

DOUBLE JEOPARDY (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Exceptions to rule against double jeopardy

Section 3 Admission made or becoming known after acquittal

19. This section provides an exception to the rule against double jeopardy in section 1. It allows a further prosecution to take place where it becomes apparent following an acquittal that the acquitted person has admitted to committing the offence. This applies to both summary and solemn proceedings. Section 14 ensures that this section applies regardless of whether the original acquittal was obtained prior to the coming into force of this section. Section 3 goes beyond the recommendation in the SLC's Report¹ by including admissions made prior to the date of the acquittal, but which were unknown (and could not with the exercise of reasonable diligence have been known) to the investigating and prosecuting authorities. So, subsection (3)(a)(ii), in conjunction with subsections (3)(b) and (4), permits an application for a retrial in such circumstances.
20. Subsections (1) and (2) provide that a fresh prosecution may take place where the admission relates to the original offence; any other offence of which it would have been competent to convict the person on the original indictment or complaint; or an offence which arises out of, or largely out of, the same acts or omissions and is an aggravated way of committing the original offence.
21. Subsection (3)(b) provides that the Lord Advocate needs to apply to the High Court if the prosecution wants to set aside the acquittal and bring a fresh prosecution. Section 5 ensures that any application under this section must be heard by a court of three judges, whose decision on the application is final.
22. Subsection (4) provides for the test that has to be satisfied before the High Court can set aside the acquittal. The application may be granted only if:
 - any admission made before the previous acquittal was not known and could not with the exercise of reasonable diligence have become known to the prosecutor at the time of that acquittal;
 - the case against the person is strengthened substantially by the admission; and
 - 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 the offence.
23. Finally, the court may only grant the application where it considers that to do so would be in the interests of justice.

¹ Recommendation 25