

DOUBLE JEOPARDY (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Exceptions to rule against double jeopardy: common provisions

Section 5 Applications under sections 2, 3 and 4

31. This section contains provisions common to applications made by the Lord Advocate under sections 2(2), 3(3)(b) and 4(3)(b) to the High Court. It provides, for example, that the acquitted person is entitled to be present and be represented at any hearing on an application to prosecute anew (subsection (2)). Subsection (3) provides that any application must be considered by a quorum of at least three High Court judges, with decisions made by a majority.
32. Subsection (4) provides that the court may appoint counsel to act as *amicus curiae* at the hearing. This may be particularly important in the case of applications under section 2 involving tainted acquittals where the offence against the course of justice was allegedly committed not by the acquitted person but by a third party. In such a case, there could potentially be no-one in a position to contradict the Lord Advocate's application.