

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

EXPLANATORY NOTES

THE ACT

Section 4

17. This section gives certain words specific meanings for the purposes of the Act. Subsection (1)(a) makes clear that incapacity arises only on the grounds of ill health. Subsection (1)(d) makes clear that it is seniority of appointment to the Inner House that is relevant to which judge is most senior in terms of the procedure in the Act. Subsection (1)(e) recognises that the Lord President is also the holder of the office of Lord Justice General. The effect is that the functions relating to that office can also be carried on under the provisions of the Act.
18. Subsection (2) preserves the provisions that already exist in statute allowing the Lord Justice Clerk to carry out a function of the Lord President or Lord Justice General. One example is section 2(1) of the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#). This provides that the High Court will sit at such places as the Lord Justice General whom failing the Lord Justice Clerk shall determine. Section 4(2) makes clear that the existence of the procedure in the Act, if it has not been triggered on vacancy or the First Minister receiving the written declaration of incapacity, does not give rise to doubts that the Lord Justice Clerk has such powers. In the event of a vacancy or the incapacity of the Lord Justice General, i.e. once the procedure in the Act has been triggered, such a function of the Lord Justice General may be exercised by the Lord Justice Clerk “whom failing” the senior judge of the Inner House acting as Lord Justice Clerk under the provisions of the Act.