



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

#### CONVICTION AND SENTENCE

##### *Review*

#### [<sup>F1</sup>442 Right of appeal.

- (1) Without prejudice to any right of appeal under section 453A of this Act—
- (a) any person convicted [<sup>F2</sup>, or found to have committed an offence,] in summary proceedings may [<sup>F3</sup>, with leave granted in accordance with section 442ZA or, as the case may be, 453AA of this Act,] appeal under this section to the High Court—
    - (i) against such conviction [<sup>F4</sup> or finding];
    - (ii) against the sentence passed on such conviction;  
[ against his absolute discharge or admonition or any probation order  
<sup>F5</sup>(ia) or any community service order under the <sup>M1</sup>Community Service by Offenders (Scotland) Act 1978 or any order deferring sentence;]or;
    - (iii) against both such conviction and such sentence [<sup>F6</sup> or disposal or order];
  - (b) the prosecutor in such proceedings may so appeal on a point of law—
    - (i) against an acquittal in such proceedings; or
    - (ii) against a sentence passed [<sup>F7</sup> on such conviction].
  - [<sup>F8</sup>(c) the prosecutor in such proceedings may, in any class of case specified by order by the Secretary of State under this paragraph, so appeal against the sentence passed on such conviction [<sup>F9</sup> or, whether the person has been convicted or not, against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person's

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absolute discharge or admonition or against any order deferring sentence]]if it appears to the prosecutor that [F10, as the case may be—.

- (i) the sentence is unduly lenient;
- (ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
- (iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
- (iv) the deferment of sentence is inappropriate or on unduly lenient conditions;]

- (2) By an appeal under subsection (1)(a) of this section or, as the case may be, against acquittal under subsection (1)(b) of this section, an appellant may bring under review of the High Court any alleged miscarriage of justice in the proceedings, including, in the case of an appeal under the said subsection (1)(a), 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.

[ The power of the Secretary of State to make an order under paragraph (c) of F11(3) subsection (1) above shall be exercisable by statutory instrument; and any order so made shall be subject to annulment in pursuance of a resolution of either House of Parliament.]]

#### Textual Amendments

- F1** S. 442, 442A, 442B substituted for s. 442 by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 1, **Sch. 6 para. 7**
- F2** Words in s. 442(1)(a) inserted (27.7.1993) by 1993 c. 36, **s. 68(3)(a)(i)**
- F3** Words in s. 442(1)(a) inserted (26.9.1995) by 1995 c. 20, **s. 42(4)**; S.I. 1995/2295, art. 3, **Sch.** (subject to transitional provisions in arts. 4-6)
- F4** Words in s. 442(1)(a)(i) inserted (27.7.1993) by 1993 c. 36, **s. 68(3)(a)(ii)**
- F5** S. 442(1)(a)(iia) inserted (27.7.1993) by 1993 c. 36, **s. 68(3)(a)(iii)**
- F6** Words in s. 442(1)(a)(iii) added (27.7.1993) by 1993 c. 36, **s. 68(3)(a)(iv)**
- F7** Words in s. 442(1)(b)(ii) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(33)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4)**, 4(1)(c)
- F8** S. 442(1)(c) inserted (1.10.1993) by 1993 c. 9, **s. 42(2)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**
- F9** Words in s. 442(1)(c) inserted (27.7.1993) by 1993 c. 36, **s. 68(3)(b)(i)**
- F10** Words in s. 442(1)(c) substituted (27.7.1993) by 1993 c. 36, **s. 68(3)(b)(ii)**
- F11** S. 442(3) inserted (1.10.1993) by 1993 c. 9, **s. 42(2)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

#### Modifications etc. (not altering text)

- C1** S. 442(1)(a)(ii) extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(2)**, 76(9), 113(1); S.I. 1996/517, arts. 3-6, **Sch.**  
S. 442(1)(a)(ii) modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, **s. 2** (as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, arts. 3-6, **Sch.**)
- C2** S. 442(1)(b)(ii) extended (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, **ss. 70(1)**, 76(9), 113(1); S.I. 1996/517, arts. 3-6, **Sch.**

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S. 442(1)(b)(ii) modified (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1987 c. 41, s. 2 (as substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 113(3), Sch. 5 para. 3; S.I. 1996/517, arts. 3-6, Sch.

**Marginal Citations**

M1 1978 c. 49

[<sup>F12</sup>442Z] **Leave to appeal against conviction etc.**

- (1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(i) or (iii) of this Act shall be made by a judge of the High Court who shall—
  - (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) The documents referred to in subsection (1) above are—
  - (a) the stated case lodged under subsection (4) of section 448 of this Act; and
  - (b) the documents transmitted to the Clerk of Justiciary under subsection (3)(b) of that section.
- (3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.
- (5) In deciding an application under subsection (4) above the High Court shall—
  - (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.
- (7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.

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- (8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.
- (9) Any application by the appellant for the leave of the High Court under subsection (8) above—
- (a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and
  - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.
- (10) The Clerk of Justiciary shall forthwith intimate—
- (a) a decision under subsection (1) or (5) above; and
  - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.]

#### Textual Amendments

**F12** S. 442ZA inserted (26.9.1995) by 1995 c. 20, s. 42(5); S.I. 1995/2295, art. 3, Sch. (subject to transitional provisions in arts. 4-6)

#### 442A Method of appeal against conviction or conviction and sentence.

- (1) Where a person desires to appeal under section 442(1)(a)(i) or (iii) or (b) of this Act, he shall pursue such appeal in accordance with the provisions of sections 444 to 453, 453D and 453E of this Act.
- (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, subject to such procedure as may be prescribed by Act of Adjournal under this Act.

#### 442B Method of appeal against sentence alone.

Where a [<sup>F13</sup>convicted]person [<sup>F13</sup>, or as the case may be a person found to have committed an offence,] desires to appeal [<sup>F14</sup>. . . , under section 442(1)(a)(ii) [<sup>F15</sup>or (ia)] of this Act [<sup>F16</sup>, or the prosecutor desires so to appeal by virtue of section 442(1)(c) thereof,]he shall pursue such appeal in accordance with the provisions of sections 453B to 453E of this Act:

[<sup>F17</sup>; but nothing in this section shall prejudice any right to proceed by bill of suspension, or as the case may be advocacy, against an alleged fundamental irregularity relating to the imposition of the sentence.]

#### Textual Amendments

**F13** Words in s. 442B inserted (27.7.1993) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 2(10)(a)

**F14** Words in s. 442B repealed (27.7.1993) by 1993 c. 36, s. 79(13)(14), Sch. 5 Pt. I para. 2(10)(b), Sch. 6 Pt. I

**F15** Words in s. 442B inserted (27.7.1993) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 2(1)(c)

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- F16** Words in s. 442B inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(34)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F17** Words in the proviso in s. 442B substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(34)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

#### **443 Appeals against hospital orders, etc.**

Where a hospital order [<sup>F18</sup>interim hospital order (but not a renewal thereof),] guardianship order or an order restricting discharge has been made by a court in respect of a person charged or brought before it, he may, without prejudice to any other form of appeal under any rule of law [<sup>F19</sup>(or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed)], appeal against that order in the same manner as against [<sup>F20</sup>sentence].

##### **Textual Amendments**

- F18** Words inserted by virtue of **Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 34(d)(i)** and **Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 126(2)(b)**
- F19** Words inserted by virtue of **Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 34(d)(ii)** and **Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 126(2)(b)**
- F20** Word substituted by **Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 2, Sch. 6 para. 7**

#### **[<sup>F21</sup>443A Suspension of disqualification, forfeiture, etc.**

- (1) Where upon conviction of any person—
- any disqualification, forfeiture or disability attaches to him by reason of such conviction; or
  - any property, matters or things which are the subject of the prosecution or connected therewith are to be or may be ordered to be destroyed or forfeited.

if the court before which he was convicted thinks fit, the disqualification, forfeiture or disability or, as the case may be, destruction or forfeiture or order for destruction or forfeiture shall be suspended pending the determination of any appeal against conviction or sentence [<sup>F22</sup>(or disposal or order)].

- (2) Subsection (1) above does not apply in respect of any disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture under or by virtue of any enactment which contains express provision for the suspension of such disqualification, forfeiture or, as the case may be, destruction or forfeiture or order for destruction or forfeiture pending the determination of any appeal against conviction or sentence [<sup>F22</sup>(or disposal or order)].

[<sup>F23</sup>(3) Where, upon conviction, a fine has been imposed upon a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980—

- the fine or compensation order shall not be enforced against him and he shall not be liable to make any payment in respect of the fine or compensation order; and
- any money paid under the compensation order shall not be paid by the clerk of court to the entitled person under section 60(1) of the Act of 1980,

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pending the determination of any appeal against conviction or sentence (or disposal or order).]

#### Textual Amendments

- F21** S. 443A inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 68(1)  
**F22** Words in s. 443A(1)(2) added (27.7.1993) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 2(11)  
**F23** S. 443A(3) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 147; S.I. 1996/517, arts. 3-6, Sch.

#### 444 Manner and time of appeal.

[<sup>F24</sup>(1) [<sup>F25</sup>Subject to section 76(8) of the Criminal Justice (Scotland) Act 1995,]an appeal under section 442(1)(a)(i) or (iii) or (b) of this Act shall be by application for a stated case, which application shall—

- (a) be made within one week of the final determination of the proceedings;
  - (b) contain a full statement of all the matters which the appellant desires to bring under review and where the appeal is also against the sentence [<sup>F26</sup>or disposal or order], [<sup>F27</sup>the ground of appeal against that sentence or disposal or order]; and
  - (c) be signed by the appellant or his solicitor and lodged with the clerk of court; and a copy of the application shall within the period mentioned in paragraph (a) above be sent by the appellant to the respondent or the respondent's solicitor.
- (1A) The clerk of the court shall enter in the record of the proceedings the date when an application under subsection (1) above was lodged.
- (1B) The appellant may, at any time within the period of three weeks mentioned in subsection (1) of section 448 of this Act, or within any further period afforded him by virtue of subsection (6) of that section, amend any matter stated in his application or add a new matter; and he shall intimate any such amendment, or addition, to the respondent or the respondent's solicitor.]
- (2) Where such an application has been made by the person convicted, and the judge by whom he was convicted dies before signing the case or is precluded by illness or other cause from doing so, it shall be competent for the convicted person to present a bill of suspension to the High Court and to bring under the review of that court any matter which might have been brought under review by stated case.
  - (3) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection (1) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.
  - (4) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application, and notification of the application shall be made by the appellant or his solicitor to the clerk of the court from which the appeal is to be taken, and the clerk shall thereupon transmit the complaint, documentary productions and any other proceedings in the cause to the Clerk of Justiciary.

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- (5) The High Court shall dispose of any application under [F28 subsection (3) of] this section in like manner as an application to review the decision of an inferior court on a grant of [F29 bail], but shall have power—
- (a) to dispense with a hearing; and
  - (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.
- (6) ..... F30

**Textual Amendments**

- F24** S. 444(1)(1A)(1B) substituted for s. 444(1) by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 3(a), **Sch. 6 para. 7**
- F25** Words in s. 444(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 181(4)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F26** Words in s. 444(1)(b) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(12)**
- F27** Words in s. 444(1)(b) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 148**; S.I. 1996/517, arts. 3-6, **Sch.**
- F28** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 3(b), **Sch. 6 para. 7**
- F29** Words substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch.1 para. 10**
- F30** S. 444(6) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

- 445 ..... F31

**Textual Amendments**

- F31** S. 445 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Schs. 6 para. 7, **Sch. 8**

**446 Procedure where appellant in custody.**

- [F32(1) If an appellant under section 444 of this Act is in custody, the court may—
- (a) grant bail;
  - (b) grant a sist of execution;
  - (c) make any other interim order.]
- (2) An application for [F33 bail] shall be disposed of by the court within 24 hours after such application has been made. The appellant, if dissatisfied with the [F34 conditions imposed], or on refusal of [F33 bail], may, within 24 hours after the judgment of the court, appeal thereagainst by a note of appeal written on the complaint and signed by himself or his solicitor, and the complaint and proceedings shall thereupon be transmitted to the Clerk of Justiciary, and the High Court or any judge thereof, either in court or in chambers, shall, after hearing parties, have power to review the decision of the inferior court and to grant [F33 bail] on such conditions as such court or judge may think fit, or to refuse [F33 bail].
- (3) No clerks' fees, court fees or other fees or expenses shall be exigible from or awarded against an appellant in custody in respect of an appeal to the High Court against the



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[<sup>F34</sup>conditions imposed] or on account of refusal of [<sup>F33</sup>bail] by a court of summary jurisdiction.

- (4) If an appellant who has been granted [<sup>F33</sup>bail] does not thereafter proceed with his appeal, the inferior court shall have power to grant warrant to apprehend and imprison him for such period of his sentence as at the date of his [<sup>F33</sup>bail] remained unexpired, such period to run from the date of his imprisonment under such warrant [<sup>F35</sup>or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against].
- (5) Where an appellant who has been granted [<sup>F33</sup>bail] does not thereafter proceed with his appeal, the court from which the appeal was taken shall have power, where at the time of the abandonment of the appeal the person is [<sup>F36</sup>in custody or] serving a term or terms of imprisonment imposed subsequently to the conviction appealed against, to order that the sentence or, as the case may be, the unexpired portion of that sentence relating to that conviction should run from such date as the court may think fit, not being a date later than the date on which [<sup>F37</sup>any term] or terms of imprisonment subsequently imposed expired.
- [<sup>F38</sup>(6) The court shall not make an order under subsection (5) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.]

#### Textual Amendments

- F32** S. 446(1) substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\), Sch. 3 para. 5, Sch. 6 para. 7](#)
- F33** Word substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\), Sch. 1 para. 11\(a\)](#)
- F34** Words substituted by [Bail etc. \(Scotland\) Act 1980 \(c. 4, SIF 39:1\), Sch. 1 para. 11\(b\)](#)
- F35** Words in s. 446(4) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 149\(a\)](#); S.I. 1996/517, arts. 3-6, [Sch.](#)
- F36** Words in s. 446(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 149\(b\)\(i\)](#); S.I. 1996/517, arts. 3-6, [Sch.](#)
- F37** Words in s. 446(5) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 149\(b\)\(ii\)](#); S.I. 1996/517, arts. 3-6, [Sch.](#)
- F38** S. 446(6) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 149\(c\)](#); S.I. 1996/517, arts. 3-6, [Sch.](#)

#### Modifications etc. (not altering text)

- C3** S. 446(2) applied by [Extradition Act 1989 \(c. 33, SIF 48\), s. 10\(13\)](#)

#### 447 Draft stated case to be prepared.

- [<sup>F39</sup>(1) Within three weeks of the final determination of proceedings in respect of which an application for a stated case is made under section 444 of this Act—
- (a) where the appeal is taken from the district court and the trial was presided over by a justice of the peace or justices of the peace, [<sup>F40</sup>the clerk of court]; or
- (b) in any other case the judge who presided at the trial,



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shall prepare a draft stated case, and the clerk of the court concerned shall forthwith issue the draft to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor.]

- (2) A stated case shall be in the form, as nearly as may be, . . . <sup>F41</sup> of the appropriate form contained in an Act of Adjournal under this Act, and shall set forth the particulars of any matters competent for review which the appellant desires to bring under the review of the High Court, and of the facts, if any, proved in the case, and any point of law decided, and the grounds of the decision.

#### Textual Amendments

- F39** S. 447(1) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 6, **Sch. 6 para. 7**
- F40** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 23(2), **Sch. 2 para. 20**
- F41** Words repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 63:1), Sch. 6 para. 1, **Sch. 8**

#### 448 Adjustment and signature of case.

- [<sup>F42</sup>(1) Subject to subsection (6) below, within three weeks of the issue of the draft stated case under section 447 of this Act, each party shall cause to be transmitted to the court and to the other parties or their solicitors a note of any adjustments he proposes be made to the draft case or shall intimate that he has no such proposal:

Provided that adjustments proposed shall relate to evidence heard (or purported to have been heard) at the trial and not to such additional evidence as is mentioned in section 442(2) of this Act.

- (2) Subject to subsection (6) below, if the period mentioned in subsection (1) above has expired and the appellant has not lodged adjustments and has failed to intimate that he has no adjustments to propose, he shall be deemed to have abandoned his appeal; and subsection (4) of section 446 of this Act shall apply accordingly.
- (2A) If adjustments are proposed under subsection (1) above or if the judge desires to make any alterations to the draft case there shall, within one week of the expiry of the period mentioned in that subsection or as the case may be of any further period afforded under subsection (6) below, be a hearing (unless the appellant has, or has been deemed to have, abandoned his appeal) for the purpose of considering such adjustments or alterations.
- (2B) Where a party neither attends nor secures that he is represented at a hearing under subsection (2A) above, the hearing shall nevertheless proceed.
- (2C) Where at a hearing under subsection (2A) above—
- any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge; or
  - any alteration . . . <sup>F43</sup> proposed by the judge is not accepted by all the parties, that fact shall be recorded in the minute of the proceedings of the hearing.
- (2D) Within two weeks of the date of the hearing under subsection (2A) above or, where there is no hearing, within two weeks of the expiry of the period mentioned in

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subsection (1) above, the judge shall (unless the appellant has been deemed to have abandoned the appeal) state and sign the case and shall append to the case—

- (a) any adjustment, proposed under subsection (1) above, which is rejected by him, a note of any evidence rejected by him which is alleged to support that adjustment and the reasons for his rejection of that adjustment and evidence; and
- (b) a note of the evidence upon which he bases any finding of fact challenged, on the basis that it is unsupported by the evidence, by a party at the hearing under subsection (2A) above.]

[<sup>F44</sup>(3) As soon as the case is signed under subsection (2D) above the clerk of court—

- (a) shall send the case to the appellant or his solicitor and a duplicate thereof to the respondent or his solicitor; and
- (b) shall transmit the complaint, productions and any other proceedings in the cause to the Clerk of Justiciary.

(4) Subject to subsection (6) below, within one week of receiving the case the appellant or his solicitor, as the case may be, shall cause it to be lodged with the Clerk of Justiciary.

(5) Subject to subsection (6) below, if the appellant or his solicitor fails to comply with subsection (4) above the appellant shall be deemed to have abandoned the appeal; and subsection (4) of section 446 of this Act shall apply accordingly.]

(6) Without prejudice to any other power of relief which the High Court may have, where it appears to that court on application made in accordance with the following provisions of this section, that the applicant has failed to comply with any of the requirements of subsection [<sup>F45</sup>(1) or] (4) of this section, the High Court may direct that such further period of time as it may think proper be afforded to the applicant to comply with any requirement of the aforesaid provisions.

(7) Any application for a direction under the last foregoing subsection shall be made in writing to the Clerk of Justiciary and shall state the grounds for the application.

(8) The High Court shall dispose of any application under [<sup>F46</sup>subsection (6) of] this section in like manner as an application to review the decision of an inferior court on a grant of [<sup>F47</sup>bail], but shall have power—

- (a) to dispense with a hearing; and
- (b) to make such enquiry in relation to the application as the court may think fit; and when the High Court has disposed of the application the Clerk of Justiciary shall inform the clerk of the inferior court of the result.

(9) ..... <sup>F48</sup>

**Textual Amendments**

**F42** S. 448(1)–(2D) substituted for s. 448(1)(2) by Criminal Justice (Scotland) Act 1980 (c. 62), Sch. 3 para. 7(a), **Sch. 6 para. 7**

**F43** Words repealed by Law Reform (Miscellaneous Provisions (Scotland) Act 1985 (c. 73, SIF 36:1), Sch. 4

**F44** S. 448(3)–(5) substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(b), **Sch. 6 para. 7**

**F45** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(c), **Sch. 6 para. 7**

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- F46** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 7(d), **Sch. 6 para. 7**
- F47** Word substituted by Bail etc. (Scotland) Act 1980 (c. 4, SIF 39:1), **Sch. 1 para. 12**
- F48** S. 448(9) repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

#### **449 Abandonment of appeal.**

- (1) An appellant [<sup>F49</sup>in an appeal such as is mentioned in section 444(1)] of this Act may at any time prior to lodging the case with the Clerk of Justiciary abandon his appeal by minute signed by himself or his solicitor, written on the complaint or lodged with the clerk of the inferior court, and intimated to the respondent [<sup>F50</sup>or the respondent's solicitor], but such abandonment shall be without prejudice to any other competent mode of appeal, review, advocacy or suspension.
- (2) [<sup>F51</sup>Subject to section 453A of this Act] On the case being lodged with the Clerk of Justiciary, the appellant shall be held to have abandoned any other mode of appeal which might otherwise have been open to him.

##### **Textual Amendments**

- F49** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(a)(i), **Sch. 6 para. 7**
- F50** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(a)(ii), **Sch. 6 para. 7**
- F51** Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 8(b), **Sch. 6 para. 7**

#### **450 Record of procedure in appeal.**

On an appeal [<sup>F52</sup>such as is mentioned in section 444(1) of this Act being taken] the clerk of court shall record on the complaint the different steps of procedure in the appeal, and such record shall be evidence of the dates on which the various steps of procedure took place. The forms of procedure in appeals shall be as nearly as may be in accordance with the forms contained in . . . <sup>F53</sup> an Act of Adjournal under this Act.

##### **Textual Amendments**

- F52** Words substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 9, **Sch. 6 para. 7**
- F53** Words repealed by S.I. 1981/386, **rule 4(3)**

#### **[<sup>F54</sup>451 Computation of time.**

- (1) If any period of time specified in any provision of this Part of this Act relating to appeals expires on a Saturday, Sunday or court holiday prescribed for the relevant court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such court holiday.
- (2) Where a judge against whose judgment an appeal is [<sup>F55</sup>taken—
- (a) is temporarily absent from duty for any cause;

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- (b) is a temporary sheriff; or
- (c) is a justice of the peace,

the sheriff] principal of the sheriffdom in which the court at which the judgment was pronounced is situated may extend any period specified in sections 447(1) and 448(2A) and (2D) of this Act for such period as he considers reasonable.

- (3) For the purposes of sections 444(1)(a) and 447(1) of this Act, summary proceedings shall be deemed to be finally determined on the day on which sentence is passed in open court; except that, where in relation to an appeal under section 442(1)(a)(i) [<sup>F56</sup>or (in so far as it is against conviction) (iii)] or (b)(i) of this Act sentence is deferred under section 432 of this Act, they shall be deemed finally determined on the day on which sentence is first so deferred in open court.]

#### Textual Amendments

- F54** S. 451 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 3 para. 10, **Sch. 6 para. 7**
- F55** S. 451(2)(a)-(c) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 45(1); S.I. 1996/517, arts. 3-6, **Sch.**
- F56** Words in s. 451(3) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 150**; S.I. 1996/517, arts. 3-6, **Sch.**

#### [<sup>F57</sup>451A Quorum of High Court in relation to appeals.

- (1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.
- (2) For the purpose of hearing and determining appeals under section 442(1)(a)(ii) or (ia) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.]

#### Textual Amendments

- F57** S. 451A inserted (26.9.1995) by 1995 c. 20, s. 43(2); S.I. 1995/2295, art. 3, **Sch.** (subject to transitional provisions in arts. 4-6)

#### [<sup>F58</sup>452 Hearing of appeal.

- (1) A stated case under this Part of this Act shall be heard by the High Court on such date as it may fix.
- (2) For the avoidance of doubt, where an appellant, in his application under section 444(1) of this Act (or in a duly made amendment or addition to that application), refers to

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an alleged miscarriage of justice, but in stating a case under section 448(2D) of this Act the inferior court is unable to take the allegation into account, the High Court may nevertheless have regard to the allegation at a hearing under subsection (1) above.

- (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 matter not contained in his application under section 444(1) of this Act (or in a duly made amendment or addition to that application).

[ Subsection (3) above shall not apply as respects any ground of appeal specified as an <sup>F59</sup>(3A) arguable ground of appeal by virtue of subsection (7) of section 442ZA of this Act.]

- (4) Without prejudice to any existing power of the High Court, that court may in hearing a stated case—

- (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;
- (f) take account of any matter proposed in any adjustment rejected by the trial judge and of the reasons for such rejection;
- (g) take account of any evidence contained in a note of evidence such as is mentioned in section 448(2D) of this Act.

- (5) The High Court may at the hearing remit the stated case back to the inferior court to be amended and returned.]

#### Textual Amendments

**F58** Ss. 452, 452A, 452B substituted for s. 452 by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), [Sch. 3 para. 11](#), [Sch. 6 para. 7](#).

**F59** S. 452(3A) inserted (26.9.1995) by [1995 c. 20, s. 42\(6\)](#); [S.I. 1995/2295, art. 3, Sch.](#) (subject to transitional provisions in [arts. 4-6](#))

#### Modifications etc. (not altering text)

**C4** S. 452(4)(a)–(e) extended by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [s. 81\(8\)](#)

**C5** S. 452(4)(a)–(e) extended by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), [s. 17\(8\)](#)

**C6** S. 452(4)(a)–(e) applied (28.10.1992) by [S.I. 1992/2372, reg. 95\(8\)](#).

S. 452(4)(a)–(e) applied (31.10.94) by [1994 c. 26, s. 98\(9\)](#); [S.I. 1994/2550, art. 2](#)

### 452A Disposal of stated case appeal.

- (1) The High Court may, subject [<sup>F60</sup>to subsection (2) below and]to section 453D(1) of this Act, dispose of a stated case by—

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- (a) remitting the cause to the inferior court with their opinion and any direction thereon;
- (b) affirming the verdict of the inferior court;
- (c) setting aside the verdict of the inferior 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 complaint before the inferior court; or

- (d) setting aside the verdict of the inferior court and granting authority to bring a new prosecution in accordance with section 452B of this Act.

[<sup>F61</sup>(2) The High Court shall, in an appeal—

- (a) against both conviction and sentence [<sup>F62</sup>(“sentence” being construed in this subsection and in subsection (3) below as including disposal or order)], subject to section 453D(1) of this Act, dispose of the appeal against sentence; or

(b) by the prosecutor, against sentence, dispose of the appeal, by exercise of the power mentioned in section 453C(1) of this Act.

(3) In setting aside, under subsection (1) above, a verdict the High Court may quash any sentence imposed on the appellant as respects the complaint, 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.

(4) Where an appeal against acquittal is sustained, the High Court may—

- (a) convict and sentence the respondent;
- (b) remit the case to the inferior court with instructions to convict and sentence the respondent, who shall be bound to attend any diet fixed by the inferior court for such purpose; or
- (c) remit the case to the inferior court with their opinion thereon:

Provided that the High Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

[<sup>F63</sup>(4A) Any reference in subsection (4) above to convicting and sentencing shall be construed as including a reference to convicting and making some other disposal or convicting and deferring sentence.]

(5) The High Court shall have power in an appeal under this Part of this Act to award such expenses both in the High Court and in the inferior court as it may think fit.

(6) Where, following an appeal (other than an appeal under section 442(1)(a)(ii) or 442(1)(b) of this Act), the appellant remains liable to imprisonment or detention under the sentence of the inferior court, or is so liable under a sentence passed in the appeal proceedings the High Court shall have power where at the time of disposal of the appeal the appellant—

- (a) was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the appellant for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment (or detention) specified



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in the sentence brought under review which remained unexpired at the date of liberation;

- (b) is serving a term or terms of imprisonment (or detention) imposed in relation to a conviction subsequent to the conviction appealed against, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

#### Textual Amendments

- F60** Words in s. 452A(1) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(35)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F61** S. 452A(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(35)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 10(b)**
- F62** Words in s. 452A(2) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(13)(a)**
- F63** S. 452A(4A) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(13)(b)**

#### 452B Supplementary provisions where High Court authorises new prosecution.

- (1) [<sup>F64</sup>Subject to subsection (1A) below,] where authority is granted under section 452A(1)(d) 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 stated case arose shall not be a bar to such 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.

- [<sup>F65</sup>(1A) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

- (1B) In proceedings in a new prosecution under this section it shall, subject to subsection (1C) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

- (1C) The complaint in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (1B) above which would not have been competent but for that subsection.]

- (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 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 452A(1)(d) of this Act setting aside the verdict shall have the effect, for all purposes, of an acquittal.

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[<sup>F66</sup>(5) On granting authority under section 452A(1)(d) of this Act to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody; but an accused person may not be detained by virtue of this subsection for a period of more than 40 days.]

#### Textual Amendments

- F64** Words in s. 452B(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(2)(a); S.I. 1996/517, arts. 3-6, **Sch.**
- F65** S. 452B(1A)-(1C) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(2)(b); S.I. 1996/517, arts. 3-6, **Sch.**
- F66** S. 452B(5) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 46(2)(c); S.I. 1996/517, arts. 3-6, **Sch.**

#### [453] <sup>F67</sup>Prosecutor’s consent to or application for setting aside of conviction.

- (1) [<sup>F68</sup>Without prejudice to section 442(1)(b) or (c) of this Act,] Where—
- (a) an appeal has been taken under section [<sup>F69</sup>442(1)(a)] of this Act or by suspension or otherwise and the prosecutor is not prepared to maintain the judgment appealed against he may, by a relevant minute, consent to the conviction [<sup>F70</sup>or sentence or, as the case may be, conviction and sentence (“sentence” being construed in this section as including disposal or order)] being set aside either in whole or in part; or
  - (b) no such appeal has been taken but the prosecutor is, at any time, not prepared to maintain the judgment on which a conviction is founded [<sup>F71</sup>or the sentence imposed following such conviction] he may, by a relevant minute, apply for the conviction [<sup>F72</sup>or sentence or, as the case may be, conviction and sentence] so to be set aside.
- (2) For the purposes of subsection (1) above, a “relevant minute” is a minute, signed by the prosecutor—
- (a) setting forth the grounds on which he is of the opinion that the judgment cannot be maintained; and
  - (b) written on the complaint or lodged with the clerk of court.
- (3) A copy of any minute under subsection (1) above shall be sent by the prosecutor to the convicted person or his solicitor and the clerk of court shall—
- (a) thereupon ascertain, and note on the record, whether that person or solicitor desires to be heard by the High Court before the appeal, or as the case may be application, is disposed of; and
  - (b) thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary.
- (4) The Clerk of Justiciary, on receipt of a complaint and relative proceedings transmitted under subsection (3) above, shall lay them before any judge of the High Court either in court or in chambers who, after hearing parties if they desire to be heard, may—
- (a) set aside the conviction [<sup>F73</sup>or the sentence, or both,] either in whole or in part and—
    - (i) award such expenses to the convicted person, both in the High Court and in the inferior court, as the judge may think fit; <sup>F74</sup> . . .

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- (ii) where the conviction is set aside in part, pass another (but not more severe) sentence in substitution for the sentence imposed in respect of that conviction; or <sup>F75</sup>; and
  - (iii) where the sentence is set aside, pass another (but not more severe) sentence;]
- (b) refuse to set aside the conviction <sup>F76</sup>or sentence, or, as the case may be conviction and sentence,], in which case the complaint and proceedings shall be returned to the clerk of the inferior court.
- (5) Where an appeal has been taken and the complaint and proceedings in respect of that appeal returned under subsection (4)(b) above, the appellant shall be entitled to proceed with the appeal as if it had been marked on the date of their being received by the clerk of the inferior court on such return.
- (6) Where an appeal has been taken and a copy minute in respect of that appeal sent under subsection (3) above, the preparation of the draft stated case shall be delayed pending the decision of the High Court.
- (7) The period from an application being made under subsection (1)(b) above until its disposal under subsection (4) above (including the day of application and the day of disposal) shall, in relation to the conviction to which the application relates, be disregarded in any computation of time specified in any provision of this Part of this Act relating to appeals.

#### Textual Amendments

- F67** S. 453 substituted (18.9.1993) by 1993 c. 9, s. 43 (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, arts. 3(3), 4(1)(a), **Sch. 2**
- F68** Words in s. 453(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(2)(a)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F69** Words in s. 453(1)(a) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(2)(b)(i)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F70** Words in s. 452(1)(a) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(2)(b)(ii)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F71** Words in s. 452(1)(b) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(2)(c)(i)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F72** Words in s. 452(1)(b) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(2)(c)(ii)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F73** Words in s. 452(4)(a) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(3)(a)(i)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F74** Word in s. 452(4)(a)(i) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, Sch. 6 Pt. I para. 151(3)(a)(ii), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3-6, **Sch.**
- F75** S. 452(4)(a)(iii) and word  
“and”  
immediately preceding it inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(3)(a)(iii)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F76** Words in s. 452(4)(b) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 151(3)(b)**; S.I. 1996/517, arts. 3-6, **Sch.**

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**[<sup>F77</sup>453A Appeal by bill of suspension or advocation on ground of miscarriage of justice.**

- (1) Notwithstanding section 449(2) of this Act, a party to a summary prosecution may, where an appeal under section 442 of this Act would be incompetent or would in the circumstances be inappropriate, appeal to the High Court, by bill of suspension against a conviction, or as the case may be by advocation against an acquittal, on the ground of an alleged miscarriage of justice in the proceedings:

Provided that where the alleged miscarriage of justice is referred to in an application, under section 444(1) of this Act, for a stated case as regards the proceedings (or in a duly made amendment or addition to that application) an appeal under subsection (1) above shall not proceed without the leave of the High Court until the appeal to which the application relates has been finally disposed of or abandoned.

- (2) Sections 452(4)(a) to (e), 452A(1)(d), 452A(3) and 452B of this Act shall apply to appeals under this section as they apply to appeals such as are mentioned in section 444(1) of this Act.
- (3) The foregoing provisions of this section shall be without prejudice to any rule of law relating to bills of suspension or advocation in so far as such rule of law is not inconsistent with those provisions.]

**Textual Amendments**

**F77** S. 453A–453E inserted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), Sch. 3 para. 13, [Sch. 6 para. 7](#)

**[<sup>F78</sup>453A Leave to appeal against sentence.**

- (1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(ii) or (iia) of this Act shall be made by a judge of the High Court who shall—
- (a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 453B(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal; and
  - (b) in any other case—
    - (i) refuse leave to appeal and give reasons in writing for the refusal; and
    - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (2) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (3) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.
- (3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.
- (4) In deciding an application under subsection (3) above the High Court shall—
- (a) if, after considering the note of appeal and other documents mentioned in subsection (1) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal; and

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- (b) in any other case—
  - (i) refuse leave to appeal and give reasons in writing for the refusal; and
  - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.
- (5) Consideration whether to grant leave to appeal under subsection (1) or (4) above shall take place in chambers without the parties being present.
- (6) Comments in writing made under subsection (1)(a) or (4)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.
- (7) Where the arguable grounds of appeal are specified by virtue of subsection (6) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.
- (8) Any application by the appellant for the leave of the High Court under subsection (7) above—
  - (a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and
  - (b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.
- (9) The Clerk of Justiciary shall forthwith intimate—
  - (a) a decision under subsection (1) or (4) above; and
  - (b) in the case of a refusal of leave to appeal, the reasons for the decision, to the appellant or his solicitor and to the Crown Agent.]

#### Textual Amendments

**F78** S. 453AA inserted (26.9.1995) by 1995 c. 20, s. 42(7); S.I. 1995/2295, art. 3, Sch. (with transitional provisions in arts. 4-6)

#### 453B Appeals against sentence only.

- (1) An appeal under section 442(1)(a)(ii) [<sup>F79</sup>or (ia)] [<sup>F80</sup>, or by virtue of section 442(1)(c),] of this Act shall be by note of appeal, which shall state the ground of appeal.
- [<sup>F81</sup>(2) The note of appeal shall, where the appeal is—
  - (a) under section 442(1)(a)(ii) [<sup>F79</sup>or (ia)] be lodged, within one week of the passing of the sentence [<sup>F82</sup>(or as the case may be of the making of the order disposing of the case or deferring sentence)], with the clerk of the court from which the appeal is to be taken; or
  - (b) by virtue of section 442(1)(c) be so lodged within four weeks of such passing [<sup>F83</sup>(or making)].
- (3) The clerk of court on receipt of the note of appeal shall—
  - (a) send a copy of the note to the respondent or his solicitor; and

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- (b) obtain a report from the judge who sentenced the convicted person [<sup>F84</sup>(or as the case may be who disposed of the case or deferred sentence)].
- (4) The clerk of court shall within two weeks of the passing of the sentence [<sup>F85</sup>(or within two weeks of the disposal or order)] against which the appeal is taken—
- (a) send to the Clerk of Justiciary the note of appeal, together with the report mentioned in subsection (3)(b) above, a certified copy of the complaint, the minute of proceedings and any other relevant documents; and
- (b) send copies of that report to the appellant and respondent or their solicitors:

Provided that the sheriff principal of the sheriffdom in which the judgment was pronounced may, where a [<sup>F86</sup>judge-

- (a) is temporarily absent from duty for any cause;
- (b) is a temporary sheriff; or
- (c) is a justice of the peace,

extend] the period of two weeks specified in this subsection for such period as the sheriff principal considers reasonable

[<sup>F87</sup>(4A) Subject to subsection (4) above, the report mentioned in subsection (3)(b) above shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.]

- (5) Where the judge's report is not furnished within the period mentioned in subsection (4) above, the High Court may extend such period or, if it thinks fit, hear and determine the appeal without such report.
- (6) Subsections (3), (4) and (5) of section 444 of this Act shall apply where an appellant fails to comply with the requirement of subsection [<sup>F88</sup>(2)(a) above] as they apply where an applicant fails to comply with any of the requirements of subsection (1) of that section.
- (7) An appellant under section 442(1)(a)(ii) [<sup>F79</sup>or (iia)] [<sup>F80</sup>, or by virtue of section 442(1)(c),] of this Act may at any time prior to the hearing of the appeal abandon his appeal by minute, signed by himself or his solicitor, lodged—
- (a) in a case where the note of appeal has not yet been sent under subsection (4) (a) above to the Clerk of Justiciary, with the clerk of the court;
- (b) in any other case, with the Clerk of Justiciary, and intimated to the respondent.
- (8) Sections 446, 450 and 452(4)(a) to (e) of this Act shall apply to appeals under section 442(1)(a)(ii) [<sup>F79</sup>or (iia)] [<sup>F80</sup>, or by virtue of section 442(1)(c),] of this Act as they apply to appeals under section 442(1)(a)(i) or (iii) of this Act [<sup>F89</sup>except that, for the purposes of such application to any appeal by virtue of section 442(1)(c), references in subsections (1) to (3) of section 446 to the appellant shall be construed as references to the convicted person and subsections (4) and (5) of section 446 shall be disregarded].

#### Textual Amendments

- F79** Words in s. 452B(1)(2)(7)(8) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(a)**
- F80** Words in s. 453B(1)(7)(8) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**



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- F81** S. 453B(2) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F82** Words in s. 452B(2)(a) inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(b)(i)**
- F83** Words in s. 452B(2)(b) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(b)(ii)**
- F84** Words in s. 452B(3)(b) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(c)**
- F85** Words in s. 452B(4) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(14)(d)**
- F86** S. 452B(4)(a)–(c) proviso substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 45(2); S.I. 1996/517, arts. 3–6, **Sch.**
- F87** S. 453B(4A) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 152**; S.I. 1996/517, arts. 3–6, **Sch.**
- F88** Word in s. 453B(6) substituted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(c)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**
- F89** Words in s. 453B(8) added (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(36)(d)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

#### Modifications etc. (not altering text)

- C7** S. 453B(3) extended by S.I. 1988/110, **rule 129(6)**
- C8** S. 453B(3) modified by S.I. 1988/110, **rule 130(1)(2)**
- C9** S. 453B(4) extended by S.I. 1988/110, **rule 129(6)**
- C10** S. 453B(4) modified by S.I. 1988/110, **rule 130(1)(2)**
- C11** S. 453B(5) extended by S.I. 1988/110, **rule 129(6)**
- C12** S. 453B(6) extended by S.I. 1988/110, **rule 129(6)**
- C13** S. 453B(6) modified by S.I. 1988/110, **rule 130(1)(2)**
- C14** Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, **rule 129(6)**

### 453C Disposal of appeal by note of appeal.

- (1) An appeal against sentence by note of appeal shall be heard by the High Court on such date as it may fix, and the High Court may, subject to section 453D(1) of this Act, dispose of such appeal by—
- affirming the sentence; or
  - if the Court thinks that, having regard to all the circumstances, including any additional evidence such as is mentioned in section 442(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:

Provided that the Court shall not in any case increase the sentence beyond the maximum sentence which could have been passed by the inferior court.

- (2) The High Court shall have power in an appeal by note of appeal to award such expenses both in the High Court and in the inferior court as it may think fit.
- (3) Where, following an appeal under section 442(1)(a)(ii) [F90 or (ia)] [F91], or by virtue of section 442(1)(c), of this Act, the [F92 convicted person] remains liable to imprisonment or detention under the sentence of the inferior court or is so liable under a sentence passed in the appeal proceedings, the High Court shall have power where at the time of disposal of the appeal the [F92 convicted person]—
- was at liberty on bail, to grant warrant to apprehend and imprison (or detain) the [F92 convicted person] for a term, to run from the date of such apprehension, not longer than that part of the term or terms of imprisonment (or detention) specified in the sentence brought under review which remained unexpired at the date of liberation; or

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- (b) is serving a term or terms of imprisonment (or detention) imposed in relation to a conviction subsequent to the conviction in respect of which the sentence appealed against was imposed, to exercise the like powers in regard to him as may be exercised, in relation to an appeal which has been abandoned, by a court of summary jurisdiction in pursuance of section 446(5) of this Act.

[<sup>F93</sup>(4) In subsection (1) above, “appeal against sentence” shall, without prejudice to the generality of the expression, be construed as including an appeal under section 442(1)(a)(iia), and any appeal under section 442(1)(c), of this Act; and without prejudice to subsection (5) below, other references to sentence in that subsection and in subsection (3) above shall be construed accordingly.

- (5) In disposing of any appeal in a case where the accused has not been convicted, the High Court may proceed to convict him; and where it does, the reference in subsection (3) above to the conviction in respect of which the sentence appealed against was imposed shall be construed as a reference to the disposal or order appealed against.]

#### Textual Amendments

- F90** Words in s. 453C inserted (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(15)(a)**  
**F91** Words in s. 453C(3) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 1(37)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**  
**F92** Word in s. 453C substituted (1.10.1993) by 1993 c. 9, ss. 47(1), **Sch. 5 para. 1(37)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**  
**F93** S. 453C(4)(5) added (27.7.1993) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 2(15)(b)**

#### Modifications etc. (not altering text)

- C15** Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, **rule 129(6)**  
**C16** S. 183 amended by Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32, SIF 68A:1, 2), **s. 1(2)(c)**

### 453D Disposal of appeal where appellant insane.

(1) In relation to any appeal under section 442(1)(a) 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 inferior 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 complaint [<sup>F94</sup>and—  
 (i) making, in respect of the appellant, any order mentioned in section 375ZC(2)(a) to (d) of this Act; or  
 (ii) making no order.]

[<sup>F95</sup>(2) Subsection (3) of section 375ZC of this Act shall apply to an order made under subsection (1)(b)(i) above as it applies to an order made under subsection (2) of that section.]

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**Textual Amendments**

- F94** S. 453D(1)(b)(i)(ii) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for words by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 153(a)**; S.I. 1996/517, arts. 3-6, **Sch.**
- F95** Words s. 453D(2) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 153(b)**; S.I. 1996/517, arts. 3-6, **Sch.**

**Modifications etc. (not altering text)**

- C17** Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, **rule 129(6)**

**453E Failure of appellant who has been granted bail to appear personally.**

Where an appellant has been granted bail, whether his appeal is under this Part of this Act or otherwise, he shall appear personally in court at the diet appointed for the hearing of the appeal. If he does not appear the High Court shall either—

- (a) dispose of the appeal as if it had been abandoned (in which case subsection (4) of section 446 of this Act shall apply accordingly); or
- (b) on cause shown permit the appeal to be heard in his absence.

**Modifications etc. (not altering text)**

- C18** Ss. 453B(7)(8), 453C–453E extended by S.I. 1988/110, **rule 129(6)**

**454 Convictions not to be quashed on certain grounds.**

- (1) No conviction, sentence, judgment, order of court or other proceeding whatsoever under this Part of this Act shall be quashed for want of form or, where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to the relevancy of the complaint, or to the want of specification therein, or to the competency or admission or rejection of evidence at the trial in the inferior court, unless such objections shall have been timeously stated<sup>F96</sup> . . .
- (2) . . . . .<sup>F97</sup>

**Textual Amendments**

- F96** Words in s. 454(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 117, **Sch. 6 Pt. I para. 154, Sch. 7 Pt. I**; S.I. 1996/517, arts. 3-6, **Sch.**
- F97** S. 454(2) repealed by **Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1)**, Schs. 6 para. 7, **Sch. 8**

**455 Other modes of appeal.**

- (1) The provisions regulating appeals shall, subject to the provisions of this Part of this Act, be without prejudice to any other mode of appeal competent.
- (2) Any officer of law may serve any bill of suspension or other writ relating to an appeal.

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[<sup>F98</sup>**455A Sentencing guidelines.**

- (1) In disposing of an appeal under section 442(1)(a)(ii), (iia) or (iii), (b)(ii) or (c) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.
- (2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.]

**Textual Amendments**

**F98** S. 455A inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 34(2); S.I. 1996/517, arts. 3-6, **Sch.**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn. of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)