



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)—

Changes to legislation: *There are currently no known outstanding effects for the Judiciary and Courts (Scotland) Act 2008, Section 5. (See end of Document for details)*

- (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.

Extent Information

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

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