

Status: Point in time view as at 28/11/2011.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, Cross Heading: Criminal Procedure (Scotland) Act 1995. (See end of Document for details)

SCHEDULE **S** CONSEQUENTIAL AMENDMENTS

Criminal Procedure (Scotland) Act 1995

6 The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.

Commencement Information

II Sch. para. 6 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

7 In section 94 (transcripts of record and documentary productions), after subsection (2A) insert—

“(2AA) Subsection (2A) applies to a person mentioned in subsection (2AB) as it applies to a person convicted at the trial, with the modification that the reference to the transcript in subsection (2A) is to be construed as a reference to the transcript of the record made of proceedings at the trial resulting in the acquittal mentioned in subsection (2AB)(b).

(2AB) The person mentioned in subsection (2AA) is a person who—

- (a) is convicted of the offence mentioned in subsection (1) of section 11 of the Double Jeopardy (Scotland) Act 2011 (asp 16));
- (b) is subsequently acquitted of an offence mentioned in subsection (2) of that section; and
- (c) desires to appeal, under subsection (7) of that section, against the conviction of the offence mentioned in paragraph (a).”.

Commencement Information

I2 Sch. para. 7 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

8 In section 107 (leave to appeal), after subsection (2) insert—

“(2A) In respect of an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), the “report under section 113” in subsection (2) (c) means—

- (a) the report of the judge who presided at the trial resulting in the appellant's acquittal for an offence mentioned in section 11(2) of that Act;
- (b) where an appeal against conviction was taken before that acquittal, the report of the judge who presided at the trial resulting in the conviction in respect of which leave to appeal is sought prepared at that time; and
- (c) any other report of that judge furnished under section 113.”.

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I3 Sch. para. 8 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

9 In section 109 (intimation of intention to appeal), after subsection (1) insert—

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“(1A) Where a person desires to appeal under section 106(1)(a) of this Act by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), subsection (1) applies with the following modifications—

- (a) for the words “two weeks of the final determination of the proceedings” substitute “two weeks of the date on which the person is acquitted of an offence mentioned in section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16)”; and
- (b) the reference to identifying the proceedings is to be construed as a reference to identifying—
 - (i) the proceedings which resulted in the conviction desired to be appealed; and
 - (ii) the proceedings which resulted in the person's acquittal as mentioned in section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).

(1B) Subsections (5) to (9) of section 106 of this Act do not apply where the modifications specified in subsection (1A) apply.”.

Commencement Information

14 Sch. para. 9 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

10 In section 110 (note of appeal), after subsection (3) insert—

“(3A) In respect of a written note of appeal relating to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16)—

- (a) subsection (1) applies as if the reference to the judge who presided at the trial were a reference to—
 - (i) the judge who presided at the trial resulting in the conviction to which the written note of appeal relates; and
 - (ii) the judge who presided at the trial for an offence mentioned in section 11(2) of that Act resulting in the convicted person's acquittal; and
- (b) subsection (3)(a) applies as if the reference to the proceedings were a reference to—
 - (i) the proceedings which resulted in the conviction to which the written note of appeal relates; and
 - (ii) the proceedings which resulted in the convicted person's acquittal.”.

Commencement Information

15 Sch. para. 10 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

11 In section 113 (judge's report)—

- (a) in subsection (1), at the beginning, insert “ Subject to subsections (1A) to (1D), ”,
- (b) after subsection (1) insert—

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- “(1A) Subsections (1B) to (1D) apply where the copy note of appeal mentioned in subsection (1) relates to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).
- (1B) The reference in subsection (1) to the judge who presided at the trial is to be construed as a reference to—
- (a) the judge who presided at the trial for an offence mentioned in section 11(2) of that Act resulting in the appellant's acquittal; and
 - (b) where subsection (1C) applies, the judge who presided at the trial resulting in the conviction to which the copy note of appeal relates.
- (1C) This subsection applies—
- (a) where, in connection with the appeal, the High Court calls for the report to be furnished by the judge mentioned in subsection (1B)(b); and
 - (b) it is reasonably practicable for the judge to furnish the report.
- (1D) For the purposes of subsections (1) to (1C), it is irrelevant whether or not the judge mentioned in subsection (1B)(b) had previously furnished a report under subsection (1).”,
- (c) in subsection (3), for “subsection (1)” substitute “ subsections (1) to (1D) ”.

Commencement Information

I6 Sch. para. 11 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

12 In section 118 (disposal of appeals), after subsection (1) insert—

“(1A) Where an appeal against conviction is by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), paragraph (c) of subsection (1) does not apply.”.

Commencement Information

I7 Sch. para. 12 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

13 After section 176 insert—

“176A Application of section 176 in relation to certain appeals

- (1) Section 176 applies in relation to an appeal under section 175(2)(a) by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16) with the following modifications.
- (2) In subsection (1)(a), for the words “one week of the final determination of the proceedings” substitute “ one week of the date on which the appellant is acquitted of an offence mentioned in section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16) ”.

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- (3) In subsection (2), the reference to the proceedings is to be construed as a reference to the proceedings resulting in the appellant's acquittal as mentioned in section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).
- (4) In subsection (5), the reference to the inferior court is to be construed as a reference to the court which acquitted the appellant of an offence under section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16).”.

Commencement Information

I8 Sch. para. 13 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 14 In section 178 (stated case: preparation of draft), after subsection (1) insert—
- “(1A) Where an application for a stated case under section 176 of this Act relates to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16)—
- (a) the reference in subsection (1) to the final determination of proceedings is to be construed as a reference to the date on which the appellant is acquitted of an offence mentioned in section 11(2) of that Act; and
 - (b) the reference in subsection (1)(b) to the judge who presided at the trial is to be construed as a reference to the judge who presided at the trial resulting in the conviction in respect of which the application for a stated case is made.”.

Commencement Information

I9 Sch. para. 14 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 15 In section 179 (stated case: adjustment and signature), after subsection (10) insert—
- “(11) In relation to a draft stated case under section 178 of this Act relating to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16)—
- (a) the reference in subsection (1) to the court is to be construed as a reference to the court by which the appellant was convicted; and
 - (b) the references in this section to the judge are to be construed as references to the judge who presided at the trial resulting in that conviction.”.

Commencement Information

I10 Sch. para. 15 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 16 In section 183 (stated case: disposal of appeal), after subsection (1) insert—
- “(1A) Where an appeal against conviction is by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), paragraphs (a) and (d) of subsection (1) do not apply.”.

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III Sch. para. 16 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

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