

2010 No. 309

HIGH COURT OF JUSTICIARY

**Act of Adjournal (Criminal Procedure Rules Amendment No. 2)
(Presentation of Conviction Appeals in Writing) 2010**

Made - - - - *27th August 2010*

Coming into force - - *1st November 2010*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and of all other powers enabling them in that behalf do hereby enact and declare:

Citation and commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (Presentation of Conviction Appeals in Writing) 2010.

(2) It shall come into force on 1st November 2010.

(3) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

Presentation of conviction appeals in writing

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(b) is amended in accordance with subparagraphs (2) to (4).

(2) In rule 15.5A (procedural hearing), paragraph (7) is omitted.

(3) After rule 15.15 (amended grounds of appeal)(c) insert—

“Requirement for case and argument

15.15A.—(1) Subject to paragraphs (2) and (3), this rule applies to an appeal under section 106(1)(a) or (f) of the Act of 1995.

(2) The court may, of its own motion or on the application of the appellant, order that this rule is not to apply in a particular appeal or to a particular aspect of an appeal.

(3) Where in relation to any ground of appeal an appellant seeks to lead evidence this rule shall apply to that ground of appeal only in relation to the question of whether that evidence should be led; but the court may nevertheless make an order containing provision similar to this rule in relation to the presentation of submissions following the hearing of that evidence.

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I 2010/184.

(c) Rule 15.15 was inserted by S.I. 2002/387.

(4) The appellant must, within 42 days of the granting of leave to appeal in accordance with section 107 of the Act of 1995, lodge a case and argument.

(5) A case and argument must—

- (a) set out, for each ground of appeal, a succinct and articulate statement of the facts founded upon and the propositions of law being advanced;
- (b) contain an estimate of how long will be required for the hearing of the appeal; and
- (c) be signed by counsel or the solicitor advocate instructed to represent the party concerned in the conduct of the appeal, or by the appellant where the appellant intends to conduct the appeal himself.

(6) A case and argument must, when lodged, be accompanied by—

- (a) all documents, or a copy thereof, referred to or founded upon in the case and argument and not already lodged in the appeal process; and
- (b) all authorities, or a copy thereof, listed in the case and argument and not contained within a publication specified by the Lord Justice General by direction.

(7) The Crown—

- (a) must, if the court, considering that the circumstances of the case require it, orders it to do so; and
- (b) may, if it considers it appropriate to do so,

lodge a case and argument in response to the appellant's case and argument.

(8) Where the court makes an order under paragraph (7)(a), the Crown must lodge the case and argument within 21 days of the making of that order.

(9) At the same time as a case and argument is lodged, a copy of it and of all the documents accompanying it must be sent to the other party to the appeal.

(10) Where the Deputy Principal Clerk of Justiciary considers a case and argument to be unduly lengthy he shall refer the matter to a judge of the High Court who shall give such directions as he considers appropriate.

(11) Where a case and argument is not lodged timeously, the Deputy Principal Clerk of Justiciary shall refer the matter to the Lord Justice General, whom failing the Lord Justice Clerk, for such action as he considers appropriate.

(12) The court may, on the application of the relevant party and on cause shown, extend the period for lodging a case and argument.

Hearing of appeal

15.15B.—(1) This Rule applies to the hearing of an appeal in so far as a case and argument has been lodged by the appellant in terms of rule 15.15A(4).

(2) At the hearing of the appeal—

- (a) the appellant's case and argument and supporting documents shall constitute the principal submissions of the appellant;
- (b) unless it otherwise directs, the court will expect the appellant to rely on the case and argument without reading it over to the court;
- (c) the appellant may, subject to the control of the court, make supplementary comment to the case and argument;
- (d) the appellant may respond to any case and argument lodged by the Crown; and
- (e) the appellant shall answer any points raised by the court.

(3) Where the Crown lodges a case and argument paragraph (2) applies, with the necessary modifications, to the Crown as it applies to the appellant.

(4) The appellant and Crown have a duty to co-operate with each other and the court to ensure the completion of the hearing of the appeal within the time allocated by the court;

(5) The court may, at any point during the hearing, set a timetable for the completion by a party of any submissions permitted in terms of paragraph (2)(b), (c), (d) or (e).

(6) On cause shown, the court may permit the appellant to introduce new information that has come to light in the period since the case and argument was lodged.

(7) Where the court permits the introduction of new information, it may at its discretion permit the lodging of additional documents in support of the new information.

(8) An appellant who wishes to introduce new information and lodge additional documents shall send a copy of the information and documents to the Clerk of Justiciary and to the Crown as soon as the information and documents come into the appellant's possession.

(9) An appellant who has sent new information and documents to the Clerk of Justiciary shall apply at the bar to allow it to be introduced or lodged, as the case may be.”.

(4) After rule 19.18 (remits in applications for leave to appeal)(a) insert—

“Presentation of summary conviction appeals in writing

19.18A. The court may, if it considers the circumstances of the case require it, order rules 15.15A and 15.15B to apply to an appeal under section 175(2)(a) or (d) of the Act of 1995 as if it were an appeal to which those rules apply.”.

Transitional provision

3. Paragraph 2 of this Act of Adjournal shall only apply to appeals in which leave to appeal, whether in terms of section 107 or, as the case may be, section 180 of the Criminal Procedure (Scotland) Act 1995, was granted after the date on which this Act of Adjournal comes into force.

A.C. HAMILTON
Lord Justice General
I.P.D.

Edinburgh
27th August 2010

(a) Rule 19.18 was inserted by S.I. 1996/2147.

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996.

Subparagraph 2(3) inserts new rule 15.15A making provision for written submissions, by way of case and argument, in appeals against conviction in solemn proceedings; and inserts new rule 15.15B making provision for the hearing of an appeal where a case and argument has been lodged in terms of rule 15.15A.

Subparagraph 2(4) inserts new rule 19.18A providing that the court may apply rules 15.15A and 15.15B to appeals against conviction in summary proceedings.

Paragraph (3) makes transitional provisions providing that the new rules shall only apply to appeals in which leave to appeal was granted after the date on which this Act of Adjournal came into force i.e. 1st November 2010.

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