

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 34.

SUMMARY APPEALS

Modifications etc. (not altering text)

- C1** The text of Schs. 2–4, Sch. 7 paras 8–11, 13, 16, 21, 24–49, 51–79 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

In the 1975 Act—

- 1 For section 442 (appeal by stated case), there shall be substituted the following sections—

“442 Right of appeal.

- (1) Without prejudice to any right of appeal under section 453A of this Act—
- (a) any person convicted in summary proceedings may appeal under this section to the High Court—
 - (i) against such conviction ;
 - (ii) against the sentence passed on such conviction ; or
 - (iii) against both such conviction and such sentence ;
 - (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 in such proceedings.
- (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 would not reasonably have been made available at the trial.

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

- (1) Where a person desires to appeal under appeal 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.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

- (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.

Where a person desires to appeal against sentence alone, under section 442(1)(a)(ii) of this Act, he shall pursue such appeal in accordance with the provisions of sections 453B to 453E of this Act:

Provided that nothing in this section shall prevent a convicted person from proceeding by way of a bill of suspension in respect of any alleged fundamental irregularity relating to the imposition of the sentence..”

- 2 In section 443 (appeals against hospital orders etc.), for the words “a conviction” there shall be substituted the word “ sentence ”.

- 3 In section 444 (manner and time of appeal)—

- (a) for subsection (1) there shall be substituted the following subsections—

“(1) 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 sentence, a statement of that fact ; 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.”; and

- (b) in subsection (5), after the word “under” there shall be inserted the words “ subsection (3) of ”.

- 4 Section 445 (caution by appellant) shall cease to have effect.

- 5 In section 446 (procedure where appellant in custody), for subsection (1) there shall be substituted the following subsection—

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

“(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.”.

6 For subsection (1) of section 447 (draft stated case to be prepared), there shall be substituted the following subsection—

“(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, the justice, or justices, with such assistance from the clerk of court as may be required; or
(b) in any other case the judge who presided at the trial,

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. ”.

7 In section 448 (adjustment and signature of case)—

(a) for subsections (1) and (2) there shall be substituted the following subsections—

“(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—

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

- (a) any adjustment proposed under subsection (1) above by a party (and not withdrawn) is rejected by the judge ; or
 - (b) any alteration to the draft case 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 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.” ;
- (b) for subsections (3) to (5) there shall be substituted the following subsections—
- “(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.” ;
- (c) in subsection (6), after the word “subsection” there shall be inserted the words “ (1) or ” ; and
- (d) in subsection (8), after the word “under” there shall be inserted the words “ subsection (6) of ”.

8 In section 449 (abandonment of appeal)—

- (a) in subsection (1)—
 - (i) for the words “under section 442”, there shall be substituted the words “ in an appeal such as is mentioned in section 444(1) ” ; and
 - (ii) after the word “respondent” there shall be inserted the words “ or the respondent’s solicitor ” ; and
- (b) in subsection (2) at the beginning there shall be inserted the words “ Subject to section 453A of this Act, ”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

9 In section 450 (record of procedure on appeal), for the words “being taken under section 442 of this Act” there shall be substituted the words “ such as is mentioned in section 444(1) of this Act being taken ”.

10 For section 451 (computation of time), there shall be substituted the following section—

“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 taken is temporarily absent from duty for any cause, 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) 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.”.

11 For section 452 (hearing of appeal), there shall be substituted the following sections—

“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 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).
- (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 ;

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

- (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.

452A Disposal of stated case appeal.

- (1) The High Court may, subject to section 453D(1) of this Act, dispose of a stated case by—
- (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.
- (2) In an appeal against both conviction and sentence the High Court shall, subject to section 453D(1) of this Act, dispose of the appeal against sentence 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

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

(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.

- (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 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.

452B Supplementary provisions where High Court authorises new prosecution.

- (1) 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.

- (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, ie the effect, for all purposes, of an acquittal.”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

- 12 In section 453 (consent by prosecutor to set aside conviction)—
- (a) in subsection (1) for the words “section 442” there shall be substituted the words “section 442(1)(a)(i) or (iii) ” ;
 - (b) in subsection (2) after the word “appellant” where it first occurs there shall be inserted the words “ or his solicitor ” ;
 - (c) in each of paragraphs (a) and (b) of subsection (5), for the words “10 days” there shall be substituted the words “ 2 weeks ”.

- 13 After section 453 of the 1975 Act there shall be inserted the following sections—

“453A Appeal by bill of suspension or advocacy 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 advocacy 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 advocacy in so far as such rule of law is not inconsistent with those provisions.

453B Appeals against sentence only.

- (1) An appeal under section 442(1)(a)(ii) of this Act shall be by note of appeal, which shall state the ground of appeal.
- (2) The note of appeal shall, within one week of the passing of the sentence, be lodged with the clerk of the court from which the appeal is to be taken.
- (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
 - (b) obtain a report from the judge who sentenced the convicted person.
- (4) The clerk of court shall within two weeks of the passing of the sentence 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

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

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 judge is temporarily absent from duty for any cause, extend the period of two weeks specified in this subsection for such period as the sheriff principal considers reasonable.

- (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 (2) 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) 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 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) of this Act as they apply to appeals under section 442(1)(a)(i) or (iii) of this Act.

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—
- (a) affirming the sentence ; or
- (b) 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) 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

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1980, SCHEDULE 3. (See end of Document for details)

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 in the sentence brought under review which remained unexpired at the date of liberation ; or
- (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.

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 and ordering that he be detained in a state hospital or such other hospital as for special reasons the court may specify.
- (2) The provisions of subsection (4) of section 174 of this Act shall apply to an order under subsection (1)(b) above as they apply to an order under that section.

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.”.

- 14 Section 454(2) (which provides in relation to summary proceedings that no conviction or sentence etc. shall be quashed except on certain specified grounds) shall cease to have effect.

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Point in time view as at 01/02/1991.

Changes to legislation:

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