



Double Jeopardy (Scotland) Act 2011

2011 asp 16

Exceptions to rule against double jeopardy: common provisions

5 Applications under sections 2, 3 and 4

- (1) On making an application under section 2(2), 3(3)(b) or 4(3)(b), the Lord Advocate is to send a copy of the application to the acquitted person.
- (2) The acquitted person is entitled to appear or to be represented at any hearing of the application.
- (3) For the purposes of hearing and determining the application, three of the Lords Commissioners of Justiciary are a quorum of the High Court (the application being determined by majority vote of those sitting).
- (4) The court may appoint counsel to act as amicus curiae at the hearing in question.
- (5) The decision of the court on the application is final.
- (6) Subsection (3) is without prejudice to any power of those sitting to remit the application to a differently constituted sitting of the court (as for example to the whole court sitting together).

6 Further provision about prosecutions by virtue of sections 2, 3 and 4

- (1) This section applies to a new prosecution brought by virtue of section 2, 3 or 4.
- (2) The new prosecution may be brought despite the fact that any time limit for the commencement of proceedings in such a prosecution, other than the time limit mentioned in subsection (3), has elapsed.
- (3) Proceedings in the new prosecution are to be commenced within 2 months after the date on which authority to bring the prosecution was granted.
- (4) For the purposes of subsection (3), proceedings are deemed to be commenced—
 - (a) in a case where a warrant to apprehend the accused person is granted—
 - (i) on the date on which it is executed, or
 - (ii) if it is executed without unreasonable delay, on the date on which it was granted, and

Status: This is the original version (as it was originally enacted).

- (b) in any other case, on the date on which the accused person is cited.
- (5) Where the 2 months mentioned in subsection (3) elapse and no new prosecution has been brought, the decision under section 2, 3 or 4 setting aside the acquittal has the effect, for all purposes, of an acquittal.
- (6) On granting authority under section 2, 3 or 4 to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit that person to bail.
- (7) The provisions of the 1995 Act mentioned in subsection (8) below apply to an accused person who is detained under subsection (6) as they apply to an accused person detained by virtue of being committed until liberated in due course of law.
- (8) Those provisions are—
 - (a) in solemn proceedings, section 65(4)(aa) and (b) and (4A) to (9) (prevention of delay in solemn proceedings), and
 - (b) in summary proceedings, section 147 (prevention of delay in summary proceedings).
- (9) In proceedings in a new prosecution it is competent for either party to lead evidence which it was competent for that party to lead in the proceedings on the original indictment or complaint (the “earlier proceedings”).
- (10) But the prosecutor must identify in the indictment or complaint in the new prosecution any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (9) which would not have been competent but for that subsection.
- (11) Where, in a new prosecution, the accused is convicted of an offence, no sentence may be passed in relation to the offence which could not have been passed under the earlier proceedings.