

SCHEDULES

SCHEDULE 5

CONSEQUENTIAL AMENDMENTS

PART I

ENACTMENTS

The Criminal Procedure (Scotland) Act 1975 (c. 21)

- 2 (1) The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.
- (2) In each of sections 181 and 382 (admonition in, respectively, solemn and summary proceedings), for “found guilty” substitute “convicted”.
- (3) In section 191 (effects of probation and absolute discharge: solemn proceedings), for paragraph (a) of subsection (3) substitute—
“*(a)* any right to appeal;”.
- (4) In section 233 (note of appeal)—
(a) in subsection (1)—
(i) in paragraph (a), for “against sentence alone” substitute “under section 228(1)(b), (bb), (bc) or (bd) of this Act” and after “sentence”, where it occurs for the second time, insert “(or as the case may be, of the making of the order disposing of the case or deferring sentence)”;
and
(ii) in paragraph (b), after “sentence” insert “(or as the case may be, of the making of the order disposing of the case or deferring sentence)”;
and
(b) in subsection (4), for “against sentence alone” substitute “under section 228(1)(b), (bb), (bc) or (bd)”.
- (5) In section 238(1) (admission to bail), for paragraph (b) substitute—
“*(b)* any relevant appeal by the Lord Advocate under section 228A of this Act.”.
- (6) In section 244(2) (abandonment of appeal), after “sentence”—
(a) where it first occurs, insert “(or as the case may be against both conviction and disposal or order)”; and
(b) where it occurs for the second time, insert “(or disposal or order)”.
- (7) In section 254 (disposal of appeals in solemn proceedings)—
(a) in subsection (2)—
(i) after “appellant” insert “(or as the case may be any disposal or order made)”;

Status: This is the original version (as it was originally enacted).

- (ii) in each of paragraphs (a) and (b), after “sentence” insert “(or disposal or order)”;
- (iii) after “sentence”, where it occurs for the fourth time, insert “or make another (but not more severe) disposal or order”; and
- (iv) after “sentence”, where it occurs for the fifth time, insert “, disposal or order”;
- (b) in subsection (4), after “appellant” insert “(or disposal or order made)”;
- (c) after subsection (4) insert—
 - “(4A) In subsection (3) above, “appeal against sentence” shall, without prejudice to the generality of the expression, be construed as including an appeal under section 228(1)(bb), (bc) or (bd), and any appeal under section 228A, of this Act; and other references to sentence in that subsection shall be construed accordingly.”.
- (8) In section 268 (reckoning of time spent in custody pending appeal), in each of subsections (1) and (2), for “appeal by the Lord Advocate against the sentence passed on conviction” substitute “relevant appeal by the Lord Advocate under section 228A of this Act”.
- (9) In section 392 (effects of probation and absolute discharge: summary proceedings) for paragraph (a) of subsection (3) substitute—
 - “(a) any right to appeal;”.
- (10) In section 442B (method of appeal against sentence alone in summary proceedings) —
 - (a) after “person” insert “, or as the case may be a person found to have committed an offence;”;
 - (b) the words “against sentence alone” shall cease to have effect; and
 - (c) after “442(1)(a)(ii)” insert “or (iia)”.
- (11) In section 443A (suspension of disqualification, forfeiture, etc.), in each of subsections (1) and (2), at the end add “(or disposal or order)”.
- (12) In section 444(1)(b) (contents of application for stated case), after “sentence” insert “or disposal or order”.
- (13) In section 452A (disposal of stated case)—
 - (a) in subsection (2), after “sentence”, where it first occurs, insert “(“sentence” being construed in this subsection and in subsection (3) below as including disposal or order)”;
 - (b) after subsection (4) insert—
 - “(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.”
- (14) In section 453B (appeals against sentence only in summary proceedings)—
 - (a) in each of subsections (1), (2), (7) and (8), after “442(1)(a)(ii)” insert “or (iia)”;
 - (b) in subsection (2)—

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- (i) in paragraph (a), after “sentence” insert “(or as the case may be of the making of the order disposing of the case or deferring sentence)”;
and
 - (ii) in paragraph (b), at the end add “(or making)”;
 - (c) in subsection (3)(b), at the end add “(or as the case may be who disposed of the case or deferred sentence)”; and
 - (d) in subsection (4), after “sentence” add “(or within two weeks of the disposal or order)”.
- (15) In section 453C (disposal in summary proceedings of appeal by note of appeal)—
- (a) in subsection (3), after “442(1)(a)(ii)” insert “or (iia)”; and
 - (b) at the end add—
 - “(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.”.