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## SCHEDULES

### FIRST SCHEDULE

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

#### 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:

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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 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.
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- 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.