 or 415 of the Criminal Procedure (Scotland) Act 1975 (restrictions on imprisonment of children etc.) ".

SCHEDULE 6

Section 83(1).

TRANSITIONAL PROVISIONS

- 1 A provision contained in any of sections 6, 12 to 17, 26, 28 29, 31, 36, 40 to 42 and 46(1)(b) of, and Schedules I and 4 to, this Act and any related amendment or repeal provided for in Schedule 7 or 8 to this Act, shall not apply in relation to proceedings which have been instituted before the coming into force of that provision; and, for the purposes of this paragraph, proceedings shall be taken to have been instituted on the day on which the petition or complaint is served on the accused.
- 2 A provision contained in any of sections 18(2), 19, 21, 22, 27, 30 and 39 of this Act, and any such related amendment or repeal, shall not apply in relation to a trial which has commenced before the coming into force of that provision ; and, for the purposes of this paragraph, a trial shall be taken to commence—
- (a) in the case of solemn proceedings, when the oath is administered to the jury ;
 - (b) in the case of summary proceedings, when the first witness is sworn.
- 3 A provision contained in any of sections 47, 48, 50 and 52 of this Act, and any such related amendment or repeal, shall not apply in relation to the enforcement of any fine or caution imposed before the coming into force of that provision.
- 4 A provision contained in any of sections 46(1)(a), (c) and (d), 56(1) and 57 of this Act shall not affect the punishment for an offence committed before the coming into force of that provision.
- 5 A person serving a sentence of borstal training on the date when section 45 of this Act comes into force, shall be liable to be detained in a young offenders institution, but in every other respect shall be liable to be dealt with as if the said section had not come into force.
- 6 Sections 33, 35 and 37 of, and Schedule 2 to, this Act shall not apply in relation to an appeal against, or review of, an order made on the final determination of a solemn prosecution before the coming into force of those sections and that Schedule.
- 7 Section 34 of, and Schedule 3 to, this Act shall not apply in relation to an appeal against an order made on the final determination of a summary prosecution before the coming into force of that section and Schedule.
- 8 A provision contained in paragraph 24 of Schedule 7 to this Act shall not affect the operation of the Rehabilitation of Offenders Act 1974 as regards any disposal which predates the coming into force of that provision.
- 9 In the application of section 66 of this Act to proceedings instituted before the coming into force of the Magistrates' Courts Act 1980, for the reference to section 91 of that Act in subsection (1) of the said section 66 there shall be substituted a reference to section 72B of the Magistrates' Courts Act 1952.

- 10 In the application of section 38A of the Criminal Law Act 1977 to the execution of extract convictions and warrants before the coming into force of the Magistrates' Courts Act 1980, for the reference to section 150(3) of the said Act of 1980 in the said section 38A there shall be substituted a reference to section 102(4) of the Magistrates' Courts Act 1952.

SCHEDULE 7

Section 83(2).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Prisons (Scotland) Act 1952 (c.61)

- 1 In section 14 (legalised police cells), after subsection (7), there shall be added the following subsection—
- “(8) For the purposes of sections 7 and 35 of this Act, legalised police cells shall be deemed to be prisons.”.
- 2 In section 28(2) (discontinuance of prison) for the words " young offenders institution or Borstal institution " there shall be substituted the words " or young offenders institution ".
- 3 In section 31 (remand centres, etc.)—
- (a) in subsection (1)—
- (i) in paragraph (b) for the words from " not less " to " 1949" there shall be substituted the words " upon whom detention therein has been imposed under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975 ";
- (ii) paragraph (c) shall cease to have effect; and
- (iii) in paragraph (d) for the words " the Criminal Justice (Scotland) Act 1963 " there shall be substituted the words " section 207 or 415 of the Criminal Procedure (Scotland) Act 1975 ";
- (b) in subsection (3) ,for the words " young offenders institution and Borstal institution " there shall be substituted the words " and young offenders institution ";
- (c) in subsection (4), for the words " young offenders institutions and Borstal institutions " there shall be substituted the words " and young offenders institutions " and for the words " young offenders institutions or Borstal institutions " there shall be substituted the words " or young offenders institutions ".
- 4 In section 34 (temporary detention) for the words " Borstal institution or a young offenders institution " there shall be substituted the words " young offenders institution or a detention centre ".
- 5 In section 35 (rules for the management of prisons and other institutions)—
- (a) in subsection (1), for the words " young offenders institutions and Borstal institutions " there shall be substituted the words " and young offenders institutions ";
- (b) in subsection (5)(c), for the words " Criminal Appeal (Scotland) Act 1926" there shall be substituted the words " Criminal Procedure (Scotland) Act 1975 ";

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- (c) in subsection (6), for the words ", corrective training, preventive detention, detention in a young offenders institution or Borstal training" there shall be substituted the words " or detention ".

6 In section 37 (persons unlawfully at large)—

- (a) in subsection (1), for the words from " corrective training " to " detained in a " there shall be substituted the words " or to detention in a young offenders institution or ";
- (b) in subsection (2)—
 - (i) for the words from " corrective training " to " detained in a " there shall be substituted the words " or to detention in a young offenders institution or ";
 - (ii) the words " Borstal institution", in both places where they occur, shall cease to have effect; and
- (c) after subsection (2) there shall be inserted the following subsection—

“(2A) Without prejudice to section 69(2) of the Criminal Justice Act 1967, in subsection (2) above references to a prison shall be construed as including references to a place which is the subject of a direction of the Secretary of State under section 206(1) of the Criminal Procedure (Scotland) Act 1975.”.

The Criminal Justice Act 1961 (c. 39)

7 In section 26 (transfer to serve sentence)—

- (a) in subsection (5)—
 - (i) for the words "any part of the United Kingdom other than Northern Ireland " there shall be substituted the words " England and Wales ";
 - (ii) for the words " that part of the United Kingdom " there shall be substituted the words " England and Wales ";
 - (iii) the proviso shall cease to have effect;
- (b) after subsection (5A) there shall be inserted the following subsection—

“(5B) Where a person sentenced to borstal training is transferred under this section to Scotland the provisions applicable to him shall be those applicable to a person sentenced in Scotland to detention in a young offenders institution:

Provided that—

 - (a) the maximum and minimum periods for which he may be detained in a young offenders institution shall be those prescribed by section 45(2) of the Prison Act 1952 as amended by section 11 of this Act;
 - (b) at any time after the expiry of such minimum period he may be released on the direction of the Secretary of State ; and
 - (c) the period after his release (whether on a direction under paragraph (b) above or on the expiry of such maximum period) during which he remains under supervision and liable to be recalled shall be that which would have applied

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under the law of the place where he was sentenced if he had been released there.”.

- 8 In section 29(1) (removal for judicial purposes) after the words " young offenders centre " there shall be inserted the words " , young offenders institution ".
- 9 In section 30(3) (prisoners unlawfully at large) after the words " young offenders centre " there shall be inserted the words " young offenders institution ".
- 10 In section 32(2) (extension throughout the United Kingdom of certain enactments relating to supervision and recall)—
- (a) paragraph (b) shall cease to have effect;
 - (b) in paragraph (f), the word "11" shall cease to have effect; and
 - (c) in paragraph (i) for the words " 214" there shall be substituted the words " 212, 214, 421 ".
- 11 In section 38 (construction of references to sentence of imprisonment)—
- (a) in subsection (3)(a)—
 - (i) the words " corrective training, preventive detention," shall cease to have effect;
 - (ii) at the end there shall be added the words " or young offenders institution "; and
 - (b) in subsection (5)(a), the words " in a young offenders institution " shall cease to have effect.
- 12 In section 39(1) (interpretation)—
- (a) in paragraph (a) of the definition of " appropriate institution", for the words "any part of the United Kingdom other than Northern Ireland " there shall be substituted the words " England and Wales ";
 - (b) in paragraph (b) of that definition, the words " England and Wales or" shall cease to have effect; and
 - (c) in paragraph (bb) of that definition, for the words " sentenced to imprisonment when under twenty-one years of age " there shall be substituted the words " under twenty-one years of age who is serving a sentence of—
 - (i) imprisonment;
 - (ii) borstal training ; or
 - (iii) detention in a young offenders centre in Northern Ireland, and ".

The Criminal Justice (Scotland) Act 1963 (c. 39)

- 13 In section 9(4)(a) (transfer between institutions), after the words " 1957 " there shall be inserted the words " the Armed Forces Act 1976 ".
- 14 In section 50(2) (general provision as to orders), for the words " 12(2) " there shall be substituted the words " 12(5) ".
- 15 In section 51 (interpretation)—
- (a) in subsection (2), for the words " or the Air Force Act 1955 " there shall be substituted the words " the Air Force Act 1955 or the Armed Forces Act 1976 "; and
 - (b) in subsection (3), for the words " in a young offenders institution " there shall be substituted the words " under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975 ".

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The Legal Aid (Scotland) Act 1967 (c.43)

- 16 In section 1 (scope and general conditions of legal aid), at the end of subsection (7) there shall be added the following proviso—

“: Provided that nothing in this section shall preclude a person from being given legal aid in connection with summary proceedings after conviction and before sentence where the court is considering a sentence of imprisonment or detention or the imposition of imprisonment, or detention, under section 396(2) of the Criminal Procedure (Scotland) Act 1975 in respect of failure to pay a fine, and he has not previously been sentenced to imprisonment, or detention as defined in section 41(2)(b) of the Criminal Justice (Scotland) Act 1980.”.

The Criminal Justice Act 1967 (c.80)

- 17 In section 60(8X6) (release on licence), for the words "in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952 " there shall be substituted the words " under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975 ".

- 18 In section 61 (release on licence of persons sentenced to imprisonment for life etc.), in subsection (4) for paragraphs (a) and (b) there shall be substituted the following paragraphs—

- “(a) in subsection (1) for the words from ' section' to the end there shall be substituted the words ' section 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975 (persons under 21 convicted of murder): but shall not release on licence such a person except after consultation with the Lord Justice General together with the trial judge if available.';
- (b) subsection (3) shall be omitted.”.

- 19 In section 62 (revocation of licences, etc.)—

- (a) in subsection (11), for the words "206" there shall be substituted the words " 205(2) "; and
- (b) after subsection (11) there shall be added the following subsection—

“(12) This section shall have effect, in its application to a person sentenced to be detained under section 205(3), 207 or 415 of the said Act of 1975 (detention of young offenders) as if for any reference to a prison there were substituted a reference to a young offenders institution.”.

- 20 In section 64(2)(a) (conditions in licences of persons transferred from another part of the United Kingdom, the Channel Islands or the Isle of Man), for the words " section 60 " there shall be substituted the words " sections 60 and 61 ".

The Social Work (Scotland) Act 1968 (c.49)

- 21 In section 42 (conduct of children's hearing and application to Sheriff for findings), after subsection (2) there shall be inserted the following subsection—

“(2A) Where the ground for referral is that the child is in need of compulsory measures of care because he has committed an offence, the sheriff to whom an application under subsection (2)(c) above shall be made shall be the

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sheriff who would have jurisdiction if the child were being prosecuted for that offence.”.

The Road Traffic Act 1972 (c.20)

- 22 In section 10(4) (evidence by certificate)—
- (a) after the word " Scotland " there shall be inserted " —(a) " ; and
 - (b) at the end there shall be inserted the following paragraph—
 - “(b) A written execution purporting to be signed by the person who served a copy of the certificate or of the notice in terms of subsection (3) above, together with, where appropriate, a post office receipt for the relative registered or recorded delivery letter shall be sufficient evidence of service of such a copy.”.
- 23 In section 94(3), for the word " conviction " there shall be substituted the word " sentence ".

The Rehabilitation of Offenders Act 1974 (c. 53)

- 24 In section 5 (rehabilitation periods for particular sentences)—
- (a) in subsection (1)(d)—
 - (i) after the word " life ", there shall be inserted the words " or under section 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975, " ; and
 - (ii) for the words " or under section 57 of the Children and Young Persons (Scotland) Act 1937 (young offenders convicted of grave crimes)" there shall be substituted the words " (young offenders convicted of grave crimes) or under section 206 of the said Act of 1975 (detention of children convicted on indictment) " ;
 - (b) in subsection (2), in Table B, in the first column—
 - (i) for the words " 57 of the said Act of 1937 " there shall be substituted the words " 206 of the Criminal Procedure (Scotland) Act 1975 " ; and
 - (ii) the words " or under section 7 of the Criminal Justice (Scotland) Act 1963 " shall cease to have effect;
 - (c) in subsection (5) for paragraph (c) there shall be substituted the following paragraph—
 - “(c) an order under section 413 of the Criminal Procedure (Scotland) Act 1975 committing a child for the purpose of his undergoing residential training ;” ; and
 - (d) in subsection (9)—
 - (i) in paragraph (a), for the words "in a young offenders institution in Scotland " there shall be substituted the words " under section 207 or 415 of the Criminal Procedure (Scotland) Act 1975 " ; and
 - (ii) in paragraph (b) for the words " section 57 of the said Act of 1937 " there shall be substituted the words " section 206 of the said Act of 1975 " .

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The Criminal Procedure (Scotland) Act 1975 (c.21)

25 In section 19(1) (prisoners before examination to have access to solicitor), the existing words after " arrest" shall be paragraph (a) of the subsection and after that paragraph there shall be inserted the following paragraph—

“(b) to be told what rights there are under paragraph (a) above and subsections (2) and (3) below.”.

26 At the end of section 28 (admission or refusal of bail after committal), there shall be added the following subsection—

“(3) For the avoidance of doubt, the provisions of section 26 of this Act and the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.”.

27 In section 71 (manner of service of indictment, etc.), for the words from " macer " to the end there shall be substituted the words " officer of law " .

28 In section 81 (examination by prosecutor of witnesses not included in lists lodged), at the beginning there shall be inserted the words " Without prejudice to section 82A of this Act, " .

29 In section 98 (jurors to be cited by registered letter or recorded delivery), after the word " delivery " there shall be inserted the words " or to be served on him by an officer of law " .

30 In section 100(2) (rules of court in relation to jurors) for the words from " The rules of court" to " to this Act." there shall be substituted the words " The provisions of Schedule 3 to this Act shall have effect as if they were rules of court made under this subsection. " .

31 After section 111 there shall be inserted the following section—

“111A Computation of period.

Where the last day of any period mentioned in section 75, 76, 76A or 80 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.”.

32 In the proviso to section 113(4) (judges in High Court), after the word "importance" there shall be inserted the words " in Edinburgh or on circuit " and after the word " preside " there shall be inserted the words " for the whole or any part of the trial. " .

33 In section 141(1) (accused and spouse competent witnesses for defence), for the words " competent witnesses" there shall be substituted the words " a competent witness " .

34 In section 168 (power of court, in respect of certain offences against a child, to refer child to reporter), for the words from " committed " to " reporter " there shall be substituted the words—

“committed any offence—

(a) under section 21 of the Children and Young Persons (Scotland) Act 1937 ;

(b) mentioned in Schedule 1 to this Act; or

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- (c) in respect of a female person aged 17 years or over which constitutes the crime of incest,

may refer—

- (i) the child in respect of whom the offence mentioned in paragraph (a) or (b) above has been committed ; or
(ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above,

to the reporter”.

- 35 In section 173(3) (reference and remit of children's cases by courts to children's hearings), for the words " shall request" there shall be substituted the words—

“dealing with the case if it is—

- (a) the High Court, may ; and
(b) the sheriff court, shall,

request”.

- 36 In section 179 (power of court, in solemn proceedings, to adjourn a case before sentence)—

- (a) in subsection (1) there shall be inserted before the proviso the words " or ordain him to appear at the adjourned diet "; and
(b) in subsection (2), for paragraph (a) there shall be substituted the following paragraph—

“(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet;”.

- 37 In section 193A (fines on conviction on indictment to be without limit), after the word " summarily " there shall be inserted the words—

“other than by virtue of section 8 of the Criminal Justice (Scotland) Act 1980”.

- 38 In section 212 (recall to young offenders institution on reconviction), in subsection (1)—

- (i) for the words " young offenders institution " there shall be substituted the words " under section 207 of this Act "; and
(ii) for the words from " instead" to the end there shall be substituted the words " , except where the person convicted is subject to a licence granted under section 60 (1) or section 61 of the Criminal Justice Act 1967, make an order for his recall. ".

- 39 For section 215 (legal custody) there shall be substituted the following section—

“215 Legal custody.

Any person required or authorised by or under this Act or Part I of the Criminal Justice (Scotland) Act 1980 to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.”.

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- 40 In section 218 (consideration of time spent in custody), the words "in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952" shall cease to have effect.
- 41 In section 241 (notice to authorities, etc. of date of hearing), for the words "Prison Commissioners for Scotland" in both places where they occur there shall be substituted the words "Secretary of State".
- 42 In section 242 (notice to Prison Commissioners of attendance of appellant at hearing), for the words "Prison Commissioners for Scotland" and "said Commissioners" there shall in each case be substituted the words "Secretary of State".
- 43 In section 243 (warders to attend court), for the words "Prison Commissioners for Scotland" there shall be substituted the words "Secretary of State" and for the word "warders" there shall be substituted the words "prison officers".
- 44 In section 251(5) (appeal against refusal of application), for the words "Prison Commissioners for Scotland" there shall be substituted the words "Secretary of State".
- 45 In section 261 (notice of determination of appeal), for the words "Prison Commissioners for Scotland" there shall be substituted the words "Secretary of State".
- 46 In section 268(4) (reckoning of time spent pending appeal) for the words "Borstal institution" there shall be substituted the words "young offenders institution".
- 47 In section 282 (Acts of Adjournal), the existing words shall be subsection (1) and at the end of that subsection there shall be added the following subsection—
- “(2) The High Court may by Act of Adjournal modify, amend or repeal any enactment, including an enactment contained in this Part of this Act, in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.”.
- 48 In section 283(1) (application of Part II of this Act)—
- (a) in paragraph (b) for the word "statute" there shall be substituted the words "enactment or rule of law"; and
 - (b) at the end of that paragraph there shall be inserted the words "as well as, in accordance with section 196(1) of this Act, to the enforcement of a fine imposed in solemn proceedings".
- 49 In section 283A(1) (offences which are to become triable only summarily), at the beginning there shall be inserted the words—
- “Subject to section 8 of the Criminal Justice (Scotland) Act 1980, but otherwise”.
- 50 In section 289D (power to alter sums specified in certain provisions)—
- (a) in subsection (2), after the word "(3)" there shall be inserted the words "or (3A)"; and
 - (b) after subsection (3) there shall be inserted the following subsection—
- “(3A) This subsection applies to a sum mentioned in—
- (a) section 186(2)(a) of this Act in relation to the penalty for a breach of a probation order;

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- (b) section 284(b) of this Act in relation to the power of the district court to impose a fine on conviction of a common law offence ;
- (c) section 284(c) of this Act in relation to the power of the district court to ordain the accused to find caution on conviction of a common law offence ;
- (d) section 285(b)(iii) of this Act in relation to the jurisdiction of the district court to try certain common law offences ;
- (e) section 312(z) of this Act in relation to stating the value of property in a charge ;
- (f) section 344(1) of this Act in relation to the penalty for certain contempts of court;
- (g) section 387(2)(a) of this Act in relation to the penalty for breach of a probation order;
- (h) section 407(1A) of this Act in relation to imprisonment for non-payment of a fine or for failure to find caution ;
- (i) section 435(e) of this Act in relation to the award of expenses against an accused ;
- (j) section 453(3) of this Act in relation to the award of expenses to an appellant;
- (k) section 7(1) of the Criminal Justice (Scotland) Act 1980 in relation to the jurisdiction of the district court to try certain statutory offences ;
- (l) section 9(2) of the said Act of 1980 in relation to the penalty for failure to attend for precognition on oath;
- (m) section 9(3) of the said Act of 1980 in relation to the penalty for refusal to give evidence, or for prevarication, during precognition on oath; or
- (n) section 59(3)(b) of the said Act of 1980 in relation to the power of the district court to make a compensation order.”.

51 At the end of section 298 (all offences to be bailable), there shall be added the following subsection—

“(3) For the avoidance of doubt, the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.”.

52 In section 305 (intimation to solicitor)—

(a) for the word " apprehended " and for the word " apprehension " there shall be substituted respectively the word " arrested " and the words " such arrest " ;

(b) the existing words after " entitled " shall be paragraph (a) of the section ; and

(c) after that paragraph there shall be inserted the following paragraph—

“(b) to be told what his rights under paragraph (a) above are.”.

53 In section 310 (incidental applications), after the words "prior to" there shall be inserted the words " or after " ; and the word " subsequent " where it first occurs shall cease to have effect.

54 In section 334 (procedure at first diet, etc.)—

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- (a) in subsection (1) for the words from " objections " where it first occurs to " stated " there shall be substituted the words " an objection to the competency or relevancy of the complaint or the proceedings or issue a denial that he is the person charged by the police with the offence ; and no such objection or denial shall be allowed to be stated or issued ";
- (b) for subsection (2) there shall be substituted the following subsection—

“(2) In the absence of the accused, an objection to the competency or relevancy of a summary complaint or the proceedings thereon may be stated, or a denial that the accused is the person charged by the police with the offence may be issued, by counsel or by a solicitor on his behalf; and where such an objection is stated or denial is issued, the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objection or issued the denial.”.

55 In section 344(4)(a) (failure of witness to attend for precognition) for the words " 24" there shall be substituted the words " 48 ".

56 In section 346(1) (accused and spouse competent witnesses for defence), for the words " competent witnesses " there shall be substituted the words " a competent witness ".

57 In section 364 (power of court, in respect of certain offences against a child, to refer child to reporter), for the words from " committed " to " reporter " there shall be substituted the words—

“committed any offence—

- (a) under section 21 of the Children and Young Persons (Scotland) Act 1937 ;
- (b) mentioned in Schedule 1 to this Act; or
- (c) in respect of a female person aged 17 years or over which constitutes the crime of incest,

may refer—

- (i) the child in respect of whom the offence referred to in paragraph (a) or (b) above has been committed; or
- (ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above,

to the reporter”.

58 In section 370 (child charged jointly with person who is not a child) for the words " , 367 and 374 " there shall be substituted the words " and 367 ".

59 In section 380 (power of court, in summary proceedings, to adjourn a case before sentence)—

- (a) in subsection (1) there shall be inserted before the proviso the words " or ordain him to appear at the adjourned diet "; and
- (b) in subsection (2), for paragraph (a) there shall be substituted the following paragraph—

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- “(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet;”.
- 60 In section 395(2) (provisions as to fines), for the words " detention centre " there shall be substituted the words " young offenders institution ".
- 61 In section 398(1) (restriction on imprisonment after fine or caution), for the words " his means in his presence " there shall be substituted the words " in his presence the reason why the fine has not been paid ".
- 62 In section 399 (payment of fine by instalments)—
- (a) in subsection (1), the words from " and it" to the end shall cease to have effect; and
- (b) for subsection (2) there shall be substituted the following subsections—
- “(2) Where the court has ordered payment of a fine by instalments it may—
- (a) allow further time for payment of any instalment thereof ;
- (b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed.
- (3) The powers conferred by subsection (2) above shall be exercisable without requiring the attendance of the accused.”.
- 63 At the end of section 401 (supplementary provisions as to payment of fine) there shall be added the following subsection—
- “(3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 412 of this Act, pay such fine in full to a constable ; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.”.
- 64 In section 407(3) (period of imprisonment for non-payment of fine) for the words " subsection (1)" there shall be substituted the words " subsection (1A) ".
- 65 In section 409(1) (payment of fine in part by prisoner), for the words from " by a number " to the end there shall be substituted the words " (or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment:
- Provided that the day on which any sum is paid shall not be regarded as a day served by the prisoner as part of the said term of imprisonment."
- 66 In section 411(1) (recovery by civil diligence), for the words " poiding the sale ", " ten free " and " small debt court " there shall be substituted, respectively, the words " poiding and sale " , " 14 " and " in a summary cause ".
- 67 In section 421(1) (recall to young offenders institution on reconviction)—
- (a) for the words " young offenders institution " there shall be substituted the words " under section 415 of this Act "; and
- (b) for the words from " instead" to the end there shall be substituted the words " , except where the person convicted is subject to a licence granted under section 60(1) or section 61 of the Criminal Justice Act 1967, make an order for his recall. ".

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68 In section 424 (detention in precincts of court), after the word " imprisonment" there shall be inserted the words " or detention " .

69 For section 426 (legal custody) there shall be substituted the following section—

“426 Legal custody.

Any person required or authorised by or under this Act or Part I of the Criminal Justice (Scotland) Act 1980 to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.”.

70 In section 431 (consideration of time spent in custody), the words "in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952 " shall cease to have effect.

71 For section 436 (forfeiture of implements) there shall be substituted the same provisions as constitute section 223 (forfeiture of property).

72 In section 457 (Acts of Adjournal), at the end there shall be added the following paragraph—

“(d) to modify, amend or repeal any enactment, including an enactment contained in this Part of this Act, in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under this section.”.

73 In section 458 (construction of enactments referring to sentence of detention) for the words " in a young offenders institution " there shall be substituted the words " under section 207 or 415 of this Act " .

74 In section 459 (construction of enactments referring to detention) for the words " in a young offenders institution " there shall be substituted the words " under section 207 or 415 of this Act " .

75 In section 460 (transitional provisions and savings) subsection (6), which is superseded by the provisions inserted by paragraphs 47 and 72 above, shall cease to have effect.

76 In section 462(1) (interpretation)—

- (a) at the appropriate place there shall be inserted the definition " ' diet ' includes any continuation of a diet; " ;
- (b) in the definition of " impose detention " and " impose imprisonment ", for the words " failing to do or abstain from doing anything required to be done or left undone " there shall be substituted the words " contempt of court " ; and
- (c) for the definition of " sentence " there shall be substituted the definition " ' sentence', whether of detention or of imprisonment, means a sentence passed in respect of a crime or offence and does not include an order for committal in default of payment of any sum of money or for contempt of court. " .

77 In section 463 (extent) after subsection (1) there shall be added the following subsection—

“(1A) Sections 169 and 374 of this Act shall extend to Northern Ireland.”.

78 In Schedule 3 (composition of juries)—

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- (a) in paragraph 2—
- (i) for the words from " be made " to " by him)." there shall be substituted the words " be lodged, at least 15 clear days before the trial diet, with the clerk of the court before which that diet is to be. "; and
 - (ii) for the words " the presiding sheriff " there shall be substituted the words " a judge of that court; and that judge shall deal with the application in chambers. The accused, if represented by counsel or by a solicitor, shall not be entitled to attend. " ; and
- (b) for paragraphs 3 and 4 there shall be substituted the following paragraph—
- “3 The judge's decision under the foregoing rule shall be recorded on the record copy of the indictment and shall be final.”.

The Criminal Law Act 1977 (c. 45)

- 79 In section 39(3) (service of summonses and citations throughout the United Kingdom)—
- (a) after the word " include " there shall be inserted " (a) "; and
 - (b) at the end there shall be added the following paragraph—
 - “(b) persons authorised by a chief officer of police in England or Wales to serve summonses there.”.

SCHEDULE 8

Section 83(3).

REPEALS

Chapter	Short Title	Extent of Repeal
7 Anne c. 21.	The Treason Act 1708.	Section 7.
39 & 40 Geo. 3. c. 93.	The Treason Act 1800.	The whole Act.
8 & 9 Vict, c. 33.	The Railways Clauses Consolidation (Scotland) Act 1845.	Section 144.
38 & 39 Vict, c. 86.	The Conspiracy, and Protection of Property Act 1875.	Section 11.
50 & 51 Vict, c. 35.	The Criminal Procedure (Scotland) Act 1887.	Schedules F and G.
55 & 56 Vict. c. 55.	The Burgh Police (Scotland) Act 1892.	Section 382.
2 & 3 Geo. 5. c. 14.	The Protection of Animals (Scotland) Act 1912.	Section 4.
23 & 24 Geo. 5. c. 12.	The Children and Young Persons Act 1933.	Section 26(5).
8 & 9 Geo. 6. c. 44.	The Treason Act 1945.	The whole Act.

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Chapter	Short Title	Extent of Repeal
12, 13 & 14 Geo. 6. c. 94.	The Criminal Justice (Scotland) Act 1949.	Section 21.
15 & 16 Geo 6. & 1 Eliz. 2. c. 61.	The Prisons (Scotland) Act 1952.	Section 75(3)(e). Section 7(4). Section 19. In section 31(4), in paragraph (i) of the proviso, the words " , section nineteen, subsections (2) to (6) of section twenty " ; and paragraph (iv) of the proviso. Sections 32 and 33. Section 35(5)(a). In section 37(2), the words " Borstal institution " in both places where they occur.
8 & 9 Eliz. 2. c 16.	The Road Traffic Act 1960.	Section 246.
9 & 10 Eliz. 2. c 39.	The Criminal Justice Act 1961.	In section 26(5), in each of paragraphs (a) and (b) of the proviso, the words " Scotland or " . In section 32(2), paragraph (b), and in paragraph (f) the word " 11 " . In section 38, in subsection (3)(a) the words " corrective training, preventive detention, " ; and in subsection (5)(a) the words "in a young offenders institution " . In section 39(1), in paragraph (b) of the definition of " appropriate institution " , the words " England and Wales or " .
1962 c. 52.	The Penalties for Drunkenness Act 1962.	In section 1(2)(a) the words " the first paragraph of subsection (1) of section seventy of the Licensing (Scotland) Act 1903, " and in section 1(2)(6) the words "or the said section seventy " .
1963 c. 39.	The Criminal Justice (Scotland) Act 1963.	Section 2.

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Chapter	Short Title	Extent of Repeal
		Sections 4 and 5. Section 9(1) and (2). Section 11. In section 50(1), the words " (other than orders made under section 11, section 12(1) or (3) or section 22) ".
1967 c. 76.	The Road Traffic Regulation Act 1967.	Section 93.
1967 c. 80.	The Criminal Justice Act 1967.	In section 60— in subsection (6) the words from "(a)" to "case," in paragraph (b); and in subsection (8), in paragraph (c) the letter " (a) ".
1968 c. 27.	The Firearms Act 1968.	In section 70(1) the words "corrective training or preventive detention ".
1971 c. 77.	The Immigration Act 1971.	In Schedule 6 Part II, paragraph 1.
1972 c. 20.	The Road Traffic Act 1972.	In section 6(51) the words " (a) except in Scotland "; and the words from " ; and (b) " to the end.
1974 c. 53.	The Rehabilitation of Offenders Act 1974.	In Schedule 4 Part IV, paragraph 3.
1975 c. 14.	The Social Security Act 1975.	In section 5(2), in Table B the words " or under section 7 of the Criminal Justice (Scotland) Act 1963 ".
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	Section 147(6). In section 68(3) the words " where the accused pleads not guilty at the first diet ".
		Section 74(3). Sections 105 to 107. Sections 120 to 122. In section 141, the words " and the spouse of the accused

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Chapter	Short Title	Extent of Repeal
		<p>" ; in proviso (b) the words " or the spouse of the accused " ; provisos (c) and (d); and in proviso (g) the words " or section 143 of this Act".</p> <p>In section 191(1) the words " under this Part of this Act".</p> <p>In section 193(2) the words from " as " to the end.</p> <p>Section 195.</p> <p>Sections 197 to 202.</p> <p>Section 204.</p> <p>Sections 208 to 211.</p> <p>In section 218 the words " in a young offenders institution as defined in section 31(1) (a)" of the Prisons (Scotland) Act 1952 ".</p> <p>In section 228, the proviso.</p> <p>Section 229.</p> <p>Section 232.</p> <p>In section 234 in each of subsections (1) and (3) the words " or an applicant for leave to appeal " and the words " or application for leave to appeal".</p> <p>In section 236 the words " or application for leave to appeal".</p> <p>In section 240 the words " and on an application for leave to appeal".</p> <p>In section 245(3) the words " from the sheriff court".</p> <p>In section 247 the words " to give leave to appeal" and the words " or of an application for leave to appeal ".</p> <p>Section 253(2).</p> <p>In section 257 the words " or applicant" and in both places where they occur the words</p>

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Chapter	Short Title	Extent of Repeal
		<p>" or application for leave to appeal".</p> <p>In section 263(1) the words " or an application for leave to appeal".</p> <p>In section 265(3) the words " either upon grounds of law alone, or with the certificate of the said judge upon any grounds mentioned in section 228(6) of this Act ".</p> <p>In section 272 the words " or of application for leave to appeal "; in the three places where they occur the words " or application for leave to appeal, "; and the words " or application" in the fourth place where they occur.</p> <p>In section 274(1) the words " or may be authorised " and the words " or application for leave to appeal".</p> <p>In section 277 the words " and application for leave to appeal"; the words "or application" in both places where they occur; the words "section 229"; the words "section 232"; and the words " section 233 ".</p> <p>In section 285, in paragraph (b), subparagraph (iv), and the proviso.</p> <p>Section 289D(3)(c).</p> <p>In section 296(5) the words " (including any continuation of diet) ".</p> <p>In section 310 the word " subsequent " where it first occurs.</p> <p>In section 314(3) the words " or a later ".</p> <p>Section 337(e).</p>

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Chapter	Short Title	Extent of Repeal
		<p>In section 346, the words " and the spouse of the accused "; in paragraph (6) of the proviso the words " or the spouse of the accused "; paragraphs (c) and (d) of the proviso; and in paragraph (g) of the proviso the words " or section 348 of this Act".</p> <p>Section 365.</p> <p>In section 392(1) the words " on indictment" and the words " under Part I of this Act".</p> <p>In section 399(1), the words from " and it " to the end.</p> <p>Section 405.</p> <p>Section 410.</p> <p>Section 411(2).</p> <p>Section 414.</p> <p>Sections 416 to 420.</p> <p>In section 434(3) the words from " and, without" to the end.</p> <p>Section 444(6).</p> <p>Section 445.</p> <p>In section 447(2) the words from " of the form " to " or ".</p> <p>Section 448(9).</p> <p>Section 454(2).</p> <p>Section 460(5) and (6)</p> <p>Schedule 4.</p> <p>In Schedule 7B, in paragraph 1, sub-paragraphs (1)(a) and (2)(c).</p> <p>In Schedule 9, paragraph 40.</p>
1975 c. 61.	The Child Benefit Act 1975.	Section 11(8).
1976 c. 66.	The Licensing (Scotland) Act 1976.	Section 128(2).
1976 c. 67.	The Sexual Offences (Scotland) Act 1976.	Section 7. Section 16.

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Chapter	Short Title	Extent of Repeal
1976 c. 71.	The Supplementary Benefits Act 1976.	Section 26(5).
1977 c. 45.	The Criminal Law Act 1977.	In Schedule 11, paragraphs 11 to 13.
1979 c. 2.	The Customs and Excise Management Act 1979.	Section 149(2).