

# Double jeopardy legislation approved before dissolution

A centuries old principle of Scots law which prevents a person being tried twice for the same offence, is to be reformed after MSPs in the Scottish Parliament voted unanimously in favour of a Bill introduced to update the law.

The double jeopardy principle dates back over 800 years, but questions have been raised in recent years about whether it needed to be modernised for the 21st Century.

Following a consultation with Scotland's legal profession, the public, victims and their families last year, formal steps were taken by Ministers to make the legislative changes required and a Bill was passed today by the Scottish Parliament.

The rule will not be removed – double jeopardy is a fundamental principle of Scots law which provides essential protection against the state repeatedly pursuing an individual for the same act.

However, certain exceptions will now apply. The key elements of the Double Jeopardy (Scotland) Act are:

- \* Restating and clarifying the ancient law on double jeopardy, removing the anomalies and uncertainties identified by the Scottish Law Commission in its 2009 Report on double jeopardy
- \* Allowing a second trial where, after an acquittal, compelling new evidence emerges to substantially strengthen the case against the accused
- \* Allowing a second trial where the original trial was 'tainted', e.g. by intimidation
- \* Allowing a second trial where, after an acquittal, evidence becomes available that the acquitted person has admitted committing the offence

- \* To permit the prosecution of a person on a more serious charge where the victim has died after the original trial
- \* Any changes to the double jeopardy law will be retrospective and apply to old cases

Mr MacAskill said:

“The principle of double jeopardy dates back over 800 years, but we now live in a very different world. The law needed to be modernised to ensure that it is fit for the 21st century and I am delighted that MSPs from all sides have voted in favour of these important changes.

“In this day and age, people shouldn’t be able to walk free from court and subsequently boast with impunity about their guilt. If new evidence emerges which shows the original ruling was fundamentally flawed, it should be possible to have a second trial. And trials which are tainted by threats or corruption should be re-run.

“Prosecutors should not have their hands tied, and these legislative changes will ensure that in such cases there will be no escape from justice.

“We have acted swiftly in the interests of Scottish justice, victims and their families and this is an historic day for Scots law.”

On 20 November 2007 the Cabinet Secretary for Justice, Kenny MacAskill MSP, asked the Scottish Law Commission to consider the principle of double jeopardy, whether there should be exceptions to it and to make any appropriate recommendations for reform.

The SLC published its Report on double jeopardy in December 2009 having previously published a Discussion Paper and conducted its own consultation exercise in early 2009. SLC papers are available online at the Commission’s.

The Government launched a consultation exercise based upon the SLC's proposals in March 2010. Responses to the consultation can be found on Scottish Government website.