

SENIOR JUDICIARY (VACANCIES AND INCAPACITY) (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Section 1

7. Subsections (1), (3)(a) and (4) of this section set out the events that trigger the provisions of the Act in relation to the office of the Lord President. Subsections (3)(a) and (4) provide for a decision that the Lord President is incapacitated. It is for the judges of the Inner House to decide this, and at least five of their number must sign a written declaration to this effect, which must be supplied to the First Minister. The Lord Justice Clerk, unless he or she is also incapacitated, or his or her post is vacant, must be one of the five judges. The requirement for five judges means that a majority of the Inner House judges must be satisfied as to the Lord President's incapacity. Once the written declaration is received by the First Minister, the provisions of the Act for incapacity take effect.
8. There is no procedure required in the case of a vacancy. As soon as the office of Lord President becomes vacant for any reason (for instance on the death, resignation, removal or retirement of the office holder), the provisions of section 1 will take effect.
9. Once the procedure is triggered, subsection (2) does a number of things. It provides that the functions of Lord President will be carried out instead by the Lord Justice Clerk, and that the functions of the office of Lord Justice Clerk will, in turn, be carried out by the senior Inner House judge.
10. The subsection also makes clear that both active and passive functions of the Lord President and the Lord Justice Clerk are covered. The Lord President has statutory functions in relation to a wide range of tribunals. He has responsibility for making appointments to, for example, the Lands Tribunal for Scotland. He also has various rule-making powers. There are also a number of provisions that require others to consult with the Lord President, or seek his approval, in the course of their activities. For example Ministers must consult with the Lord President before they appoint persons as temporary judges. The Lord President's approval is required for rules made by the Law Society of Scotland to govern such matters as professional practice and rights of audience.
11. The powers under the Act will cease to have effect on one of two events occurring. The first would be the assumption of office of a new Lord President where there has been a vacancy. The second is when the First Minister receives a written declaration signed by at least five Inner House judges that they are satisfied the Lord President is no longer incapacitated. This is provided for in subsection (3)(b). There is no requirement that the same five judges sign both declarations.
12. Subsection (5) requires the First Minister to send a copy of either declaration concerning incapacity received from the judges - whether triggering or ending the process in the Act - to the Presiding Officer of the Scottish Parliament.