



# Double Jeopardy (Scotland) Act 2011

## 2011 asp 16

### *Exceptions to rule against double jeopardy*

#### **4 New evidence**

- (1) A person who, on indictment in the High Court (the “original indictment”), has been acquitted of an offence (the “original offence”) may, if the conditions mentioned in subsection (3) are satisfied, be charged with, and prosecuted anew for—
  - (a) the original offence,
  - (b) an offence mentioned in subsection (2) (a “relevant offence”).
- (2) A relevant offence is—
  - (a) an offence (other than the original offence) of which it would have been competent to convict the person on the original indictment, or
  - (b) an offence which—
    - (i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment, and
    - (ii) is an aggravated way of committing the original offence.
- (3) The conditions are that—
  - (a) there is new evidence that the person committed the original offence or a relevant offence, and
  - (b) the High Court, on the application of the Lord Advocate, has—
    - (i) set aside the acquittal, and
    - (ii) granted authority to bring a new prosecution in the High Court.
- (4) For the purposes of subsection (3)(a), evidence which was not admissible at the trial in respect of the original offence but which is admissible at the time the court considers the application under subsection (3)(b) is not new evidence.
- (5) Only one application may be made under subsection (3)(b) to set aside the acquittal of an original offence.
- (6) But an application may not be made to set aside the acquittal of an original offence if the person was charged with, and prosecuted anew for, that offence by virtue of this section.
- (7) The court may set aside the acquittal only if satisfied that—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the case against the person is strengthened substantially by the new evidence,
- (b) the new evidence was not available, and could not with the exercise of reasonable diligence have been made available, at the trial in respect of the original offence,
- (c) on the new evidence and the evidence which was led at that trial, it is highly likely that a reasonable jury properly instructed would have convicted the person of—
  - (i) the original offence, or
  - (ii) a relevant offence, and
- (d) it is in the interests of justice to do so.