

CHAPTER 63

APPLICATIONS RELATING TO TRUSTS

PART I

VARIATION OR REVOCATION OF TRUSTS

Interpretation of this Part

63.1. In this Part, "the Act of 1961" means the Trusts (Scotland) Act 1961(a).

Form of petitions under section 1(4) of the Act of 1961

63.2. In a petition under section 1(4) of the Act of 1961 (petition to vary or revoke purposes of an alimentary trust), it shall not be necessary to aver the amount or details of the income of an alimentary beneficiary from all sources.

Service on certain persons

63.3. In a petition under section 1 of the Act of 1961(b) (petition for variation or revocation of trust purposes or extension of trustees' powers), the order under rule 14.5 (first order in petitions)-

- (a) shall include a requirement for the petition to be served-
 - (i) where the trust deed is registered in a register kept by the Keeper of the Registers or the Keeper of the Records, on the relevant Keeper; or
 - (ii) where the trust deed is registered in a sheriff court book, on the sheriff clerk who keeps the relevant sheriff court book; and
- (b) may include a requirement for the petition to be served on a trustee or settlor or any other person who has contributed or is liable to contribute to the trust estate which may be affected by the petition.

(a) 1961 c.57

(b) Section 1 was amended by the Age of Majority (Scotland) Act 1989 (c.39), Schedule 1 and the Age of Legal Capacity (Scotland) Act 1991 (c.50), Schedule 1, paragraph 27 and Schedule 2.

PART II

PETITIONS BY TRUSTEES FOR DIRECTIONS

Application of this Part

63.4. This Part applies to an application for which provision is to be made by virtue of section 6(vi) of the Act of 1988^(a) (provision to enable trustees under any trust deed to obtain direction of the court).

Form and service of application

63.5.-(1) An application to which rule 63.4 applies shall be made by petition.

(2) Subject to rule 63.6A (executors of underwriting members of Lloyd's of London) the petition shall set out the question on which the direction of the court is sought and may include, in an appendix, any relevant documents.

(3) The court may, in any order made under rule 14.5 (first order in petitions) or in any subsequent order, include a requirement to serve the petition on creditors, beneficiaries or other persons interested in the subject-matter of the petition.

Determination of petition

63.6.-(1) Subject to rule 63.6A (executors of underwriting members of Lloyd's of London) the petition shall be disposed of at a hearing on the Summar Roll.

(2) At the hearing on the Summar Roll, the court may order inquiry by-

- (a) proof,
- (b) remit to a reporter, or
- (c) affidavit,

as it thinks fit.

Executors of underwriting members of Lloyd's of London

63.6A.-(1) This rule applies to a petition under this Part for directions as to the distribution of, or the administration of any trust relating to, the estate of a deceased underwriting member of Lloyd's of London, where –

- (a) all liabilities of the estate in respect of syndicates or which the deceased was a member have been reinsured (whether directly or indirectly) or are otherwise the subject of indemnity; and
- (b) the only reason for the executor delaying distribution of the estate is the possibility of personal liability to creditors of Lloyd's of London.

(2) The petition shall-

- (a) state that this rule applies; and
- (b) contain averments as to the matters mentioned in paragraph (1).

(3) There shall be lodged with the petition all affidavits and other documents available to the petitioner in respect of the matters mentioned in paragraph (1)

(4) If, on the expiry of the period of notice, no answers have been lodged –

^(a) 1988 c.36.

- (a) the petitioner shall apply by motion for a remit to a reporter approved by the court for that purposes; and
 - (b) where a report has been lodged in process by the reporter, the petitioner may apply by motion for an order granting the prayer of the petition.
- (5) Where answers have been lodged –
- (a) the parties may adjust the petition and answers within 28 days after the date on which the answers were lodged (“the adjustment period”) and shall intimate such adjustments to one another;
 - (b) within 14 days after the expiry of the adjustment period, the petitioner shall apply by motion for such further procedure as may be specified in the motion.
 - (6) Where the petitioner fails to comply with the requirements of paragraph (5), a respondent may apply by motion for decree of dismissal.

PART III

PUBLIC TRUSTS

Application and interpretation of this Part

63.7.-(1) This Part applies to-

- (a) an application to the *nobile officium* of the court for approval of a cy près scheme in relation to a public trust; or
- (b) an application to the court under-
 - (i) Part VI of the Education (Scotland) Act 1980(a) (reorganisation of endowments); or
 - (ii) Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b) (charities and reorganisation of public trusts).

(2) In this Part, "the Act of 1990" means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Proceedings before nominated judge

63.8. Subject to rule 63.9 (referral to Inner House), all proceedings in an application to which this Part applies shall be brought before a judge of the court nominated for that purpose by the Lord President or, where the nominated judge is not available, any other judge of the court (including the vacation judge); and, in this Part, "Lord Ordinary" shall be construed accordingly.

Remit to Inner House

63.9. The Lord Ordinary, if he thinks fit, may at any time remit a petition to which this Part applies to the Inner house to be determined by a Division of the Inner House.

Form of applications

63.10.-(1) Subject to the following paragraphs of this rule, an application to which this Part applies shall be made by petition.

(2) An application for an order in a petition to which this Part applies which is in dependence shall be made by motion.

(3) At the hearing of a motion under paragraph (2), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as the court thinks fit.

(4) Intimation to the court by the Scottish Ministers under section 1(6) or 5(13) of the Act of 1990 (interdict until intimation to court) shall be made by motion for recall of the interlocutor.

Service on interested persons

63.11. A petition to which this Part applies shall be served on all persons who may have an interest in the subject-matter of the petition.

Procedure where no answers lodged

63.12.-(1) If, on the expiry of the period of notice, no answers have been lodged, the petitioner may apply by motion for an order granting the prayer of the petition.

(a) 1980 c.44

(b) 1990 c.40.

(2) On a motion under paragraph (1), the Lord Ordinary may, before determining that motion-

- (a) remit to a reporter to inquire into, and report on, the petition and any scheme appended to it;
- (b) order the petitioner to lodge evidence by affidavit or documentary evidence;
- (c) order a further hearing; or
- (d) make such other order as he thinks fit.

Procedure where answers lodged

63.13.-(1) Where answers are lodged in a petition, the parties may adjust the petition and answers during the period of 28 days from the date on which answers are lodged or from the expiry of the period of notice, whichever is the later.

(2) Within 14 days after the expiry of the period allowed for adjustment under paragraph (1), the petitioner shall enrol a motion for an order for such further procedure as he shall specify.

(3) On a motion under paragraph (2), the Lord Ordinary shall make such order as he thinks fit for the further procedure of the petition; and, in particular-

- (a) may-
 - (i) remit to a reporter to inquire into, and report on, the petition and any scheme appended to it;
 - (ii) order a party to lodge evidence by affidavit or documentary evidence; and
- (b) then, or thereafter, shall appoint the cause to a hearing.

(4) At a hearing appointed under paragraph (3)(b), the Lord Ordinary shall-

- (a) determine the petition; or
- (b) make such order for further procedure as he thinks fit.

(5) If at any stage answers are withdrawn, the petition shall proceed as if answers had not been lodged.

Warrants for registration

63.14. An interlocutor approving a cy près scheme or a scheme for the variation or reorganisation of a public trust shall contain a warrant for the registration of an official certified copy of the interlocutor, and a copy of the scheme certified by the agent to the petitioner, in the Books of Council and Session or the books of a specified sheriff court.

Advertisement of court orders

63.15. An order made under paragraph (a) or (g) of section 7(4) of the Act of 1990 (interim interdict or interdict of body holding itself out as a charity etc.) shall, unless the court otherwise directs, be advertised forthwith in one or more newspapers as the court shall direct for ensuring that it comes to the notice of persons dealing with a non-recognised body within the meaning of section 2(2) of that Act.