

CHAPTER 14

PETITIONS

Application of this Chapter

14.1 Subject to any other provisions in these Rules, this Chapter applies to a petition presented to the court.

Applications by petition in the Outer House

14.2 Subject to any other provision in these Rules, the following applications to the court shall be made by petition presented in the Outer House:-

- (a) an application for the appointment of a judicial factor, a factor *loco absentis*, a factor pending litigation or a curator *bonis*;
- (b) an application for the appointment of a judicial factor on the estate of a partnership or joint adventure;
- (c) an application to the nobile *officium* of the court which relates to-
 - (i) the administration of a trust;
 - (ii) the office of trustee; or
 - (iii) a public trust;
- (d) a petition and complaint for breach of interdict;
- (e) an application to the supervisory jurisdiction of the court;
- (f) an application for suspension, suspension and interdict, and suspension and liberation;
- (g) an application to recall an arrestment or inhibition other than in a cause depending before the court;
- (h) a petition or other application under these Rules or any other enactment or rule of law; and
- (i) an application to the court in exercise of its *parens patriae* jurisdiction.

Applications by petition in the Inner House

14.3. Any of the following applications shall be made by petition presented in the Inner House:-

- (a) a petition and complaint other than for breach of interdict;
- (b) an application under any enactment relating to solicitors or notaries public;
- (c) an application which is, by virtue of these Rules or any other enactment, to be by petition and is incidental to a cause depending before the Inner House;
- (d) an application to the *nobile officium* of the court other than an application mentioned in rule 14.2(c) (applications relating to the administration of a trust, the office of trustee or a public trust);
- (e) a petition by trustees for directions under Part II of Chapter 63;
- (f) an application under section 1 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 **(a)** (assistance in obtaining evidence for civil proceedings in another jurisdiction);
- (g) an application under section 1 of the Trusts (Scotland) Act 1961 **(b)** (variation or revocation of trusts);
- (h) an application under section 17(6), 18(7), 20(7), 20(11)(b), 21(5), 21(7) or 21(10) of, or under paragraph 20 of Schedule 1 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 **(d)** (orders in relation to conveyancing or executry practitioners); and
- (i) an application required to be made to the Inner House under any enactment.

(a) 1975 c.34.

(b) 1961 c.57.

(c) 1982 c.50; section 49 was amended by the Companies Consolidation (Consequential Provisions) Act 1985 c.9., Schedule 2.

(d) 1990 c.40.

Form of petitions

14.4.-(1) A petition shall be in Form 14.4.

(2) A petition shall include-

- (a) a statement of facts in numbered paragraphs setting out the facts and circumstances on which the petition is founded;
- (b) a prayer setting out the orders sought; and
- (c) the name, designation and address of the petitioner and a statement of any special capacity in which the defender is being sued.

(3) In a petition presented under an enactment, the statement of facts shall expressly refer to the relevant provision under the authority of which the petition is presented.

(4) Where a petition is one to which the Civil Jurisdiction and Judgments Act 1982 (a) applies, the statement of facts shall include averments stating-

- (a) the ground of jurisdiction of the court, unless jurisdiction would arise only if the respondent prorogated the jurisdiction of the court without contesting jurisdiction;
- (b) unless the court has exclusive jurisdiction, whether or not there is an agreement prorogating the jurisdiction of a court in another country; and
- (c) whether or not there are proceedings involving the same cause of action in subsistence between the parties in a country to which the convention in Schedule 1 or 3C to that Act (b) applies and the date any such proceedings commenced.

(5) The prayer of a petition shall crave warrant for such intimation, service and advertisement as may be necessary having regard to the nature of the petition, or as the petitioner may seek; and the name, address and capacity of each person on whom service of the petition is sought shall be set out in a schedule annexed to, and referred to in, the prayer of the petition.

(6) Where it is sought in a petition-

- (a) to dispense with intimation, service or advertisement, or
- (b) to shorten or extend the period of notice,

the appropriate order shall be craved in the prayer, and the grounds on which the order is sought shall be set out in the statement of facts.

First order in petitions

14.5.-(1) Subject to paragraph (2), on a petition on being lodged, the court shall, without a motion being enrolled for that purpose, pronounce an interlocutor for such intimation, service and advertisement as may be necessary.

(2) Where a petitioner seeks-

- (a) to dispense with intimation, service or advertisement on any person, or
- (b) any interim order,

he shall apply by motion for such order as appears appropriate.

(3) On disposing of a motion under paragraph (2), the court shall make such order as it thinks fit.

Period of notice for lodging answers

14.6.-(1) Subject to any other provision in these Rules, the period of notice for lodging answers to a petition shall be-

(a) 1982 c.27.

(b) Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 was substituted by S.I. 1990/2591 and Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 1(3).

- (a) in the case of service, intimation or advertisement within Europe, 21 days from whichever is the later of the date of execution of service, the giving of intimation or the publication of the advertisement;
- (b) in the case of service or intimation furth of Europe under rule 16.2(2)(d) or (e) (service by an *huissier* etc. or personally), 21 days from whichever is the later of the date of execution of service or the giving of intimation;
- (c) in the case of service or intimation furth of Europe other than under sub-paragraph (b), or advertisement furth of Europe, 42 days from whichever is the later of the date of execution of service, the giving of intimation or the publication of the advertisement;
- (d) in the case of service by advertisement under rule 16.5 (service where address of person is not known), 6 months from the date of publication of the advertisement.

(2) An application may be made by motion to shorten or extend the period of notice.

(3) Where a motion under paragraph (2) is made in a petition at the time that an order for intimation, service or advertisement is made under rule 14.5 (first order in petitions), the decision of the court on the motion shall be final and not subject to review.

Intimation and service of petitions

14.7.-(1) A petition shall be intimated-

- (a) on the walls of the court; and
- (b) in such other manner as the court thinks fit.

(2) A copy of the petition shall be served on every person, specified in the petition or by the court as a person on whom the petition is to be served, with a citation in Form 14.7 attached to it.

(3) A petition to the court in exercise of its *parens patriae* jurisdiction shall not be intimated on the walls of the court.

Procedure where answers lodged

14.8. Where answers to a petition have been lodged, the petitioner shall, within 28 days after the expiry of the period of notice, apply by motion for such further procedure as he seeks, and the court shall make such order for further procedure as it thinks fit.

Unopposed petitions

14.9.-(1) Subject to paragraph (2), where the period of notice has expired without answers being lodged, the court shall, on the motion of the petitioner, after such further procedure and inquiry into the grounds of the petition, if any, as it thinks fit, dispose of the petition.

2) Where-

- (a) the prayer of the petition seeks an order directed against a person,
- (b) service of the petition has been made on that person furth of the United Kingdom under rule 16.2, and
- (c) such order has been granted without that person having lodged answers,

a certified copy of the interlocutor granting the order shall be served forthwith by the petitioner on that person.

(3) The court may, on the motion of a person to whom paragraph (2) applies, recall the interlocutor and allow answers to be lodged if-

- (a) that person-
 - (i) without any fault on his part, did not have knowledge of the petition in sufficient time to lodge answers;
 - (ii) has disclosed a *prima facie* answer to the petition on the merits; and
 - (iii) has enrolled the motion for recall within a reasonable time after he had knowledge of the petition; and
- (b) the motion is enrolled before the expiry of one year from the date of the interlocutor sought to be recalled.

(4) The recall of an interlocutor under paragraph (3) shall be without prejudice to the validity of anything already done or transacted, of any contract made or obligation incurred, or of any appointment made or power granted, in or by virtue of that interlocutor.

(5) The provisions of this rule are without prejudice to the power of the court to make any interim appointment or order at any stage of the cause.