DOUBLE JEOPARDY (SCOTLAND) BILL

REVISED DELEGATED POWERS MEMORANDUM

Purpose

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Double Jeopardy (Scotland) Bill. It describes the purpose of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed power. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Double Jeopardy (Scotland) Bill as amended at Stage 2 is divided into 15 sections and 1 schedule. The Bill is largely based upon the work of the Scottish Law Commission (SLC), contained within its 2009 Report on Double Jeopardy.1

3. Section 1 of the Bill will restate and reform the law which prevents a person being tried twice for the same offence.

4. There is no general proposal to remove the rule against double jeopardy. However, sections 2, 3 and 4 of the Bill will create certain strictly limited exceptions where a new trial will in future be possible. The only delegated power in the Bill is contained in section 16, which provides for the Bill to be commenced by order.

1 SCOT LAW COM No 218 http://www.scotlawcom.gov.uk/publications/
DELEGATED POWER

Section 16(3) – Short title, interpretation and commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no procedure

Provision

5. Section 16(3) provides for the sections of the enacted Bill (other than section 16) to come into force on such a day as the Scottish Ministers appoint by order.

Rationale for subordinate legislation

6. This is a standard commencement by order power. As usual with commencement orders, no provision is made for laying the order in Parliament, as the power is to commence provisions which the Parliament has already scrutinised.

Choice of procedure

7. Whilst the order will not be subject to Parliamentary procedure as such, the Subordinate Legislation Committee will, in terms of its remit, have the opportunity to consider the order.
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SUPPLEMENTARY DELEGATED POWERS MEMORANDUM