



GUIDELINES FOR THE USE OF TEMPORARY JUDGES

ISSUED BY THE LORD PRESIDENT

Introduction

1. The use of temporary judges in the Court of Session and the High Court of Justiciary was introduced by section 35 (3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. At the time of this innovation guidance was prepared and issued by the then Lord President (Hope) as to the duties that they could perform. This guidance has been referred to in several cases including *Clancy –v- Caird* 2000 SC 441.
2. A recent case raised the question whether that guidance still held true. It seems that the guidance has been modified over the years. I have therefore decided to issue revised guidance.

Application

3. This guidance applies to persons appointed as temporary judges under section 35 (3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. It does not apply to the re-employment of retired judges under section 22 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985. There is no restriction as to the duties that they can perform

Use of Temporary Judges

4. Temporary judges will be used only where there are, for reasons of a temporary nature, an insufficient number of permanent judges to meet the demands of business and the Lord President has approved their use.
5. Where a temporary judge is to be used the preference will be to allocate business to a temporary judge who is an existing judicial office

holder or, as the case may be, a former judicial office holder (that is to say one not appointed under section 22 of the Act of 1985) rather than a temporary judge who is a practising member of the legal profession.

Scope of Use

6. In the High Court of Justiciary, temporary judges may be allocated any kind of criminal business at first instance. Until further notice, temporary judges may be used in the Appeal Court but only with the prior authority of the Lord Justice General.
7. In the Court of Session, temporary judges may be allocated any kind of civil business at first instance with the exception of civil jury trials and cases of particular public interest. Until further notice, temporary judges may sit in the Inner House but only with the prior authority of the Lord President.

Brian Gill

Lord President

Edinburgh
6 February 2013