

2011 No. 387

HIGH COURT OF JUSTICIARY

SHERIFF COURT

JUSTICE OF THE PEACE COURT

**Act of Adjournal (Criminal Procedure Rules Amendment No.7)
(Double Jeopardy (Scotland) Act 2011) 2011**

Made - - - - - *2nd November 2011*

Laid before the Scottish Parliament *4th November 2011*

Coming into force - - - *28th November 2011*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), section 165 of the Criminal Justice and Licensing (Scotland) Act 2010(b), and of all other powers enabling them in that behalf do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No.7) (Double Jeopardy (Scotland) Act 2011) 2011.

(2) It comes into force on 28th November 2011.

(3) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

(4) The Criminal Procedure Rules 1996(c) are amended in accordance with the following paragraphs.

Disclosure and Double Jeopardy

2.—(1) In Chapter 7A (disclosure)(d)—

(a) in rule 7A.3 (applications for ruling on disclosure) for paragraph (1) substitute—

“(1) An application under section 128(2), section 139(2) or section 140E(2) of the 2010 Act shall be in Form 7A.3.”.

(b) in rule 7A.4 (review of ruling on disclosure) for paragraph (1) substitute—

(a) 1995 c.46.
(b) 2010 asp 13.
(c) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2011/355).
(d) Chapter 7A was inserted by S.S.I. 2011/242, last amended by S.S.I. 2011/290.

“(1) an application under section 129(2), section 140(2) or section 140F(2) of the 2010 Act shall be in Form 7A.4.”.

(2) In the appendix, for Forms 7A.3, 7A.4, 7A.6-C and 7A.7-A substitute respectively Forms 7A.3, 7A.4, 7A.6-C and 7A.7-A set out in Part 1 of the Schedule to this Act of Adjournal.

Double Jeopardy

3.—(1) After Chapter 58 (Control of Dogs (Scotland) Act 2010)(a) insert—

“CHAPTER 59

DOUBLE JEOPARDY (SCOTLAND) ACT 2011

Interpretation

59.1. In this Chapter, “the 2011 Act” means the Double Jeopardy (Scotland) Act 2011(b).

Exceptions to the rule against Double Jeopardy: applications by the Lord Advocate

59.2.—(1) An application by the Lord Advocate to set aside a person’s acquittal and grant authority to bring a new prosecution—

- (a) under section 2(2) of the 2011 Act (tainted acquittals);
- (b) under section 3(3)(b) of the 2011 Act (admission made or becoming known after acquittal);
- (c) under section 4(3)(b) of the 2011 Act (new evidence),

shall be in Form 59.2.

(2) On making an application the Lord Advocate shall send a copy of the application to the acquitted person.

Other subsequent prosecutions: applications by the prosecutor

59.3.—(1) An application by the prosecutor—

- (a) under section 11(3) of the 2011 Act (eventual death of injured person) shall be in Form 59.3-A;
- (b) under section 12(3) of the 2011 Act (nullity of proceedings on previous indictment or complaint) shall be in Form 59.3-B.

(2) On making an application the prosecutor shall send a copy of the application to the person to whom the application relates.

Hearing and determination of applications

59.4.—(1) This rule applies to the hearing and determination of an application mentioned in this Chapter.

(2) On an application being lodged the Clerk of Justiciary shall—

- (a) appoint a hearing on the application;
- (b) intimate the date and time of the hearing to the parties;
- (c) grant warrant for the citation of witnesses and the lodging of productions by the parties;

(a) Chapter 58 was inserted by S.S.I. 2011/194.

(b) 2011 asp 16.

(d) specify the last date for lodging witness lists and productions.

(3) At the same time as lodging witness lists and productions, the party lodging them shall intimate copies to the other party.

(4) Where a production cannot reasonably be copied the list of productions shall be intimated.

(5) Parties shall be entitled to see the productions according to the existing law and practice of the High Court.

(6) Section 90A of the Act of 1995 (obstructive witnesses)(a) applies, with the necessary modifications.

(7) A party shall not be permitted to—

(a) examine any witness not listed as a witness;

(b) put in evidence any production not lodged,

in accordance with paragraph 2(d) except by leave of the High Court on cause shown.

(8) Without prejudice to any existing power of the High Court, it may—

(a) order the production of any document or thing concerned with the application;

(b) hear any evidence relevant to the application;

(c) remit to any fit person to enquire and report on any matter affecting the application;

(d) appoint a person with expert knowledge to act as assessor to the High Court where it appears to the court that such expert knowledge is required.

(9) Where the High Court hears any evidence it shall do so in accordance with the existing law and practice as to the taking of evidence in criminal trials in Scotland.

Appeal to the High Court

59.5.—(1) An appeal to the High Court under section 11(6) of the 2011 Act shall be made by lodging a note of appeal in Form 59.5.

(2) The note of appeal shall be lodged with the Clerk of Justiciary not later than 7 days after the making of the decision in question.

(3) At the same time as lodging a note of appeal the appellant shall send a copy of the note of appeal to the other party.

(4) On an appeal being lodged the Clerk of Justiciary shall—

(a) appoint a hearing on the appeal;

(b) intimate the time and date of the hearing to the parties.”.

(2) In the appendix, at the end insert the Forms set out in Part 2 of the Schedule to this Act of Adjournal, namely, Forms 59.2, 59.3-A, 59.3-B and 59.5.

A.C.HAMILTON
Lord Justice General
I.P.D.

Edinburgh
2nd November 2011

(a) Section 90A was inserted by section 11 of the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

SCHEDULE

PART 1

Paragraph 2(2)

Form 7A.3

Rule 7A.3(1)

Form of application for ruling on disclosure under section 128(2) [*or* section 139(2)]
[*or* section 140E(2)] of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

(*specify accused*) [*or* (*appellant*)] [*or* (*respondent*)]

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The applicant considers that, in relation to the charge(s) against him (*or* her) [*or* the application under the Double Jeopardy (Scotland) Act 2011] namely, (*specify*), the prosecutor has failed to disclose information to which section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 applies [*or* has failed to disclose information falling within section 133(3) [*or* section 140B(3)] of the Criminal Justice and Licensing (Scotland) Act 2010].
2. The applicant applies to the court for a ruling on whether section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 applies to the information in question [*or* whether the information in question falls within section 133(3) [*or* section 140B(3)] of the Criminal Justice and Licensing (Scotland) Act 2010].
3. The information in question is: (*specify*)

4. The applicant considers that section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 applies to the information in question [*or* that the information in question falls within section 133(3) [*or* section 140B(3)] of the Criminal Justice and Licensing (Scotland) Act 2010] because: (*specify*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make a ruling under section 128(7) of the Criminal Justice and Licensing (Scotland) Act 2010 that section 121(3) of that Act applies to the information in question [*or* to make a ruling under section 139(7) [*or* section 140E(7)] of the Criminal Justice and Licensing (Scotland) Act 2010 that the information in question falls within section 133(3) [*or* section 140B(3)] of that Act].

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

Note:

Date of intimation: (*specify*)

Date of lodging: (*specify*)

Form 7A.4

Rule 7A.4(1)

Form of application for review of ruling on disclosure under section 129(2) [*or* section 140(2)] [*or* section 140F(2)] of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

(*specify accused*) [*or* (*appellant*)] [*or* (*respondent*)]

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The applicant considers that had information which is now available (the “secondary information”) been available to the court at the time it made its ruling it would have made a ruling that section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 does apply to the information in question [*or* that the information in question does fall within section 133(3) [*or* section 140B(3)] of the Criminal Justice and Licensing (Scotland) Act 2010].
2. The applicant applies to the court which made the ruling for a review of that ruling.
3. The application is in relation to the following charge(s) against the applicant [*or* the application under the Double Jeopardy (Scotland) Act 2011] (*specify*).
4. The information in question and the secondary information is: (*specify*)
5. The applicant considers that section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 does apply to the information in question [*or* that the information in question does fall within section 133(3) [*or* section 140B(3)] of the Criminal Justice and Licensing (Scotland) Act 2010] because: (*specify*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [OR THE COURT] to make a ruling under section 129(7) of the Criminal Justice and Licensing (Scotland) Act 2010 that section 121(3) of that Act applies to the information in question [or to make a ruling under section 140(7) [or section 140F(7)]of the Criminal Justice and Licensing (Scotland) Act 2010 that the information in question falls within section 133(3) [or section 140B(3)] of that Act].

IN RESPECT WHEREOF

(Signed)

Applicant *(or agent for the applicant)*

Note:

Date of intimation: *(specify)*

Date of lodging: *(specify)*

Form 7A.6-C

Rule 7A.6(3)

Form of application by the prosecutor for a section 145 order under section 141(5) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF
OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT
OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* PROCURATOR FISCAL]
(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The prosecutor by virtue of section 141, in particular section 141(2) [*or* 141(3)], [*or* 141(3A)] of the Criminal Justice and Licensing (Scotland) Act 2010 applies for a section 145 order.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make a section 145 order.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

Form 7A.7-A

Rule 7A.7(1)

Form of application by the Secretary of State for a section 146 order under section 146(1) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

SECRETARY OF STATE

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The Secretary of State by virtue of section 146, in particular section 146(2) [*or* 146(3)] [*or* 146(4)] [*or* 146(4A)], of the Criminal Justice and Licensing (Scotland) Act 2010 applies for a section 146 order.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make a section 146 order.

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

PART 2

Paragraph 3(2)

Form 59.2

Rule 59.2(1)

Form of application by the Lord Advocate under section 2(2) [or 3(3)(b)] [or 4(3)(b)]
of the Double Jeopardy (Scotland) Act 2011

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

APPLICATION

by

THE LORD ADVOCATE

APPLICANT

HUMBLY SHEWETH, that:

1. *(here specify the name of the acquitted person, the (original) offence they were acquitted of and the circumstances in which they were acquitted).*
2. *(here specify why, with reference to section 2 [or 3] [or 4] of the Double Jeopardy (Scotland) Act 2011, the acquittal should be set aside and why authority for a new prosecution should be granted).*

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to set aside the acquittal and grant authority to bring a new prosecution under section 2(2) [or 3(3)(b)] [or 4(3)(b)] of the Double Jeopardy (Scotland) Act 2011.

IN RESPECT WHEREOF

(Signed)

LORD ADVOCATE

Form 59.3-A

Rule 59.3(1)(a)

Form of application by the prosecutor under section 11(3) of the Double Jeopardy
(Scotland) Act 2011

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

APPLICATION

by

HER MAJESTY'S ADVOCATE

APPLICANT

HUMBLY SHEWETH, that:

1. *(here specify the name of the acquitted person, the (original) offence they were acquitted of and the circumstances in which they were acquitted).*
2. *(here specify why, with reference to section 11 of the Double Jeopardy (Scotland) Act 2011, it would be in the interests of justice to proceed as mentioned in section 11(2) of that Act).*

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to grant authority to the prosecutor to proceed as mentioned in section 11(2) of the Double Jeopardy (Scotland) Act 2011.

IN RESPECT WHEREOF

(Signed)

Prosecutor

Form 59.3-B

Rule 59.3(1)(b)

Form of application by the prosecutor under section 12(3) of the Double Jeopardy
(Scotland) Act 2011

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

APPLICATION

by

HER MAJESTY'S ADVOCATE

APPLICANT

HUMBLY SHEWETH, that:

1. *(here specify the name of the convicted or acquitted person, the offence they were convicted or acquitted of and the circumstances in which they were convicted or acquitted).*
2. *(here specify why, with reference to section 12 of the Double Jeopardy (Scotland) Act 2011, the previous proceedings were a nullity and why it would be in the interests of justice to proceed as mentioned in section 12(2) of that Act).*

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to grant authority to the prosecutor to proceed as mentioned in section 12(2) of the Double Jeopardy (Scotland) Act 2011.

IN RESPECT WHEREOF

(Signed)

Prosecutor

Form 59.5

Rule 59.5

Form of appeal under section 11(6) of the Double Jeopardy (Scotland) Act 2011

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL

by

(specify)

(address)

APPLICANT

HUMBLY SHEWETH, that:

1. On *(date)* the High Court granted *(or refused)* a motion made to it under section 11(5) of the Double Jeopardy (Scotland) Act 2011.
2. The applicant appeals against the decision on the following grounds:- *(specify)*

ACCORDING TO JUSTICE, etc.

(Signed)

Applicant *(or agent for the applicant)*

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996 in consequence of the commencement of the Double Jeopardy (Scotland) Act 2011.

Paragraph 2 amends Chapter 7A (disclosure).

Paragraph 3 inserts new Chapter 59 (Double Jeopardy (Scotland) Act 2011).

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