Double Jeopardy (Scotland) Act 2011

2011 asp 16

Double jeopardy

1 Rule against double jeopardy

(1) It is not competent to charge a person who, whether on indictment or complaint (the "original indictment or complaint"), has been convicted or acquitted of an offence (the "original offence") with—

(a) the original offence,

(b) any other offence of which it would have been competent to convict the person on the original indictment or complaint, or

(c) an offence which—

(i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment or complaint, and

(ii) is an aggravated way of committing the original offence.

(2) Subsection (1) is subject to sections 2, 3 and 4 and is without prejudice to sections 107E(3) (prosecutor's appeal against acquittal: authorisation of new prosecution), 118(1)(c) (disposal of appeals), 119 (provision where High Court authorises new prosecution), 183(1)(d) (stated case: disposal of appeal) and 185 (authorisation of new prosecution) of the 1995 Act.

(3) In this Act, references to a person being "convicted" of an offence are references to—

(a) the person being found guilty of the offence,

(b) the prosecutor accepting the person's plea of guilty to the offence, or

(c) the court making an order under section 246(3) of the 1995 Act discharging the person absolutely in relation to the offence,

and related expressions are to be construed accordingly.

(4) For the purposes of subsection (3)—

(a) section 247(1) (conviction of person placed on probation or absolutely discharged deemed not to be a conviction) of the 1995 Act does not apply, and

(b) it is immaterial whether or not sentence is passed.

Status: *Point in time view as at 28/11/2011.*
Changes to legislation: *There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011. (See end of Document for details)*

Commencement Information

I1 S. 1 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

Exceptions to rule against double jeopardy

2 Tainted acquittals

(1) A person who, whether on indictment or complaint (the "original indictment or complaint"), has been acquitted of an offence (the "original offence") may, provided that the condition mentioned in subsection (2) is satisfied, be charged with, and prosecuted anew for—

(a) the original offence,

(b) any other offence of which it would have been competent to convict the person on the original indictment or complaint,

(c) an offence which—

(i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment or complaint, and

(ii) is an aggravated way of committing the original offence.

(2) The condition is that the High Court has, on the application of the Lord Advocate—

(a) set aside the acquittal, and

(b) granted authority to bring a new prosecution.

(3) The court may not set aside the acquittal unless it—

(a) is satisfied that the acquitted person or some other person has (or the acquitted person and some other person have) been convicted of an offence against the course of justice in connection with the proceedings on the original indictment or complaint, or

(b) concludes on a balance of probabilities that the acquitted person or some other person has (or the acquitted person and some other person have) committed such an offence against the course of justice.

(4) Where the offence against the course of justice consisted of or included interference with a juror or with the trial judge, the court must set aside the acquittal if it—

(a) is unable to conclude that the interference had no effect on the outcome of the proceedings on the original indictment or complaint, and

(b) is satisfied that it is in the interests of justice to do so.

(5) But the acquittal is not to be set aside if, in the course of the trial, the interference (being interference with a juror and not with the trial judge) became known to the trial judge, who then allowed the trial to proceed to its conclusion.

(6) Where the offence against the course of justice is not one mentioned in subsection (4), the acquittal may be set aside only if the court is satisfied—

(a) on a balance of probabilities as to the matters mentioned in subsection (7), and

(b) that it is in the interests of justice to do so.

(7) The matters referred to in subsection (6)(a) are—

(a) that the offence led to—

(i) the withholding of evidence which, had it been given, would have been capable of being regarded as credible and reliable by a reasonable jury, or

(ii) the giving of false evidence which was capable of being so regarded, and

(b) that the withholding, or as the case may be the giving, of the evidence was likely to have had a material effect on the outcome of the proceedings on the original indictment or complaint.

(8) In this section, "offence against the course of justice" means an offence of perverting, or of attempting to pervert, the course of justice (by whatever means and however the offence is described) and—

(a) includes—

(i) an offence under section 45(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (aiding, abetting, counselling, procuring or suborning the commission of an offence under section 44 of that Act),

(ii) subornation of perjury, and

(iii) bribery,

(b) does not include—

(i) perjury, or

(ii) an offence under section 44(1) of that Act (statement on oath which is false or which the person making it does not believe to be true).

Commencement Information

I2 S. 2 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

3 Admission made or becoming known after acquittal

(1) A person who, whether on indictment or complaint (the "original indictment or complaint"), 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 complaint, 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 or complaint, and

(ii) is an aggravated way of committing the original offence.

(3) The conditions are that—

(a) after the acquittal—

(i) the person admits to committing the original offence or a relevant offence, or

(ii) such an admission made by that person before the acquittal becomes known, 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.

(4) The court may set aside the acquittal only if satisfied—

(a) in the case of an admission such as is mentioned in subsection (3)(a)(ii), that the admission was not known, and could not with the exercise of reasonable diligence have become known, to the prosecutor by the time of the acquittal in respect of the original offence,

(b) that the case against the person is strengthened substantially by the admission,

(c) that, on the admission and the evidence which was led at the trial in respect of the original offence, 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) that it is in the interests of justice to do so.

Commencement Information

I3 S. 3 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

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—

(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.

Commencement Information

I4 S. 4 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

Exceptions to rule against double jeopardy: common provisions

5 Applications under sections 2, 3 and 4

(1) On making an application under section 2(2), 3(3)(b) or 4(3)(b), the Lord Advocate is to send a copy of the application to the acquitted person.

(2) The acquitted person is entitled to appear or to be represented at any hearing of the application.

(3) For the purposes of hearing and determining the application, three of the Lords Commissioners of Justiciary are a quorum of the High Court (the application being determined by majority vote of those sitting).

(4) The court may appoint counsel to act as amicus curiae at the hearing in question.

(5) The decision of the court on the application is final.

(6) Subsection (3) is without prejudice to any power of those sitting to remit the application to a differently constituted sitting of the court (as for example to the whole court sitting together).

Commencement Information

I5 S. 5 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

Status: *Point in time view as at 28/11/2011.*
Changes to legislation: *There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011. (See end of Document for details)*

6 Further provision about prosecutions by virtue of sections 2, 3 and 4

(1) This section applies to a new prosecution brought by virtue of section 2, 3 or 4.

(2) The new prosecution may be brought despite the fact that any time limit for the commencement of proceedings in such a prosecution, other than the time limit mentioned in subsection (3), has elapsed.

(3) Proceedings in the new prosecution are to be commenced within 2 months after the date on which authority to bring the prosecution was granted.

(4) For the purposes of subsection (3), proceedings are deemed to be commenced—

(a) in a case where a warrant to apprehend the accused person is granted—

(i) on the date on which it is executed, or

(ii) if it is executed without unreasonable delay, on the date on which it was granted, and

(b) in any other case, on the date on which the accused person is cited.

(5) Where the 2 months mentioned in subsection (3) elapse and no new prosecution has been brought, the decision under section 2, 3 or 4 setting aside the acquittal has the effect, for all purposes, of an acquittal.

(6) On granting authority under section 2, 3 or 4 to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit that person to bail.

(7) The provisions of the 1995 Act mentioned in subsection (8) below apply to an accused person who is detained under subsection (6) as they apply to an accused person detained by virtue of being committed until liberated in due course of law.

(8) Those provisions are—

(a) in solemn proceedings, section 65(4)(aa) and (b) and (4A) to (9) (prevention of delay in solemn proceedings), and

(b) in summary proceedings, section 147 (prevention of delay in summary proceedings).

(9) In proceedings in a new prosecution it is competent for either party to lead evidence which it was competent for that party to lead in the proceedings on the original indictment or complaint (the "earlier proceedings").

(10) But the prosecutor must identify in the indictment or complaint in the new prosecution any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (9) which would not have been competent but for that subsection.

(11) Where, in a new prosecution, the accused is convicted of an offence, no sentence may be passed in relation to the offence which could not have been passed under the earlier proceedings.

Commencement Information

I6 S. 6 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

Plea in bar of trial

7 Plea in bar of trial that accused has been tried before

(1) This section applies where a person is charged with an offence—
- (a) whether on indictment or complaint,
- (b) other than by virtue of—
  - (i) section 2, 3, 4, 11 or 12, or
  - (ii) section 107E(3) (prosecutor's appeal against acquittal: authorisation of new prosecution), 118(1)(c) (disposal of appeals), 119 (provision where High Court authorises new prosecution), 183(1)(d) (stated case: disposal of appeal) or 185 (authorisation of new prosecution) of the 1995 Act.

(2) The person may aver, as a plea in bar of trial, that the offence arises out of the same, or largely the same, acts or omissions as have already given rise to the person being tried for, and convicted or acquitted of, an offence.

(3) The court must sustain the plea if satisfied on a balance of probabilities as to the truth of the person's averment.

(4) But the court may repel the plea despite being so satisfied if it—
- (a) is persuaded by the prosecutor that there is some special reason why the case should proceed to trial, and
- (b) determines that it is in the interests of justice to do so.

(5) Subsection (4) is subject to sections 8, 9 and 10.

Commencement Information
I7 S. 7 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

8 Plea in bar of trial for murder: new evidence and admissions

(1) This section applies where—
- (a) a person is charged with murder,
- (b) the person avers, as a plea in bar of trial under section 7(2), that the charge arises out of the same, or largely the same, acts or omissions as have already given rise to the person, whether on indictment or complaint (the "original indictment or complaint"), being tried for, and convicted or acquitted of, an offence other than murder, and
- (c) the prosecutor asserts, as a special reason why the case should proceed to trial, one of the matters mentioned in subsection (2).

(2) Those matters are that, since the trial on the original indictment or complaint (the "original trial")—
- (a) there is new evidence that the person committed the murder charged,
- (b) the person has admitted to committing the murder charged,
- (c) such an admission made before the conviction or acquittal at the original trial has become known.

Status: *Point in time view as at 28/11/2011.*
Changes to legislation: *There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011. (See end of Document for details)*

(3) For the purposes of subsection (2)(a), evidence which was not admissible at the original trial but which is admissible at the time the court considers the plea is not new evidence.

(4) For the purposes of determining whether to sustain or repel the plea, three of the Lords Commissioners of Justiciary are a quorum of the High Court (the plea being determined by majority vote of those sitting).

(5) Where the special reason relates to the matter mentioned in subsection (2)(a), the court may repel the plea only if satisfied that—

(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 original trial,

(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 the murder had it been charged, and

(d) it is in the interests of justice to do so.

(6) Where the special reason relates to the matter mentioned in subsection (2)(b) or (c), the court may repel the plea only if satisfied—

(a) in the case of an admission such as is mentioned in subsection (2)(c), that the admission was not known, and could not with the exercise of reasonable diligence have become known, to the prosecutor by the time of the conviction or acquittal at the original trial,

(b) that the case against the person is strengthened substantially by the admission,

(c) that, on the admission and the evidence which was led at the original trial, it is highly likely that a reasonable jury properly instructed would have convicted the person of murder, and

(d) that it is in the interests of justice to do so.

(7) Section 5 (other than subsections (1) and (3)) applies to a case to which this section applies as it applies to an application under section 4(3)(b), with the modifications that—

(a) the reference in subsection (2) of that section to the acquitted person is to be read as a reference to the person charged, and

(b) the reference in subsection (6) of that section to subsection (3) is to be read as a reference to subsection (4) of this section.

Commencement Information

I8 S. 8 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

9 Plea in bar of trial: nullity of previous trial

(1) This section applies where—

(a) a person avers, as a plea in bar of trial under section 7(2), that the charge arises out of the same, or largely the same, acts or omissions as have already given rise to the person, whether on indictment or complaint (the "original indictment or complaint"), being tried for, and convicted or acquitted of, an offence, and

(b) the prosecutor asserts, as a special reason why the case should proceed to trial, that the trial on the original indictment or complaint (the "original trial") was a nullity.

(2) Where the proceedings are before—
(a) the sheriff, or
(b) a justice of the peace court,
the sheriff or justice of the peace court must remit the case to the High Court.

(3) Where the proceedings are—
(a) before the High Court, or
(b) are remitted to that court under subsection (2),
the court must determine whether to sustain or repel the plea.

(4) The High Court may repel the plea only if satisfied that—
(a) the original trial was a nullity,
(b) the existence of that trial was not known to the prosecutor before the commencement of the proceedings in which the plea is made, and
(c) it is in the interests of justice to do so.

Commencement Information
I9 S. 9 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

10 Plea in bar of trial: previous foreign proceedings

(1) This section applies where the previous trial averred under section 7(2) took place outwith the United Kingdom.

(2) In determining under section 7(4)(b) whether it is in the interests of justice for the case to proceed to trial, the court is in particular to have regard to—
(a) whether the purpose of bringing the person to trial in the foreign country appears to have been to assist the person to evade justice,
(b) whether the proceedings in the foreign country appear to have been conducted—
(i) independently and impartially, and
(ii) in a manner consistent with dealing justly with the person,
(c) whether such sentence (or other disposal) as was or might have been imposed in the foreign country for the offence of the kind of which the person has been convicted or acquitted is commensurate with any that might be imposed for an offence of that kind in Scotland, and
(d) the extent to which the acts or omissions can be considered to have occurred in, respectively—
(i) Scotland,
(ii) the foreign country.

(3) But the court may not repel the plea if permitting the case to proceed to trial would be inconsistent with the obligations of the United Kingdom under Article 54 of the Schengen Convention.

(4) In subsection (3), the "Schengen Convention" means the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985.

Commencement Information
I10 S. 10 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

Other subsequent prosecutions

11 Eventual death of injured person

(1) This section applies where—
- (a) a person ("A") is, whether on indictment or complaint, convicted or acquitted of an offence (the "original offence") involving the physical injury of another person ("B"),
- (b) after the conviction or acquittal, B dies, apparently from the injury, and
- (c) in a case where A was acquitted, the condition mentioned in subsection (3) is satisfied.

(2) It is competent to charge A with—
- (a) the murder of B,
- (b) the culpable homicide of B, or
- (c) any other offence of causing B's death.

(3) The condition referred to in subsection (1)(c) is that, on the application of the prosecutor and after hearing parties, the High Court is satisfied that it is in the interests of justice to proceed as mentioned in subsection (2).

(4) Subsection (5) applies where—
- (a) A was convicted of the original offence, and
- (b) A is subsequently convicted of an offence mentioned in subsection (2).

(5) The court may—
- (a) on the motion of A made immediately on A's being convicted, and
- (b) after hearing the parties on that motion,

quash A's conviction of the original offence where satisfied that it is appropriate to do so.

(6) A party may appeal to the High Court against the grant or refusal of a motion under subsection (5).

(7) Where A was convicted of the original offence and is subsequently acquitted of an offence mentioned in subsection (2), A may appeal against the conviction under section 106(1)(a) or, as the case may be, section 175(2)(a) of the 1995 Act.

(8) An appeal may be brought by virtue of subsection (7) despite the fact that A, before the acquittal mentioned in that subsection—
- (a) had appealed, or
- (b) had been refused leave to appeal,

against the conviction or against any other matter mentioned in section 106(1) or 175(2) of the 1995 Act in relation to the original offence.

(9) Sections 121 and 193 of the 1995 Act do not apply in relation to an appeal under subsection (7).

Commencement Information
I11 S. 11 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

12 Nullity of proceedings on previous indictment or complaint

(1) This section applies where—
  (a) a person has, whether on indictment or complaint, been charged with, and acquitted or convicted of, an offence, and
  (b) the condition mentioned in subsection (3) is satisfied.

(2) The person may be charged with, and prosecuted anew for, the offence.

(3) The condition referred to in subsection (1)(b) is that, on the application of the prosecutor and after hearing parties, the High Court is satisfied that—
  (a) the proceedings on the indictment or complaint were a nullity, and
  (b) it is in the interests of justice to proceed as mentioned in subsection (2).

Commencement Information
I12 S. 12 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

Disclosure of information

13 Disclosure of information

(1) Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (disclosure of information) is amended as follows.

(2) After section 140 (review of ruling under section 139) insert—

"Disclosure in relation to 2011 Act proceedings

140A Sections 140B to 140F: interpretation

In sections 140B to 140F—
"2011 Act" means the Double Jeopardy (Scotland) Act 2011 (asp 16),
"2011 Act proceedings" means—
  (a) an application under section 2(2), section 3(3)(b) or section 4(3)(b) of the 2011 Act to set aside a person's acquittal and grant authority for a new prosecution,
  (b) an application under subsection (3) of section 11 of that Act to charge a person as mentioned in subsection (2) of that section,

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(c) an application under subsection (3) of section 12 of that Act to charge, and prosecute anew, a person as mentioned in subsection (2) of that section,

"respondent" means the person to whom the 2011 Act proceedings relate.

140B Duty to disclose on institution of 2011 Act proceedings

(1) This section applies where 2011 Act proceedings are instituted in relation to a respondent.

(2) As soon as practicable after the relevant act the prosecutor must—

(a) review all information of which the prosecutor is aware that relates to the 2011 Act proceedings, and

(b) disclose to the respondent any information that falls within subsection (3).

(3) Information falls within this subsection if it is—

(a) information that the prosecutor was required by virtue of section 121(2)(b), 123(2)(b), 133(2)(b), 134(2)(b), 136(2), 137(2) or 138(2) to disclose in, or in relation to, the first proceedings but did not disclose,

(b) information to which, during the first proceedings, the prosecutor considered paragraph (a) or (b) of section 121(3) or subsection (3) of section 133 did not apply but to which the prosecutor now considers one or both of those paragraphs or that subsection would apply,

(c) information of which the prosecutor has become aware since the disposal of the first proceedings that, had the prosecutor been aware of it during or after those proceedings, the prosecutor would have been required to disclose by virtue of section 121(2)(b), 123(2)(b), 133(2)(b), 134(2)(b), 136(2), 137(2) or 138(2), or

(d) information of which the prosecutor has become aware since the disposal of the first proceedings, other than information that falls within paragraph (c), which—

(i) would materially weaken or undermine the evidence that is likely to be led or relied on by the prosecutor in the 2011 Act proceedings involving the respondent,

(ii) would materially strengthen the respondent's case, or

(iii) is likely to form part of the evidence to be led or relied on by the prosecutor in the 2011 Act proceedings involving the respondent.

(4) The prosecutor need not disclose under subsection (2)(b) anything that the prosecutor has already disclosed to the respondent.

(5) In this section—

"appellate proceedings" has the meaning given by section 132,

"first proceedings", in relation to 2011 Act proceedings, means the proceedings (including any appellate proceedings or other appeal) in or as a result of which the respondent was convicted or acquitted,

"relevant act" means the making of the application under section 2(2), 3(3)(b), 4(3)(b), 11(3) or 12(3) of the 2011 Act.

140C Continuing duty of prosecutor

(1) This section applies where—
- (a) the prosecutor has complied with section 140B(2) in relation to a respondent, and
- (b) during the relevant period, the prosecutor becomes aware of information which relates to the 2011 Act proceedings and falls within section 140B(3).

(2) The prosecutor must disclose to the respondent any information that falls within section 140B(3).

(3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the respondent.

(4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.

(5) In subsection (1), "relevant period" means the period—
- (a) beginning with the prosecutor's compliance with section 140B(2), and
- (b) ending with the relevant conclusion.

(6) In subsection (5), "relevant conclusion" means the disposal or abandonment of the 2011 Act proceedings.

140D Application to prosecutor for further disclosure

(1) This section applies where—
- (a) the prosecutor has complied with section 140B(2) in relation to a respondent, and
- (b) the respondent lodges a further disclosure request—
  - (i) during the preliminary period, or
  - (ii) if the court on cause shown allows it, after the preliminary period but before the relevant conclusion.

(2) A further disclosure request must set out—
- (a) the nature of the information that the respondent wishes the prosecutor to disclose, and
- (b) the reasons why the respondent considers that disclosure by the prosecutor of any such information is necessary.

(3) As soon as practicable after receiving a copy of the further disclosure request the prosecutor must—
- (a) review any information of which the prosecutor is aware that relates to the request, and
- (b) disclose to the respondent any of that information that falls within section 140B(3).

(4) The prosecutor need not disclose under subsection (3)(b) anything that the prosecutor has already disclosed to the respondent.

(5) In this section—

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Changes to legislation: *There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011. (See end of Document for details)*

"preliminary period", in relation to the 2011 Act proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the 2011 Act proceedings,

"relevant act" has the meaning given by section 140B(5),

"relevant conclusion" has the meaning given by section 140C(6).

Court rulings on disclosure: 2011 Act proceedings

140E Application by respondent for ruling on disclosure

(1) This section applies where the respondent—
  (a) has made a further disclosure request under section 140D, and
  (b) considers that the prosecutor has failed, in responding to the request, to disclose to the respondent an item of information falling within section 140B(3) (the "information in question").

(2) The respondent may apply to the court for a ruling on whether the information in question falls within section 140B(3).

(3) An application under subsection (2) is to be made in writing and must set out—
  (a) a description of the information in question, and
  (b) the respondent's grounds for considering that the information in question falls within section 140B(3).

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
  (a) comply with subsection (3), or
  (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 140B(3).

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the respondent an opportunity to be heard before determining the application.

(7) On determining the application, the court must make a ruling on whether the information in question, or any part of the information in question, falls within section 140B(3).

(8) In this section and in section 140F, "the court" means the High Court.

(9) Except where it is impracticable to do so, the application is to be assigned to the judge or judges who are to hear the 2011 Act proceedings.

140F Review of ruling under section 140E

(1) This section applies where—
  (a) a court has made a ruling under section 140E that an item of information (the "information in question") does not fall within section 140B(3), and
  (b) during the relevant period—

(i) the respondent becomes aware of information ("secondary information") that was unavailable to the court at the time it made its ruling, and

(ii) the respondent considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section 140B(3).

(2) The respondent may apply to the court which made the ruling for a review of the ruling.

(3) An application under subsection (2) is to be made in writing and must set out—

(a) a description of the information in question and the secondary information, and

(b) the respondent's grounds for considering that the information in question falls within section 140B(3).

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 140B(3).

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the respondent an opportunity to be heard before determining the application.

(7) On determining the application, the court may—

(a) affirm the ruling being reviewed, or

(b) recall that ruling and make a ruling that the information in question, or any part of the information in question, falls within section 140B(3).

(8) Except where it is impracticable to do so, the application is to be assigned to the judge or judges who dealt with the application for the ruling that is being reviewed.

(9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.

(10) In this section, "relevant period", in relation to a respondent, means the period—

(a) beginning with the making of the ruling being reviewed, and

(b) ending with the relevant conclusion.

(11) In subsection (10), "relevant conclusion" has the meaning given by section 140C(6).".

Commencement Information

I13 S. 13 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3** (with arts. 4, 5)

General

14 Retrospective application of Act

For the purposes of sections 1 to 4 and 7 to 12, it is immaterial whether the conviction or, as the case may be, acquittal referred to in each of those sections was before or after the coming into force of this Act.

Commencement Information
I14 S. 14 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

15 Transitional provision etc.

(1) The Scottish Ministers may by order made by statutory instrument make such provision as they consider necessary or expedient for transitional, transitory or saving purposes in connection with the coming into force of section 13 or paragraphs 17 to 34 of the schedule.

(2) An order under subsection (1) may modify any enactment (including this Act).

(3) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) But no order under subsection (1) which contains provisions which add to, replace or omit any part of the text of an Act may be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.

Commencement Information
I15 S. 15 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

16 Consequential amendments

The schedule, which makes amendments of enactments consequential on the provisions of this Act, has effect.

Commencement Information
I16 S. 16 in force at 28.11.2011 by S.S.I. 2011/365, **art. 3**

17 Short title, interpretation and commencement

(1) The short title of this Act is the Double Jeopardy (Scotland) Act 2011.

(2) In this Act, the "1995 Act" means the Criminal Procedure (Scotland) Act 1995 (c.46).

(3) This Act, except this section, comes into force on such day as the Scottish Ministers may, by order made by statutory instrument, appoint.

Status:
Point in time view as at 28/11/2011.

Changes to legislation:
There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011.