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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 365 (C. 34)**

**CRIMINAL LAW**

**The Double Jeopardy (Scotland) Act 2011  
(Commencement and Transitional Provisions) Order 2011**

*Made* - - - - 25th October 2011  
*Laid before the Scottish  
Parliament* - - - - 27th October 2011  
*Coming into force* - - 28th November 2011

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 15(1) and 17(3) of the Double Jeopardy (Scotland) Act 2011<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

**1.** This Order may be cited as the Double Jeopardy (Scotland) Act 2011 (Commencement and Transitional Provisions) Order 2011 and comes into force on 28th November 2011.

**Interpretation**

**2.**—(1) In this Order—

“the 2011 Act” means the Double Jeopardy (Scotland) Act 2011;

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010<sup>(2)</sup>;

“the first appearance of the respondent”, in relation to first proceedings<sup>(3)</sup>, means—

(a) where the proceedings were under solemn procedure—

(i) the respondent’s first appearance on petition; or

(ii) the respondent’s first appearance on indictment (the respondent not having appeared on petition in relation to the same matter);

(b) where the proceedings were under summary procedure, the recording of a plea of not guilty;

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<sup>(1)</sup> 2011 asp 16.

<sup>(2)</sup> 2010 asp 13.

<sup>(3)</sup> Section 140B(5) of the Criminal Justice and Licensing (Scotland) Act 2010 contains a definition of “first proceedings”.

“the original offence” has the meanings respectively given, in relation to 2011 Act proceedings<sup>(4)</sup>, by sections 2(1), 3(1), 4(1) or 11(1)(a) of that Act; and in relation to section 12 of the 2011 Act, means the offence of which the respondent has been acquitted or convicted of on indictment or complaint.

(2) Any words or expressions used in this Order to which meanings are assigned by Part 6 of the 2010 Act have the same meaning as in that Act.

### **Appointed day**

3. The provisions of the 2011 Act, in so far as not already in force, come into force on 28th November 2011.

### **Transitional provisions relating to the disclosure of information**

4.—(1) This article applies where, in relation to 2011 Act proceedings, the first appearance of the respondent in the first proceedings was before 6th June 2011.

(2) Sections 140B to 140F of the 2010 Act have effect, for the purposes of determining whether information falls within section 140B(3), as if the provisions of Part 6 of the 2010 Act mentioned in section 140B(3)(a) to (c) had applied to the first proceedings.

5.—(1) This article applies where, in relation to 2011 Act proceedings, the respondent was convicted or acquitted of the original offence before 28th November 2011.

(2) Sections 140B(4), 140C(3) and 140D(4) of the 2010 Act apply subject to the modification that the prosecutor need not disclose information already disclosed only where to do so would be consistent with the respondent receiving a fair hearing.

St Andrew’s House, Edinburgh  
25th October 2011

*KENNY MACASKILL*  
A member of the Scottish Executive

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(4) Section 140A of the Criminal Justice and Licensing (Scotland) Act 2010 contains a definition of “2011 Act proceedings”.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes commencement and transitional provisions in respect of the Double Jeopardy (Scotland) Act 2011 (“the 2011 Act”).

This Order brings into force on 28th November 2011 those provisions of the 2011 Act which are not already in force.

This Order also makes transitional provisions for the disclosure of information to the respondent. The transitional provision in article 4 will ensure that the disclosure provisions in Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) will apply to 2011 Act proceedings notwithstanding that the first proceedings which gave rise to the acquittal or conviction were commenced prior to Part 6 of the 2010 Act coming into force. Article 5 makes a transitional provision to ensure that where the first proceedings concluded prior to the 2011 Act coming into force, the exceptions contained within sections 140B(4), 140C(3) and 140D(4) of the 2010 Act, which provide that the prosecutor need not disclose anything that the prosecutor has already disclosed in respect of the same matter, will apply but only in so far as this would be consistent with the respondent receiving a fair hearing.

The Bill for the 2011 Act received Royal Assent on 27th April 2011. Section 17 of the 2011 Act came into force on Royal Assent.