

# **DOUBLE JEOPARDY (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Other subsequent prosecutions*

#### *Section 11 Eventual death of injured person*

59. This section provides that where a person is convicted or acquitted of an offence involving the physical injury of another (such as an assault) and that victim subsequently dies as a result of the injury, it is possible to charge the person with their murder, culpable homicide or any other offence of causing the death of the victim. Section 14 ensures that this section applies regardless of whether the original acquittal or conviction was obtained prior to the coming into force of this section.
60. Subsections (1)(c) and (3) apply where the previous trial ended in an acquittal of an offence involving physical injury. They require the prosecutor to apply to the High Court for authority to prosecute for causing death. The High Court must consider whether a new prosecution would be in the interests of justice.
61. Subsections (4) and (5) provide a mechanism to deal with the scenario of person “A” being convicted of the offence at the original trial and also the offence at the subsequent trial. They enable the court, on a motion of A, to quash the original conviction if considered appropriate. Subsection (6) provides a right of appeal against such a decision.
62. Subsection (7) applies where A was convicted of the offence at the original trial but then acquitted of the offence at the subsequent trial. In such a case, A may appeal against the conviction, notwithstanding any previous appeal or refusal of leave to appeal (subsections (8) and (9)).
63. The Act makes various technical amendments to the 1995 Act to make provision for prosecutions under section 11. In particular, provision is made for appeals against the earlier conviction. Paragraphs 6 to 16 of the schedule set out a number of amendments to the 1995 Act to take into account the unusual circumstances of this section, for example, the amendments in paragraph 11 clarify that the judge at the original trial may be required to write a report in response to the grounds of appeal for a case coming under section 11(7).

#### *Section 12 Nullity of proceedings on previous indictment or complaint*

64. This section applies where the prosecutor is of the view that a previous trial was a fundamental nullity and wants to raise a fresh prosecution. In such circumstances, the prosecutor needs to make an application to the High Court for authority to prosecute anew.
65. Subsection (3) sets out the test the High Court needs to consider before granting authority to prosecute.