

DOUBLE JEOPARDY (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Plea in bar of trial

Section 9 Plea in bar of trial: nullity of previous trial

53. This section applies where a plea in bar of trial is taken in terms of section 7(2) and the prosecutor avers as a special reason to repel the plea that the original trial was a nullity and therefore cannot be regarded as either a valid acquittal or conviction. Section 14 ensures that this section applies regardless of whether the original acquittal or conviction was obtained prior to or after the coming into force of the section.
54. Subsections (2) and (3) provide that the matter must be considered by the High Court.
55. Subsection (4) sets out the test that must be satisfied before the High Court can repel the plea in bar. This is essentially the same test as the Court would have applied had an application been made to it under section 12 before proceedings were raised. The Court must also be satisfied that the existence of the original trial was not known to the prosecutor before these proceedings were raised. This could arise, for example, where the original trial took place abroad.