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SCHEDULES

SCHEDULE 4

PROSECUTION AND PUNISHMENT OF OFFENCES

PART IV

Supplementary provisions as to prosecution, trial and punishment of offences

- 1 Upon the trial of a person who is indicted for culpable homicide in Scotland in connection with the driving of a motor vehicle by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under section 2, to find him guilty of that offence.
- 2 If upon the trial in Scotland of a person for an offence under section 1 the jury are not satisfied that his driving was the cause of the death, but are satisfied that he is guilty of driving as mentioned in section 2, it shall be lawful for them to convict him of an offence under section 2.
- 3 A contravention occurring in Scotland of any of the provisions of this Act or of any regulations made thereunder, which is directed to be prosecuted summarily and which, if it had been triable on indictment, could competently have been libelled as an additional or alternative charge in an indictment charging a person with culpable homicide in respect of the driving or attempted driving or use of a motor vehicle, or with a contravention of section 1, 2, 5, 6 or 9 may, notwithstanding the direction aforesaid, be so libelled and may be tried accordingly.

In this paragraph any reference to a contravention of regulations includes a reference to a failure to comply with regulations.
- 4 Where a person is charged in England or Wales before a magistrates' court with an offence under section 2 or with an offence under section 17, and the court is of opinion that the offence is not proved, then, at any time during the hearing or immediately thereafter the court may, without prejudice to any other powers possessed by the court, direct or allow a charge for an offence under section 3 or, as the case may be, section 18 to be preferred forthwith against the defendant and may thereupon proceed with that charge, so however that he or his solicitor or counsel shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge, and the court shall, if it considers that the defendant is prejudiced in his defence by reason of the new charge's being so preferred, adjourn the hearing.
- 5 Where a person is prosecuted on indictment in England or Wales for an offence to which section 179 does not apply, section 179(2) shall not be taken to prejudice any power of the jury on the charge for that offence, if they find him not guilty of it, to find him guilty of an offence against section 2.

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- 6 In Scotland a person may be convicted of an offence against section 2 by virtue of paragraph 1 or 2 above notwithstanding that the requirement of section 179(2) has not been satisfied as respects that offence.
- 7 A person may be convicted of an offence against section 3 or 18 notwithstanding that the requirement of section 179(2) has not been satisfied as respects that offence where—
- (a) the charge for the offence has been preferred against him by virtue of paragraph 4 above, and
 - (b) the said requirement has been satisfied, or does not apply, as respects the alleged offence against section 2 or, as the case may be, section 17.
- 8 If on the trial of an indictment in Scotland for stealing a motor vehicle the jury are of the opinion that the accused was not guilty of stealing the motor vehicle but was guilty of an offence under section 175, the jury may find him guilty of an offence under the said section 175 and thereupon he shall be liable to be punished accordingly.