

# **JUDICIARY AND COURTS (SCOTLAND) ACT 2008**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 – the Judiciary**

#### ***Chapter 2 – Senior Judiciary: Vacancy, Incapacity and Suspension***

#### ***Section 6 - Periods when both sections 4 and 5 apply***

24. **Section 6** makes provision for what would happen were both the Lord President and the Lord Justice Clerk to be incapacitated or suspended at the same time or in the event of both posts being vacant. It provides that in such a situation their functions would be carried out by the two most senior judges of the Inner House. In particular the most senior would carry out the Lord President's functions and the other (i.e. "the second senior judge") would carry out the Lord Justice Clerk's functions .
25. By way of illustration - the Inner House comprises the Lord President, the Lord Justice Clerk, and, in order of seniority, Judges 1, 2, 3, 4, 5, 6, 7, 8 and 9. The Lord President is incapacitated. The Lord Justice Clerk is carrying out the functions of that office, with Judge 1 carrying of the functions of the Lord Justice Clerk. The Lord Justice Clerk becomes incapacitated before the Lord President returns to duty. Following the scheme of this section, Judge 1 then "steps up" and exercises the functions of the Lord President; Judge 2 assumes powers to carry on the functions of the Lord Justice Clerk.