# Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 65</th>
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<td>Introduced on:</td>
<td>13 June 2006</td>
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<td>Introduced by:</td>
<td>Cathy Jamieson (Executive Bill)</td>
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<td>Passed:</td>
<td>15 June 2006</td>
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<td>Royal Assent:</td>
<td>27 June 2006</td>
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## Passage of the Bill

The Senior Judiciary (Vacancies and Incapacity) (Scotland) Bill [SP Bill 65] was introduced in the Parliament on 13 June 2006. The Scottish Executive sought the agreement of the Parliament to treat it as an Emergency Bill, under the provisions set out in Rule 9.21 of the 'Standing Orders of the Scottish Parliament'. A motion to this effect was agreed on 15 June 2006 and the Bill was passed without amendment on the same day, with all stages of parliamentary scrutiny being dealt with by the Parliament as a whole.

## Purpose and objectives of the Bill

The two most senior judges in Scotland are the Lord President of the Court of Session (who also holds the office of Lord Justice General in relation to the High Court of Justiciary) and the Lord Justice Clerk. The Bill makes provision for the functions of these two judges to be carried out by other senior judges when either office is vacant, or where the judge in question is unable to carry out the functions of the office because of ill health.

In seeking the agreement of the Parliament to treat the Bill as an Emergency Bill, the Minister for Justice stated that:

> “I will briefly outline why I consider that it is important that this short but critical piece of legislation should be handled under those exceptional procedures.

The need arises because Scotland’s senior judge, the Lord President of the Court of Session, has been ill for some time and there is no indication of when he will return. Under the present law, a number of important functions may be carried out by the Lord President alone. His extended absence is already causing difficulties for the administration of the courts. The second most senior judge, the Lord Justice Clerk, has asked ministers to take early action to deal with this gap in our law. The only way in which we can remedy the situation is to legislate to put beyond any doubt that the Lord Justice Clerk may act in place of the
Background information on the Scottish court system and judiciary (including the roles of the Lord President and Lord Justice Clerk) is set out in a SPICe briefing (06/50) on the Bill.

**Provisions of the Bill**

The Bill makes provision for the functions of the Lord President (including functions performed in the role of Lord Justice General) and Lord Justice Clerk to be carried out by other senior judges when either office is vacant, or where the judge in question is incapacitated (ie unable to carry out the functions of the office because of ill health).

The Bill provides that the Lord President may be treated as incapacitated where the First Minister receives a declaration to that effect signed by the Lord Justice Clerk and at least four other judges of the Inner House of the Court of Session. Similar provision is made in relation to the Lord Justice Clerk. Thus, in both cases, a majority of Inner House judges must agree.

Where the Lord President is incapacitated, or when the office is vacant, the Bill provides that his/her role can be performed by the Lord Justice Clerk. The Bill goes on to provide that, in such circumstances, the role of the Lord Justice Clerk can be performed by the next most senior judge of the Inner House (as determined by seniority of appointment). Similar provision is made for situations where it is the Lord Justice Clerk who is incapacitated (or where that office is vacant) – with the next most senior judge below the Lord Justice Clerk performing the role.

**Parliamentary consideration**

Following the Stage 1 debate, the general principles of the Bill were agreed with cross-party support.

Stage 2 of the Bill (considered by a Committee of the Whole Parliament) involved consideration of a number of detailed amendments which were withdrawn (or not moved) following debate.

Following the Stage 3 debate, the Bill was passed with cross-party support.