

# **DOUBLE JEOPARDY (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Double jeopardy*

#### *Section 1 Rule against double jeopardy*

5. This section places onto a statutory footing the general rule against double jeopardy i.e. that a person should not be prosecuted on more than one occasion for the same offence.
6. Subsection (1) restates the rule against double jeopardy. It provides that, where someone has been convicted or acquitted of an offence, it is not possible to charge the person again with the same offence or any other offence of which it would have been competent to convict on the original indictment or complaint. Subsection (1)(c) further provides that it is also not competent to charge the person again with an offence which arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment or complaint and is an aggravated way of committing the original offence. The section does not prevent a person from being tried for murder or culpable homicide where the victim dies after that person's conviction or acquittal of assault, since murder and culpable homicide are not aggravated ways of committing assault but separate crimes; such prosecutions are regulated by section 11. Similarly, it does not prohibit the charging of a person for murder who has previously been tried for culpable homicide arising out of the same act or omission, provided that murder was not charged at the earlier trial (however, such a charge could result in a plea in bar of trial under section 7(2)).
7. Subsection (2) makes it clear that section 1 does not bar a further prosecution where this is authorised under sections 2, 3 or 4 of the Act, or under existing provisions whereby a new prosecution is authorised by the High Court following appeal (those provisions are set out in the 1995 Act)
8. Subsections (3) and (4) define what is meant by conviction of an offence and provide that the rule applies to a conviction even if sentence has not been passed. This definition settles the question of whether a sentence must be passed before the rule against double jeopardy may operate, making it clear that double jeopardy protection will apply in any case where a verdict has been delivered or a guilty plea accepted, regardless of whether sentence has been passed.
9. The reference to section 246(3) of the 1995 Act expands the definition of conviction to include a special scenario in summary cases. This is where a person has been charged and, although the court was satisfied that the accused committed the offence, it opted in the circumstances to discharge the person without proceeding to conviction. The reference in subsection (4) to section 247(1) of the 1995 Act ensures that a conviction where the offender was placed on probation or discharged absolutely will count as a conviction for the purposes of the rule against double jeopardy.
10. [Section 14](#) ensures that this section applies regardless of whether the original acquittal or conviction was obtained prior to or after the coming into force of this section.