HIGH COURT OF JUSTICIARY

PRACTICE NOTE

No. 2 of 2010

Amended grounds of appeal

1. Despite their popularity in practice, the Criminal Procedure (Scotland) Act 1995 does not recognise or expressly permit amendments to grounds of appeal or the lodging of additional grounds of appeal.

2. In solemn conviction appeals, an appellant must first lodge an intimation of intention to appeal within two weeks of sentencing (ss 109(1)). Within eight weeks of that, he must lodge "a written note of appeal" (ss 110(1)(a)). This note must "contain a full statement of all the grounds of appeal" (ss 110(3)(b)). Both periods may be extended (ss 111(2)). The Clerk of Justiciary may also extend the 8 week period (ss 110(2)). The note of appeal is sent to the trial judge so that he can prepare his report (ss 110(1) and 113). It is provided that an appellant cannot, without leave of the Court on cause shown, "found any aspect of his appeal on a ground not contained in the note of appeal" (ss 110(4)). The statutory scheme is therefore that, in the normal case, all grounds to be argued should be contained in the original note of appeal.

3. An appellant's right of appeal is subject to the grant of "leave" (ss 106(1)) in respect of "arguable grounds of appeal" (ss 107(1)(a)) contained in the note of appeal or the sifting judge's comments (ss 107(7)). Such leave is only granted after consideration of the trial judge's report (ss 107(2)(a)), although ss 113(3) does allow the appeal to be determined without any report. It is provided that, without leave of the Court, an appellant can proceed only on the basis of specified arguable grounds (ss 107(8)).

4. Therefore, the statutory formula is that all grounds of appeal should be specified in the original note of appeal and only grounds in that note which have been reported upon by the trial judge and granted leave can be argued at the appeal hearing.

5. The Act of Adjournal (Criminal Procedure Rules) 1996 prescribes the forms to be used for a notice of intention to appeal and a note of appeal (rule 15.2; Forms 15.2-A and B). It also contains an express provision dealing with "Amended grounds of appeal" (rule 15.15). Rule 15.15(1) permits the Court, again only on cause shown, to "grant leave to an appellant to amend the grounds of appeal contained in the note of appeal". If that is done then the amended note may be sent to the trial judge for a written report on the amended grounds (rule 15.15(2)(a) and (b)). Where an appellant is allowed leave to amend, the rules provide:-

> "15.15(4)…section 107 of the Act of 1995 shall apply, unless the Court otherwise directs, for the purposes of obtaining leave to appeal for the amended grounds of appeal as it applies for the purposes of the original grounds of appeal…"

6. Thus, the structure of the rules is that, if leave to amend is granted then, in the normal case, the amended grounds go back to the stage of the first sift. This course will have prompted the Court to send the amended grounds to the trial judge for a report upon them.

7. Contrary to the variety of practices which appear to have sprung up, therefore, if an appellant is seeking to lodge "additional grounds" of appeal or otherwise wishes to change his existing grounds, the appropriate application for him to make is for leave to amend his grounds of appeal (i.e. his note of appeal). The appropriate minute is one "granting leave to the appellant to amend the grounds of appeal contained in the note of appeal". The minute will, ordinarily also remit the amended grounds to the trial judge for a report. Unless there is a specific direction in

the minute to the contrary, which would be exceptional, the appeal will revert to the stage of the first sift to determine leave to appeal on the amended grounds.

A. C. HAMILTON

Lord Justice General

Edinburgh

8 June 2010