

*These notes relate to the Senior Judiciary (Vacancies and Incapacity)
(Scotland) Act 2006 (asp 9) which received Royal Assent on 27 June 2006*

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

EXPLANATORY NOTES

THE ACT

Section 2

13. This section deals with the incapacity of the Lord Justice Clerk, or a vacancy in that office. The provisions are almost identical with those in section 1. However, there are some important differences.
14. One difference is that it is made clear in subsections (2)(a) and (b) that among the functions of the Lord Justice Clerk that are covered by the provision are those which the Lord Justice Clerk might be carrying on for the time during the incapacity of the Lord President, or because that office is vacant, because section 1 of the Act has been invoked. Sections 1 and 2 of the Act therefore provide a comprehensive arrangement to ensure there is no disruption to administration were both the Lord President and the Lord Justice Clerk to be incapacitated at the same time, or in the event that both posts were vacant. This is achieved by providing for the functions of the two most senior judicial offices to be carried out by the most senior Inner House judges respectively. The Lord Justice Clerk is accordingly replaced with the senior judge of the Inner House. In the case where the Lord President and the Lord Justice Clerk are both incapacitated or their office vacant, the senior judge takes the Lord President's functions and the next most senior such judge (called "the second senior judge" in the Act) takes the Lord Justice Clerk's functions (see subsection (2)(c) and (d)). The next paragraph illustrates how this would work in practice.
15. The Inner House comprises the Lord President, the Lord Justice Clerk, and, in order of seniority, Judges 1, 2, 3, 4, 5, 6, 7 and 8. The Lord President is incapacitated. The Lord Justice Clerk is carrying out the functions of that office, with Judge 1 carrying out the functions of the Lord Justice Clerk. The Lord Justice Clerk becomes incapacitated before the Lord President returns to duty. Following the scheme of section 2, Judge 1 then "steps up" and exercises the functions of the Lord President; Judge 2 assumes powers to carry on the functions of the Lord Justice Clerk.