

CHAPTER 77

SUMMARY TRIALS

Application of this Chapter

77.1. This Chapter applies to a petition under section 26 of the Act of 1988 (a) (summary trials).

Disapplication of certain rules to this Chapter

77.2. The following rules shall not apply to a petition under this Chapter:-

- 14.5 (first order in petitions),
- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.8 (procedure where answers lodged),
- 14.9 (unopposed petitions).

Form of petition

77.3. A petition for a summary trial shall contain-

- (a) a concise narrative in numbered paragraphs of the facts or circumstances in relation to which the dispute or question arises;
- (b) where the parties are agreed on the facts-
 - (i) a statement to that effect; and
 - (ii) a note of the questions which have arisen between them;
- (c) where the parties are not agreed on the facts-
 - (i) a statement to that effect;
 - (ii) specification of the facts which are in dispute; and
 - (iii) a note of any further questions which may arise when the dispute of fact has been determined, or a reservation of such questions; and
- (d) a prayer that the dispute or question be referred to a particular Lord Ordinary for his determination.

Presentation to Lord Ordinary

77.4.-(1) The petition shall be placed before the Lord Ordinary named in the petition on the earliest available day but, subject to paragraph (2), within 7 days after the date of presentation of the petition.

(2) Where the last day of the period specified in paragraph (1) falls in vacation without the petition having been brought before the Lord Ordinary, the petition shall be placed before the Lord Ordinary on the first sitting day after that vacation.

(3) On the petition being placed before the Lord Ordinary, he shall-

- (a) where it appears that the parties are agreed on the facts, appoint the cause to be heard before him, in court or in chambers, on a date within 6 weeks (excluding days in vacation) after the date of the interlocutor appointing the hearing;
- (b) where it appears that the parties are not agreed on the facts, appoint a proof to be taken before him in court or in chambers.

(4) The Lord Ordinary may take any hearing or proof, or any continuation of such hearing or proof, during session or vacation.

Procedure in summary trials

77.5. Subject to any other provision in this Chapter, the petition shall follow such procedure as the parties may, with the consent of the Lord Ordinary, agree, or, failing such agreement, as the Lord Ordinary shall direct.

Recording of evidence at proof

77.6. The evidence led at a proof allowed under rule 77.4(3)(b) shall not be recorded, unless the parties so agree.

Reports to Inner House

77.7.-(1) If at any stage of the cause it appears to the Lord Ordinary that the determination of the petition may affect the status of any person, the Lord Ordinary shall report the matter to the Inner House in accordance with Chapter 34.

(2) On receiving a report under paragraph (1), the Lord President may appoint the parties to show cause before a Division of the Inner House why the petition should proceed under section 26 of the Act of 1988; and the Inner House shall, after hearing parties and subject to any conditions as it thinks fit, direct that the petition shall proceed or refuse the prayer of the petition.

Disposal of petitions

77.8. Any decision of the Lord Ordinary shall be given effect to in an interlocutor and he may-

- (a) pronounce any interlocutor which he thinks fit to enable his decision to be carried into effect; and
- (b) dispose of all questions of expenses.

Finality of interlocutors

77.9. An interlocutor of the Lord Ordinary shall be final, binding only on the parties to the petition, and shall not be subject to review.

Transfer to another Lord Ordinary

77.10.-(1) In the event of the death, disability or absence of the Lord Ordinary before the petition has been determined, the petitioners may lodge a joint minute in Form 77.10 in process for the cause to be referred to another Lord Ordinary named in that minute.

(2) On such a minute being lodged in process, the cause shall be transferred to the Lord Ordinary named in that minute who shall take up the procedure at the point which had been reached by his predecessor.

(3) The Lord Ordinary to whom the cause is transferred under paragraph (2) may re-hear the evidence of any witness heard by his predecessor.

Agreement to adopt summary trial procedure in action in dependence

77.11.-(1) Where the parties to an action propose to adopt summary trial procedure by virtue of section 26(2) of the Act of 1988 (agreement to adopt summary trial procedure in action in dependence), they shall lodge in the process of the action a joint minute in Form 77.11.

(2) On such a joint minute being lodged in process, the Lord Ordinary shall pronounce an interlocutor directing that the action shall proceed as a summary trial.

(3) On an interlocutor being pronounced under paragraph (2), rules 77.3 to 77.10 shall, with the necessary modifications and the following modifications, apply to the further procedure in the action:-

- (a) subject to sub-paragraph (b) of this paragraph, in rule 77.4, for the word "petition" there shall be substituted the words "record or other pleading"; and
- (b) in rule 77.4, for the words "date of presentation of the petition", there shall be substituted the words "date of the interlocutor pronounced under rule 77.11(2)".