



Judiciary and Courts (Scotland) Act 2008

2008 asp 6

PART 2

THE JUDICIARY

CHAPTER 2

SENIOR JUDICIARY: VACANCY, INCAPACITY AND SUSPENSION

Extent Information

E1 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

4 Lord President

- (1) This section applies during any period when—
 - (a) the office of Lord President is vacant,
 - (b) the Lord President is incapacitated, or
 - (c) the Lord President is suspended.
- (2) During such a period—
 - (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
 - (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—
 - (a) the Lord President is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by a majority of the total number

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- of 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 a majority of the total number of judges of the Inner House declaring that they are satisfied that the Lord President is no longer incapacitated.
- (4) The judges of the Inner House making a declaration for the purposes of subsection (3) (a) or (b) must include the Lord Justice Clerk.
- (5) The requirement in subsection (4)—
- (a) does not apply during any period when section 5 applies, and
- (b) is subject to section 7(4).
- (6) 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.
- (7) The reference in subsection (2)(a) to functions of the Lord President does not include the function of participating in a panel established under section 19(2) in connection with a vacancy, or an expected vacancy, in the office of Lord Justice Clerk.

Extent Information

E2 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

5 Lord Justice Clerk

- (1) This section applies during any period when—
- (a) the office of Lord Justice Clerk is vacant,
- (b) the Lord Justice Clerk is incapacitated, or
- (c) the Lord Justice Clerk is suspended.
- (2) During such a period—
- (a) any function of the Lord Justice Clerk is exercisable instead by the senior judge of the Inner House, and
- (b) 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—
- (a) the Lord Justice Clerk is to be regarded as incapacitated only if the First Minister has received a declaration in writing signed by a majority of the total number of 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 as incapacitated until the First Minister has received a declaration in writing signed by a majority of the total number of judges in the Inner House declaring that they are satisfied that the Lord Justice Clerk is no longer incapacitated.
- (4) The judges of the Inner House making a declaration for the purposes of subsection (3) (a) or (b) must include the Lord President.
- (5) The requirement in subsection (4)—
- (a) does not apply during any period when section 4 applies, and

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- (b) is subject to section 7(4).
- (6) 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.

Extent Information

E3 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

6 Periods when both sections 4 and 5 apply

- (1) Subsection (2) applies during any period when both sections 4 and 5 apply.
- (2) During such a period, subsection (2) of each of those sections does not apply and instead—
- (a) any function of the Lord President is exercisable instead by the senior judge of the Inner House,
 - (b) anything that falls to be done in relation to the Lord President falls to be done instead in relation to the senior judge of the Inner House,
 - (c) any function of the Lord Justice Clerk is exercisable instead by the second senior judge of the Inner House, and
 - (d) anything that falls to be done in relation to the Lord Justice Clerk falls to be done instead in relation to the second senior judge of the Inner House.

Extent Information

E4 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

7 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 4, 5 or 6, 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 6 or subsection (1) above, 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.
- (3) In calculating the total number of judges of the Inner House for the purposes of section 4(3) or 5(3), the following are not to be counted—
- (a) in the case of section 4(3)—
 - (i) the Lord President, and
 - (ii) during any period when section 5 applies, the Lord Justice Clerk,

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- (b) in the case of section 5(3)—
 - (i) the Lord Justice Clerk, and
 - (ii) during any period when section 4 applies, the Lord President, and
 - (c) in either case—
 - (i) any judge of the Inner House who is suspended from office, and
 - (ii) any office of judge of the Inner House which is vacant.
- (4) The requirements in sections 4(4) and 5(4) do not apply for the purpose of declarations under sections 4(3)(a) and 5(3)(a) respectively if—
- (a) the judges making the declarations are satisfied that both the Lord President and the Lord Justice Clerk are incapacitated, and
 - (b) the declarations state that this subsection applies.
- (5) Nothing in this Chapter affects any remuneration payable to, or in respect of, the Lord President, the Lord Justice Clerk or any other judge of the Inner House.

Extent Information

E5 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

8 Interpretation of Chapter 2

- (1) In this Chapter—
- “incapacitated”, in relation to the Lord President or the Lord Justice Clerk, means unable by reason of ill health to carry out the functions of the office concerned, and
 - “suspended” means suspended from office under section 36.
- (2) A reference in this Chapter 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.
- (3) A reference in this Chapter to—
- (a) any function of the Lord President includes any function of the Lord Justice General,
 - (b) 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,
 - (c) the functions of the office of Lord President includes the functions of the office of Lord Justice General.
- (4) Where any other enactment makes provision for the carrying out 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 4 applies.

Extent Information

E6 Pt. 2 Ch. 2 extended to E.W.N.I. (14.9.2009) by [S.I. 2009/2231](#), [art. 4](#)

Changes to legislation:

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