

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 65-EN. A Policy Memorandum is printed separately as SP Bill 65-PM.

Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the exercise of functions during vacancies in the offices of Lord President of the Court of Session and Lord Justice Clerk and the incapacity of the holders of those offices.

1 Functions of the Lord President during vacancy or incapacity

- 5 (1) Subsection (2) applies during any period when—
- (a) the office of Lord President of the Court of Session (“the Lord President”) is vacant; or
 - (b) the Lord President is incapacitated.
- (2) During such a period—
- 10 (a) any function of the Lord President is exercisable instead by the Lord Justice Clerk;
- (b) anything that falls to be done in relation to the Lord President falls to be done instead in relation to the Lord Justice Clerk;
- (c) any function of the Lord Justice Clerk is exercisable instead by the senior judge of the Inner House; and
- 15 (d) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the senior judge of the Inner House.
- (3) For the purposes of this section—
- 20 (a) the Lord President is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by at least 5 judges of the Inner House declaring that they are satisfied that the Lord President is incapacitated;
- (b) in such a case, the Lord President is to be regarded as incapacitated until the First Minister has received a declaration in writing signed by at least 5 judges of the Inner House declaring that they are satisfied that the Lord President is no longer
- 25 incapacitated.
- (4) Except in any period during which section 2(2) applies, the judges of the Inner House mentioned in subsection (3)(a) and (b) must include the Lord Justice Clerk.

- (5) The First Minister must send a copy of a declaration received under subsection (3)(a) or (b) to the Presiding Officer of the Scottish Parliament.

2 Functions of the Lord Justice Clerk during vacancy or incapacity

- (1) Subsection (2) applies during any period when—

- (a) the office of Lord Justice Clerk is vacant; or
(b) the Lord Justice Clerk is incapacitated.

- (2) During such a period—

- (a) any function of the Lord Justice Clerk (including any function exercisable by virtue of section 1) is exercisable instead by the senior judge of the Inner House;
(b) anything that falls to be done in relation to the Lord Justice Clerk (whether or not by virtue of that section) falls to be done instead in relation to the senior judge of the Inner House;
(c) any function exercisable by the senior judge of the Inner House by virtue of that section is exercisable instead by the second senior judge of the Inner House; and
(d) anything that falls to be done in relation to the senior judge of the Inner House by virtue of that section falls to be done instead in relation to the second senior judge of the Inner House.

- (3) For the purposes of this section—

- (a) the Lord Justice Clerk is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by at least 5 judges of the Inner House declaring that they are satisfied that the Lord Justice Clerk is incapacitated;
(b) in such a case, the Lord Justice Clerk is to be regarded for the purposes of this section as incapacitated until the First Minister has received a declaration in writing signed by at least 5 judges of the Inner House declaring that they are satisfied that the Lord Justice Clerk is no longer incapacitated.

- (4) Except in any period during which section 1(2) applies, the judges of the Inner House mentioned in subsection (3)(a) and (b) must include the Lord President.

- (5) The First Minister must send a copy of a declaration received under subsection (3)(a) or (b) to the Presiding Officer of the Scottish Parliament.

3 Supplementary

- (1) Where—

- (a) any function is exercisable by, or anything falls to be done in relation to, the senior judge of the Inner House by virtue of section 1 or 2; and
(b) that judge is unavailable,

the function is exercisable by, or the thing falls to be done in relation to, the second senior judge of the Inner House.

- (2) Where—

- (a) any function is exercisable by, or anything falls to be done in relation to, the second senior judge of the Inner House by virtue of section 2(2)(c) or (d) or subsection (1) of this section; and

(b) that judge is unavailable,
the function is exercisable by, or the thing falls to be done in relation to, the next senior judge of the Inner House who is available.

4 Interpretation

(1) In this Act—

(a) “incapacitated”, in relation to the Lord President or the Lord Justice Clerk, means unable by reason of ill health to exercise the functions of the office concerned;

(b) “the Inner House” means the Inner House of the Court of Session;

(c) a reference to judges of the Inner House is to judges in the First or Second Division of the Inner House;

(d) a reference to the senior judge, the second senior judge or the next senior judge of the Inner House is to be construed by reference to seniority of appointment to a Division of the Inner House, but does not include the Lord President or the Lord Justice Clerk;

(e) a reference to—

(i) any function of the Lord President includes any function of the Lord Justice General;

(ii) anything that falls to be done in relation to the Lord President includes anything that falls to be done in relation to the Lord Justice General;

(iii) the functions of the office of Lord President includes the functions of the office of Lord Justice General.

(2) Where any other enactment makes provision for the exercise of any function of the Lord President by the Lord Justice Clerk, this Act does not affect the operation of that enactment except in relation to any period during which section 1(2) applies.

5 Short title

This Act may be cited as the Senior Judiciary (Vacancies and Incapacity) (Scotland) Act 2006.

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Introduced by: Cathy Jamieson
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