



Double Jeopardy (Scotland) Act 2011

2011 asp 16

Plea in bar of trial

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.
- (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,

Changes to legislation: There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011, Section 8. (See end of Document for details)

- (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

II [S. 8](#) in force at 28.11.2011 by [S.S.I. 2011/365](#), [art. 3](#)

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