



# Homicide Act 1957

## 1957 CHAPTER 11

An Act to make for England and Wales (and for courts-martial wherever sitting) amendments of the law relating to homicide and the trial and punishment of murder, and for Scotland amendments of the law relating to the trial and punishment of murder and attempts to murder. [21st March, 1957]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### AMENDMENTS OF LAW OF ENGLAND AND WALES AS TO FACT OF MURDER

#### **1 Abolition of "constructive malice"**

- (1) Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence.
- (2) For the purposes of the foregoing subsection, a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, shall be treated as a killing in the course of furtherance of an offence.

#### **2 Persons suffering from diminished responsibility**

- (1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or

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induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

- (2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.
- (3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.
- (4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

### **3 Provocation**

Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

### **4 Suicide pacts**

- (1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person.
- (2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.
- (3) For the purposes of this section " suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

## **PART II**

### LIABILITY TO DEATH PENALTY

### **5 Death penalty for certain murders**

- (1) Subject to subsection (2) of this section, the following murders shall be capital murders, that is to say.—
  - (a) any murder done in the course or furtherance of theft;
  - (b) any murder by shooting or by causing an explosion; 2
  - (c) any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody,

- (d) any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting;
  - (e) in the case of a person who was a prisoner at the time when he did or was a party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting.
- (2) If, in the case of any murder falling within the foregoing subsection, two or more persons are guilty of the murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used force on that person in the course or furtherance of an attack on him; but the murder shall not be capital murder in the case of any other of the persons guilty of it.
- (3) Where it is alleged that a person accused of murder is guilty of capital murder, the offence shall be charged as capital murder in the indictment, and if a person charged with capital murder is convicted thereof, he shall be liable to the same punishment for the murder as heretofore.
- (4) In this Act " capital murder " means capital murder within subsections (1) and (2) of this section.
- (5) In this section—
- (a) " police officer " means a constable who is a member of a police force or a special constable appointed under any Act of Parliament, and " police force " has the same meaning as in section thirty of the Police Pensions Act, 1921 (as amended by the Police Act, 1946) or, as regards Scotland, the same meaning as in section forty of the Police (Scotland) Act, 1956;
  - (b) " prison " means any institution for which rules may be made under the Prison Act, 1952, or the Prisons (Scotland) Act, 1952, and any establishment under the control of the Admiralty or the Secretary of State where persons may be required to serve sentences of imprisonment or detention passed under the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955;
  - (c) " prison officer " includes any member of the staff of a prison;
  - (d) " prisoner " means a person who is undergoing imprisonment or detention in a prison, whether under sentence or not, or who, while liable to imprisonment or detention in a prison, is unlawfully at large;
  - (e) " theft " includes any offence which involves stealing or is done with intent to steal.

## **6 Death penalty for repeated murders**

- (1) A person convicted of murder shall be liable to the same punishment as heretofore, if before conviction of that murder he has, whether before or after the commencement of this Act, been convicted of another murder done on a different occasion (both murders having been done in Great Britain).
- (2) Where a person is charged with the murder of two or more persons, no rule of practice shall prevent the murders being charged in the same indictment or (unless separate trials are desirable in the interests of justice) prevent them being tried together; and where a person is convicted of two murders tried together (but done on different occasions), subsection (1) of this section shall apply as if one conviction had preceded the other.

## **7 Abolition of death penalty for other murders**

No person shall be liable to suffer death for murder in any case not falling within section five or six of this Act.

## **8 Courts-martial**

- (1) The foregoing provisions of this Part of this Act shall not have effect in relation to courts-martial, but a person convicted by a court-martial of murder (or of an offence corresponding thereto under section seventy of the Army Act, 1955, or of the Air Force Act, 1955) shall not be liable to suffer death, unless he is charged with and convicted of committing the offence under circumstances which, if he had committed it in England, would make him guilty of capital murder.
- (2) An accused so charged before a court-martial under the Naval Discipline Act may, on failure of proof of the offence having been committed under such circumstances as aforesaid, be found guilty of the murder as not having been committed under such circumstances.

## **9 Punishment for murders not punishable with death, and other consequential provisions**

- (1) Where a court (including a court-martial) is precluded by this Part of this Act from passing sentence of death, the sentence shall be one of imprisonment for life.
- (2) Accordingly paragraph (a) of subsection (3) of section seventy of the Army Act, 1955, and of the Air Force Act, 1955, and the first paragraph of section forty-five of the Naval Discipline Act, shall each be amended by the addition, at the end of the paragraph, of the words " or, in a case of murder not falling within section eight of the Homicide Act, 1957, imprisonment for life ".
- (3) In section fifty-three of the Children and Young Persons Act, 1933, and in section fifty-seven of the Children and Young Persons (Scotland) Act, 1937, there shall be substituted for subsection (1)—
  - “(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence who appears to the court to have been under the age of eighteen years at the time the offence was committed, nor shall any such person be sentenced to imprisonment for life under section nine of the Homicide Act, 1957; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.”
- (4) The provisions of the First Schedule to this Act shall have effect with respect to procedural and other matters arising out of sections five to seven of this Act, and with respect to the convictions which may be taken into account under section six.

## PART III

### AMENDMENTS AS TO FORM AND EXECUTION OF DEATH SENTENCE IN ENGLAND AND WALES

#### 10 Form of sentence of death for murder

Where by virtue of section five or six of this Act a person convicted of murder is sentenced to death, the form of the sentence shall be to the effect only that he is to "suffer death in the manner authorised by law".

#### 11 Notice of execution

- (1) Sections seven and ten of the Capital Punishment Amendment Act, 1868, shall cease to have effect, in so far as they require provision to be made for the purpose of making known without the prison walls the fact that execution of sentence of death for murder is taking place, or require any document relating to such an execution to be exhibited on or near the prison.
- (2) Where sentence of death for murder is to be executed in accordance with that Act, it shall be the duty of the Secretary of State, as early as he conveniently can, to publish in such manner as he thinks fit the time and place fixed for the execution.
- (3) Where sentence of death for murder has been executed in accordance with that Act, it shall be the duty of the Secretary of State, as early as he conveniently can, to publish in such manner as he thinks fit the fact that the execution has taken place, and to cause to be published in the London Gazette a copy of the coroner's inquisition required by the Act.

#### 12 Avoidance of double executions

Where two or more persons sentenced to death for murder are confined in the same prison, the Secretary of State may, with a view to avoiding the execution of more than one such sentence in that prison on the same day, direct that any of those persons shall be removed to and confined in some other prison specified in the direction; and the sentence on that person may lawfully be executed in the prison so specified, and the sheriff charged with the execution shall for that purpose have the same jurisdiction in that prison and over the officers of it, and be subject to the same responsibilities and duties in it, as though the prison were that in which the sentence would have been executed but for the direction.

## PART IV

### APPLICATION TO, AND SPECIAL PROVISIONS FOR, SCOTLAND

#### 13 Application of Parts I and III to Scotland

- (1) Part I and, subject to subsection (2) of this section, Part III of this Act shall not extend to Scotland.
- (2) Section eleven of this Act shall extend to Scotland, with the omission of subsection (2) and with the substitution in subsection (3) of a reference to the Edinburgh Gazette for

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the reference to the London Gazette and of a reference to the report or deliverance of the sheriff or sheriff substitute for the reference to the coroner's inquisition.

(3) Subsection (1) of this section does not affect courts-martial.

**14 Amendment as to penalty for certain attempts to murder**

The Criminal Law (Scotland) Act, 1829 (which makes punishable by death certain crimes of violence against Her Majesty's subjects), shall have effect with the substitution for any reference to a sentence of death of a reference to a sentence of imprisonment for life.

**15 Amendment as to period within which date of execution is to be fixed**

Section two of the Criminal Law (Scotland) Act, 1830 (which provides for the date of execution to be fixed within different periods according to whether the sentence is pronounced north or south of the Forth), shall have effect, in the case of a sentence of death for murder, as if the words " if pronounced in Edinburgh or in any other part of Scotland to the southward of the firth or river of Forth " and the words from " and if pronounced " to the end of the section were omitted.

**PART V**

COMMENCEMENT, ETC.

**16 Past offences**

This Act shall not have effect in relation to any offence, where an indictment for that offence has been signed or, in Scotland, has been served before the date of the commencement of this Act, or, as the case may be, a court-martial for the trial of that offence has been ordered or convened before that date; but (subject to that) this Act shall have effect in relation to offences committed wholly or partly before that date as it applies in relation to offences committed after that date.

**17 Short title, repeal and extent**

- (1) This Act may be cited as the Homicide Act, 1957.
- (2) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) This Act, except as regards courts-martial, shall not extend to Northern Ireland.

## FIRST SCHEDULE

### SUPPLEMENTARY PROVISIONS AS TO PROCEDURE, APPEALS, ETC.

#### PART I

##### ENGLAND AND WALES

- 1 (1) On an indictment charging a person with capital murder, he may be found not guilty of capital murder but guilty of murder.
- (2) Capital murder shall be treated as a distinct offence from murder for the purposes of any appeal against conviction; but where on an appeal against conviction of capital murder the court substitute a verdict of guilty of murder for the verdict of guilty of capital murder, the court shall nevertheless confirm the sentence of death if the sentence is warranted by section six of this Act.
- (3) Subject to the foregoing sub-paragraphs, capital murder shall not be treated as a different offence from murder for any purpose.
- 2 (1) Where a person is convicted of murder, he shall not by virtue of section six of this Act be sentenced to death by reason of a previous conviction of another murder done in Great Britain on a different occasion, unless—
  - (a) at least three days before the trial notice is given to him and to the clerk of assize that it is intended to prove the previous conviction; and
  - (b) before he is sentenced, his previous conviction of the other murder, and the fact that the murders were done in Great Britain on different occasions, are admitted by him or found by the verdict of a jury:

Provided that head (a) of this sub-paragraph shall not apply where he is convicted of both murders at the same assizes (or before the same court of assize held by virtue of a special commission).
- (2) The said jury shall be the trial jury, that is to say the jury to whom he was given in charge to be tried for the murder for which the sentence is in question, and the members of the jury need not be re-sworn:

Provided that—

  - (a) if any member of the trial jury, either before or after the conviction, dies or is discharged by the court as being through illness incapable of continuing to act or for any other cause, the inquiry under this paragraph shall proceed without him; and
  - (b) where there is no trial jury, a jury shall be constituted as if to try whether or not he was fit to plead, and shall be sworn in such manner as the court may direct.
- (3) Where a person is sentenced to death by virtue of a verdict given by a jury in proceedings under this paragraph, he shall have the like right of appeal under the Criminal Appeal Act, 1907, against the sentence as if the appeal were against a conviction involving sentence of death:

Provided that, he shall not by virtue of this sub-paragraph have a right of appeal against a sentence passed on a conviction of capital murder, unless he appeals against that conviction.

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- (4) On any such appeal against sentence, the court shall have the same powers as to allowing or dismissing the appeal as on an appeal against a conviction; and where the court allow the appeal, and it appears to the court that having regard to the decision on the appeal the sentence is not warranted in law, the court shall quash the sentence and pass the appropriate sentence in substitution for it.
- (5) The proviso to section thirteen of the Criminal Law Act, 1827 (which provides that a pardon of a felony shall not affect the punishment on a subsequent conviction for felony), so far as it relates to free pardons, shall not apply for the purposes of section six of this Act.
- 3 (1) Where a person is sentenced to death on being convicted of murder after a previous conviction of murder, and afterwards the previous conviction is set aside on appeal, he may thereupon (or at any time not later than ten days thereafter) apply to the Court of Criminal Appeal to set aside the sentence of death on the ground that it is no longer warranted in law having regard to the decision on the appeal; and the court if satisfied that the sentence is no longer warranted in law shall set it aside and pass the appropriate sentence in substitution for it.
- (2) Where a person is sentenced to death as aforesaid, then (unless he is so sentenced on being convicted of capital murder) the sentence shall not in any case be executed so long as the previous conviction can be set aside on appeal.
- (3) No application to extend the time for giving notice of appeal or of an application for leave to appeal against a person's conviction of murder shall be entertained if he has been sentenced to death on a later conviction of murder and the time for giving notice of appeal against the later conviction has expired.
- 4 (1) Where a person is convicted of two murders tried together, he shall not by reason thereof be sentenced to death by virtue of section six of this Act, unless before he is sentenced the fact that the murders were done in Great Britain on different occasions is admitted by him or found by the verdict of a jury: and sub-paragraphs (2) to (4) of paragraph 2 of this Schedule shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (2) Where sentence of death is passed on a person convicted of two murders tried together, it shall be treated as passed in respect of each of the convictions; but if one of the convictions is and the other is not set aside on appeal, the court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of the other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.
- 5 The power to make rules of court conferred by section eighteen of the Criminal Appeal Act, 1907, shall include power to make rules for the purpose of carrying into effect this Schedule, so far as relates to appeals and applications to the Court of Criminal Appeal.
- 6 This Part of this Schedule shall extend to England and Wales only, but references therein to a previous or later conviction include a conviction in Scotland.



## PART II

### SCOTLAND

- 7 (1) Under an indictment which charges capital murder the person accused may be found not guilty of capital murder but may be convicted of murder.
- (2) Capital murder shall be treated as a distinct offence from murder for the purposes of any appeal against conviction; but where on an appeal against conviction of capital murder the court substitute a verdict of guilty of murder for the verdict of guilty of capital murder, the court shall nevertheless confirm the sentence of death if the sentence is warranted by section six of this Act.
- (3) Subject to the foregoing sub-paragraphs, capital murder shall not be treated as a different offence from murder for any purpose.
- 8 (1) Where a person is convicted of murder, he shall not by virtue of section six of this Act be sentenced to death by reason of a previous conviction of another murder done in Great Britain on a different occasion, unless—
- (a) notice has been served on him with the indictment that it is intended to place before the Court such a previous conviction; and
- (b) before he is sentenced, his previous conviction of the other murder is held or proved to apply to him and the fact that the murder was so done is held to be admitted by him or proved:
- Provided that head (a) of this sub-paragraph shall not apply where he is convicted of both murders at the same sitting of the High Court of Justiciary.
- (2) The provisions of section thirty-nine of the Criminal Justice (Scotland) Act, 1949 (which relates to previous convictions in proceedings on indictment) shall have effect for the purposes of this paragraph with regard to a previous conviction of murder as they have effect with regard to a previous conviction constituting an aggravation of any charge contained in an indictment, subject, however, to the modifications that references to a previous conviction and to objecting to a previous conviction shall include references to the fact that the murder was so done, and to denying such fact, and that any reference to a conviction being held to apply to the accused shall include a reference to any such fact being held to be admitted by him.
- (3) Where a person is sentenced to death by virtue of the previous conviction and the fact that the murders were done in Great Britain on different occasions having been proved, he shall have the like right of appeal under the Criminal Appeal (Scotland) Act, 1926, against the sentence as if the appeal were against a conviction involving sentence of death:
- Provided that he shall not by virtue of this sub-paragraph have a right of appeal against a sentence passed on a conviction of capital murder, unless he appeals against that conviction.
- (4) On any Such appeal against sentence, the court shall have the same powers as to allowing or dismissing the appeal as on an appeal against a conviction; and where the court allow the appeal, and it appears to the court that having regard to the decision on the appeal the sentence is not warranted in law, the court shall quash the sentence and pass the appropriate sentence in substitution for it.
- 9 (1) Where a person is sentenced to death on being convicted of murder after a previous conviction of murder, and afterwards the previous conviction is set aside on appeal, he may thereupon (or at any time not later than ten days thereafter) apply to the

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High Court of Justiciary to set aside the sentence of death on the ground that it is no longer warranted in law having regard to the decision on the appeal; and the court if satisfied that the sentence is no longer warranted in law shall set it aside and pass the appropriate sentence in substitution for it.

- (2) Where a person is sentenced to death as aforesaid, then (unless he is so sentenced on being convicted of capital murder) the sentence shall not in any case be executed so long as the previous conviction can be set aside on appeal.
- (3) No application to extend the time for giving notice of appeal or of an application for leave to appeal against a person's conviction of murder shall be entertained if he has been sentenced to death on a later conviction of murder and the time for giving notice of appeal against the later conviction has expired.
- 10 (1) Where a person is convicted of two murders tried together he shall not by reason thereof be sentenced to death by virtue of section six of this Act unless before he is sentenced the fact that the murders were done in Great Britain on different occasions is proved; and sub-paragraphs (3) and (4) of paragraph 8 of this Schedule shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (2) Where sentence of death is passed on a person convicted of two murders tried together, it shall be treated as passed in respect of each of the convictions; but if one of the convictions is and the other is not set aside on appeal, the court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of the other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.
- 11 The power to make Acts of Adjournal conferred by section fifteen of the Criminal Appeal (Scotland) Act, 1926, shall include power to make rules for the purpose of carrying into effect this Schedule, so far as relates to appeals and applications to the High Court of Justiciary.
- 12 This Part of this Schedule shall extend to Scotland Only, but references therein to a previous or later conviction include a conviction in England or Wales.

## SECOND SCHEDULE

### REPEALS

Session and Chapter	Short Title	Extent of Repeal
24 & 25 Vict. c. 100.	The Offences Against the Person Act, 1861.	Sections two and three.
11 & 12 Geo. 6 c. 58.	The Criminal Justice Act, 1948.	Section sixteen.
12, 13 & 14 Geo. 6. c. 94.	The Criminal Justice (Scotland) Act, 1949.	Section seventeen.

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*Table of Statutes referred to in this Act*

Short Title	Session and Chapter
Criminal Law Act, 1827	7 & 8 Geo. 4. c. 28.
Criminal Law (Scotland) Act, 1829	10 Geo. 4. c. 38.
Criminal Law (Scotland) Act, 1830	1 11 Geo. 4. & 1 Will. 4. c. 37.
Naval Discipline Act	29 & 30 Vict. c. 109.
Capital Punishment Amendment Act, 1868	31 & 32 Vict. c. 24.
Criminal Appeal Act, 1907	7 Edw. 7. c. 23.
Police Pensions Act, 1921	11 & 12 Geo. 5. c. 31.
Criminal Appeal (Scotland) Act, 1926	16 & 17 Geo. 5. c. 15.
Children and Young Persons Act, 1933	23 & 24 Geo. 5. c. 12.
Children and Young Persons (Scotland) Act, 1937.	1 Edw. 8. & 1 Geo. 6. c. 37.
Police Act, 1946	9 & 10 Geo. 6. c. 46.
Criminal Justice (Scotland) Act, 1949	12, 13 & 14 Geo. 6. c. 94.
Prison Act, 1952	15&16Geo.6.& 1Eliz.2. c. 52.
Prisons (Scotland) Act, 1952	15&16Geo.6.& 1Eliz.2. c. 61.
Army Act, 1955	3 & 4Eliz. 2. c. 18.
Air Force Act, 1955	3 & 4 Eliz. 2. c. 19.
Police (Scotland) Act, 1956	4 & 5 Eliz. 2. c. 26.