Double Jeopardy (Scotland) Bill

Bill Number: SP Bill 59
Introduced on: 7 October 2010
Introduced by: Kenny MacAskill (Executive Bill)
Passed: 22 March 2011
Royal Assent: 28 April 2011

Passage of the Bill

The Double Jeopardy (Scotland) Bill was introduced in the Parliament in October 2010. The Justice Committee, as lead committee, commenced taking stage 1 oral evidence on the general principles of the Bill in November 2010. The stage 1 debate took place in February 2011 and the Bill was passed following the stage 3 parliamentary debate in March 2011. It was the final bill to be passed during the third session (2007-2011) of the Parliament.

Purpose and objectives of the Bill

The existing common law rule against double jeopardy generally prevents someone from being tried twice for the same crime. The Bill restates that rule in statute. In doing so, it seeks to clarify and reform certain aspects of the current rule – in particular, providing for a number of exceptions to the rule.

Provisions of the Bill

The Bill provides for a general rule against double jeopardy comprising two elements:

- a core rule preventing a second prosecution for offences which a person could have been convicted of in the original case
- a broader principle aimed at preventing the improper splitting of charges by a prosecutor seeking multiple chances of convicting an accused in relation to a single set of acts
It also provides for three exceptions to the general rule against double jeopardy, allowing an acquitted person to be tried again where:

- tainted acquittals – the original acquittal is tainted by an offence against the course of justice (e.g., one involving the intimidation of witnesses)
- new evidence of admissions – the prosecutor has new evidence that the accused admitted committing the offence
- general new evidence – the prosecutor has other new evidence of guilt

The Bill is based on proposals put forward by the Scottish Law Commission in its *Report on Double Jeopardy* (2009). However, the Bill (both as introduced and passed) departs from the Commission’s recommendations in a number of important respects. For example, the Commission argued that any general new evidence exception should only apply to cases originally determined after the coming into force of that exception. The Bill does not adopt this restriction, instead allowing retrospective application of the exception.

**Parliamentary consideration**

In general, the Bill attracted wide support across the Parliament – both in relation to retaining a general rule against double jeopardy and allowing for some exceptions to that rule. Key areas of debate during parliamentary scrutiny of the Bill included the following:

- provisions establishing a general new evidence exception with retrospective application – the general approach in the Bill as introduced was supported by the Parliament and is reflected in the Bill as passed
- provisions restricting the application of the general new evidence exception to a list of particular offences – the Bill was amended to replace the list with provisions restricting the exception to High Court cases
- provisions establishing a specific new evidence exception for admissions which is not restricted to cases involving serious offences (thus applying more widely than the general new evidence exception) – although the provisions establishing this exception were amended (to bring them more into line with the general new evidence exception) the original approach on this point (i.e., not being expressly limited to serious offences) is still reflected in the Bill as passed

In addition, new provisions were added to the Bill, by stage 3 amendment, to ensure that the statutory regime for the disclosure of evidence in criminal cases (set out in the Criminal Justice and Licensing (Scotland) Act 2010) will apply to all relevant stages of a case where the Bill allows for a further prosecution. Although quite substantial, the new provisions were not considered to be controversial.

The Bill was passed at stage 3 without division.