

SCHEDULES

SCHEDULE 4

MISCELLANEOUS AMENDMENTS OF ENACTMENTS RELATING TO CRIMINAL APPEAL.

THE ADMINISTRATION OF JUSTICE ACT 1960 (C. 65)

- 24 In section 4 (power to grant bail pending appeal to the House of Lords) as it applies to England and Wales.—
- (a) in subsection (1), after the word " appellant " there shall be inserted the words " under section 1 of this Act, or a person applying for leave to appeal thereunder "; and
 - (b) in subsection (2) for the words " an appellant pending an appeal under section one of this Act in such proceedings " there shall be substituted the words " an appellant under section 1 of this Act, or a person applying for leave to appeal thereunder, pending the appeal ".
- 25 In section 4, as it applies to Northern Ireland—
- (a) in subsection (1) after the word " appellant ", there shall be inserted the words " under section 1 of this Act, or a person applying for leave to appeal thereunder "; and
 - (b) in subsection (2)—
 - (i) for the words " seeking to appeal " there shall be substituted the words " appealing or applying for leave to appeal ";
 - (ii) for the words " section three of the Summary Jurisdiction Act 1857 " there shall be substituted the words " section 148 of the Magistrates' Courts Act (Northern Ireland) 1964 "; and
 - (iii) for the words " section twenty-six of the Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935 " there shall be substituted the words " section 4 of the County Courts Appeals Act (Northern Ireland) 1964 ".
- 26 In section 5 (power to order detention of defendant pending appeal by Crown) as it applies to England and Wales and also as it applies to Northern Ireland.—
- (a) in subsection (1) after the word " bail " there shall be inserted the words " (which may be granted by the court as under section 4 above) "; and
 - (b) subsection (2) shall be omitted.
- 27 In section 5(4) as it applies to Northern Ireland, for the reference to the enactments for the time being in force in Northern Ireland with respect to prisoners or other persons suffering from mental illness or other mental disorder there shall be substituted a reference to the Mental Health Act (Northern Ireland) 1961.
- 28 In section 8(3) (costs on application for leave to appeal to House of Lords), as it applies to England and Wales, after the word " payment " in paragraph (a) there shall be inserted the words " to the defendant " ; and the following shall be added at the end of the subsection:—

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

(i) where the order is made by the criminal division of the Court of Appeal, by the registrar of criminal appeals ; and

(ii) where it is made by the House of Lords, by such officer or officers, and in such manner, as may be prescribed by order of that House ;

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

29 In section 8, as it applies to Northern Ireland by virtue of section 18(4) of, and Schedule 2 to, the Act.—

(a) for subsection (3) there shall be substituted the following subsection:—

“(3) Where the Court of Criminal Appeal in Northern Ireland or the House of Lords dismiss an application for leave to appeal from that Court, that Court or the House may, if it thinks fit—

(a) where the application was made by the prosecutor, order the payment to the defendant by the Ministry of Home Affairs of such sums as appear to it reasonably sufficient to compensate the defendant for any expenses properly incurred by him in resisting the application ;

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

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

(i) where the order is made by the Court of Criminal Appeal in Northern Ireland, by that court; and

(ii) where it is made by the House of Lords, by such officer or officers, and in such manner, as may be prescribed by order of that House ;

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

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

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

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

31 In section 10 (application of provisions giving right of appeal to House of Lords from decisions of Courts-Martial Appeal Court), after the words " provisions of this

Act " there shall be inserted the words " except section 4 " ; and at the end of the section there shall be added the following three subsections:—

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

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

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

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

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

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

“1 (1) In section 1(1), for the words ' at the instance of the defendant or the prosecutor' there shall be substituted the words ' at the instance of the accused or the Defence Council'.

(2) In sections 2(3) and 5(3) and (5), for the words ' the defendant' there shall be substituted the words 'the accused'.

(3) In section 9(3), for the words ' A defendant who is detained pending an appeal under section one of this Act' there shall be substituted the words ' Where the accused is detained pending an appeal under section 1 of this Act, he'.

1A (1) In section 5, the following shall be substituted for subsection (1):—

“(1) Where the accused would, but for the decision of the Courts-Martial Appeal Court, be liable to be detained and immediately after that decision the Defence Council are granted, or give notice that they intend to apply for, leave to appeal, the Court may make an order providing for the detention of the accused or directing that he shall not be released except on bail (which may in the case of a person to whom section 10(2) of this Act applies, be granted as under that subsection) so long as any appeal under section 1 of this Act is pending.

(2) In section 5(4), for the words " a defendant " there shall be substituted the words " a person " , and the references to any provision of the Mental Health Act 1959 shall include

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- references to any provision of the Mental Health (Scotland)
Act 1960 or the Mental Health Act (Northern Ireland) 1961”
- (b) in paragraph 2(3), for the words " the Admiralty " there shall be substituted the words " the Defence Council "; and
 - (c) in paragraph 3(3), for the words " the defendant " (wherever occurring) there shall be substituted the words " the accused " ,
and for the words from the beginning of paragraph (a) to " may require " there shall be substituted the words " where the application was made by the Secretary of State, direct the payment by him " .