



# Judiciary and Courts (Scotland) Act 2008

## 2008 asp 6

### PART 2

#### THE JUDICIARY

#### CHAPTER 2

##### SENIOR JUDICIARY: VACANCY, INCAPACITY AND SUSPENSION

#### 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)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) does not apply during any period when section 4 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.