

Double Jeopardy (Scotland) Act 2011

2011 asp 16

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.

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

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- 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,
- (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.

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.

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.

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- (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.