

SCHEDULES

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—

- (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.”.

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- 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.
- (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.

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- (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—

“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.

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- (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.
- (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

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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

(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

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- 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) " ;
- (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 " .