

# JUDICIARY AND COURTS (SCOTLAND) ACT 2008

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## EXPLANATORY NOTES

### THE ACT

#### *Schedule 2 - Panels Established under Section 18(2)*

156. This schedule sets out the procedures in relation to a panel established under section 19(2) to deal with a vacancy in either the office of the Lord President or the Lord Justice Clerk.
157. [Paragraph 1\(1\)](#) deals with the composition of the panel for a vacancy in the office of the Lord President, which is to include 2 qualifying judges nominated by the First Minister, as further explained in paragraph 3(1). Similar provision is made at paragraph 1(2) in connection with a panel for a vacancy in the office of the Lord Justice Clerk, except that one of the 2 judges nominated by the First Minister is replaced by the Lord President.
158. [Paragraph 2\(1\)](#) makes provision for when the Chairing Member of the Board is unable to take part in either panel. In these circumstances they must nominate another lay member of the Board to take their place. Under paragraph 2(2), if the office of Chairing Member is vacant, or that member is not able to make a nomination, then the Board must nominate another lay member of the Board as a substitute.
159. When the Lord President is unable to take part in a panel dealing with a vacancy in the office of Lord Justice Clerk, he or she may nominate another qualifying judge to sit in his or her place under paragraph 2(3). Paragraph 2(4) provides that where section 4(2) applies, that is, where the Lord President is incapacitated, suspended, or there is a vacancy in the office, the First Minister is to nominate another qualifying judge to take the Lord President's place.
160. [Paragraph 3\(2\)](#) provides that the Lord Justice Clerk may not sit on a panel to fill a vacancy in that office. Thus a retiring Lord Justice Clerk has no role in the appointment of his or her successor. Paragraph 3(3) provides that in order to qualify to sit on a panel judges must first confirm to the First Minister that they do not wish to be appointed to the office in question. The effect of this is that any judges wishing to be considered for the vacant office will not be considered for appointment to the panel formed in connection with that vacancy.