

ACT OF ADJOURNAL (CRIMINAL PROCEDURE RULES) 1996 SI
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SCHEDULE 2

CRIMINAL PROCEDURE RULES 1996

PART VII MISCELLANEOUS PROCEDURES

CHAPTER 59

DOUBLE JEOPARDY (SCOTLAND) ACT 2011

Interpretation

59.1. In this Chapter, “the 2011 Act” means the Double Jeopardy (Scotland) Act 2011(1).

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.

(1) 2011 asp 16.

(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;
- (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)⁽²⁾ 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.

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

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.