OUTER HOUSE, COURT OF SESSION

[2019] CSOH 77

P900/19

OPINION OF LORD PENTLAND

In the petition of

(1) DALE VINCE OBE; (2) JOLYON MAUGHAM QC; and (3) JOANNA CHERRY QC MP

Petitioners

against

THE RIGHT HONOURABLE BORIS JOHNSON AND THE LORD KEEN OF ELIE

Respondents

for

an Order for Specific Performance by the Prime Minister of his Statutory Duties under the European Union (Withdrawal) (No 2) Act 2019 and interdict

Petitioners: O'Neill QC, Welsh; Balfour + Manson LLP
Respondent: Webster QC, Pirie; Office of the Advocate General

7 October 2019

Introduction

[1] The petitioners seek various orders aimed at ensuring that the Prime Minister of the United Kingdom complies with the statutory duties imposed on him under the European Union (Withdrawal) (No 2) Act 2019 ("the 2019 Act"), and specifically with the duties to which he is made subject by section 1(4) thereof. The petition has been brought under Chapter 14 of the Rules of the Court of Session; it is not a petition for judicial review

invoking the supervisory jurisdiction of the court. No issue was raised as to the title and interest of any of the petitioners to bring the present proceedings.

[2] The first respondent to the petition is the Prime Minister of the United Kingdom, the Right Honourable Boris Johnson MP. The second respondent is the Advocate General for Scotland; he has been convened, in accordance with the Crown Suits (Scotland) Act 1857, as the minister of the Crown representing the government of the United Kingdom ("the government") in proceedings brought before the Scottish courts.

[3] I should note at the outset one point which can be quickly disposed of. The Advocate General has tabled a preliminary plea in his answers challenging the jurisdiction of the court over Mr Johnson as an individual on the basis that he is not personally domiciled in Scotland. At the hearing before me on 4 October 2019 Mr O'Neill QC clarified on behalf of the petitioners that the intention was not to convene the first respondent in the present proceedings as an individual, but solely in his capacity as a minister of the Crown. In view of that acceptance, the jurisdiction point falls away since it was not in dispute that the Crown is domiciled throughout the United Kingdom and, therefore, that this court has jurisdiction over the first respondent in his capacity as a minister of the Crown.

[4] The petitioners seek four substantive orders, but at the hearing Mr O'Neill explained that he was seeking at this stage orders in terms of heads (i) and (ii) of the prayer only.

[5] Head (i) seeks interdict against the first respondent and any minister of the Crown (and anybody acting on their behalf or at their request) from taking any action that would undermine or frustrate the will of the UK Parliament as enacted in the 2019 Act, particularly (but not restricted to) (a) sending any document, message or statement alongside the letter required to be issued under section 1(4) of the 2019 Act which suggests that the UK's intention is anything other than that set out in the letter; (b) delaying or otherwise causing

the letter sent under section 1(4) not to be received by the President of the European Council; and (c) encouraging (or causing to be encouraged) any other EU Member States either directly or indirectly to disagree with any proposed extension of the period under Article 50(3) of the Treaty on European Union.

[6] Head (ii) seeks an order under section 45(b) of the Court of Session Act 1988 ordaining the first respondent, in the event that neither of the conditions in subsection (1) or (2) of section 1 of the 2019 Act has been fulfilled by 11 pm on 18 October 2019, to sign and send the letter referred to in subsection (4) prior to 3.00pm on 19 October 2019, without any amendment, alteration or addition, either within the letter or in any separate letter, note, addendum or message, and to take all necessary steps to achieve the extension of the period under Article 50(3) of the Treaty on European Union due to end at 11pm on 31 October 2019.

[7] The other orders craved in the petition are, in short, for interdict against the respondents from withdrawing the letter of request, for the imposition of penalties in the event that the court's orders are not complied with, and for expenses.

[8] The petition was presented on 30 September 2019. I ordered intimation and service of it on 1 October 2019. Answers were lodged for the second respondent on 3 October 2019. The case came before me for a hearing on the petition and answers on 4 October 2019. Mr O'Neill moved for the orders to which I have already referred. Mr Webster QC, on behalf of the second respondent, moved for the petition to be refused.

The UK's withdrawal from the EU

[9] Article 50(3) of the Treaty on European Union provides that the EU Treaties will no longer apply to a Member State which has submitted a notification of its intention to withdraw from the EU from the date of entry into force of a withdrawal agreement in terms

of Article 50(2) or, failing that, two years after the notification, unless the European Council, in agreement with the Member State concerned, unanimously agrees to an extension.

[10] The UK notified the President of the European Council of its intention to leave the EU on 29 March 2017. A number of extensions of the deadline for leaving have been agreed since then. The extension currently in force will result in the Treaties ceasing to apply to the UK on 31 October 2019. As matters currently stand, at 11.00 pm on 31 October the European Communities Act 1972, which created EU law as an independent source of domestic law in the UK, will be repealed (European Union (Withdrawal) Act 2018, sections 1 and 20), although that date and time may be amended by regulation to reflect when the Treaties will cease to apply in accordance with any extension. Article 50(3) makes clear that the EU Treaties continue to apply to the UK during any extension.

The 2019 Act

[11] The 2019 Act received Royal Assent on 9 September 2019 and came into force that day. The underlying purpose of the 2019 Act is to ensure that the UK does not leave the EU on 31 October 2019 without a withdrawal agreement, unless the UK Parliament consents. The intention of the Act was to allow the government time to reach an agreement with the EU at the European Council meeting on 17 and 18 October 2019 or alternatively to seek the consent of the UK Parliament to leave the EU without a withdrawal agreement. If it proved impossible for the government either to enter into a withdrawal agreement or to obtain the consent of the UK Parliament to leave the EU without such an agreement, then the Prime Minister would be required to request a further extension, under Article 50(3) of the Treaty on European Union until 31 January 2020.

[12] The scheme set out in the statutory provisions by which the aims of the 2019 Act are to be achieved may be summarised as follows.

[13] Section 1(3) and (4) of the 2019 Act impose a duty on the Prime Minister, with which he must comply no later than 19 October 2019, unless one of two conditions is satisfied.

[14] The first condition (set out in subsection (1)) is that the House of Commons, following the laying before the House by a Minister of the Crown of a statement, approves, and the House of Lords takes note of, a withdrawal agreement in terms of Article 50(2) of the Treaty on European Union.

[15] The second, and alternative, condition (set out in subsection (2)) is that the House of Commons, following the laying before the House by a Minister of the Crown of a statement, approves, and the House of Lords takes note of, the UK's withdrawal from the EU without an agreement.

[16] The statutory duty specifically imposed on the Prime Minister is established by subsections (3) and (4), which provide as follows:

> "(3) If neither of the conditions in subsection (1) or subsection (2) is satisfied, subsection (4) must be complied with no later than 19 October 2019.
>
> (4) The Prime Minister must seek to obtain from the European Council an extension of the period under Article 50(3) of the Treaty on European Union ending at 11.00pm on 31 October 2019 by sending to the President of the European Council a letter in the form set out in the Schedule to this Act requesting an extension of that period to 11.00pm on 31 January 2020 in order to debate and pass a Bill to implement the agreement between the United Kingdom and the European Union under Article 50(2) of the Treaty on European Union, including provisions reflecting the outcome of inter-party talks as announced by the Prime Minister on 21 May 2019, and in particular the need for the United Kingdom to secure changes to the political declaration to reflect the outcome of those inter-party talks."

Subsection (5) provides that if following a request for an extension being made under subsection (4) either of the conditions in subsection (1) or (2) is met before the end of 30 October 2019 then the Prime Minister may withdraw or modify the request.

[17] The Schedule to the 2019 Act sets out the form of the letter which the Prime Minister requires to send to the President of the European Council in the event that his statutory duty to send such a letter is triggered. The letter is to be in the following terms:

> "Dear Mr President,
>
> The UK Parliament has passed the European Union (Withdrawal) (No. 2) Act 2019. Its provisions now require Her Majesty's Government to seek an extension of the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty, currently due to expire at 11.00pm GMT on 31 October 2019, until 11.00pm GMT on 31 January 2020.
>
> I am writing therefore to inform the European Council that the United Kingdom is seeking a further extension to the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty. The United Kingdom proposes that this period should end at 11.00pm GMT on 31 January 2020. If the parties are able to ratify before this date, the Government proposes that the period should be terminated early.
>
> Yours sincerely,
>
> Prime Minister of the United Kingdom of Great Britain and Northern Ireland"

[18] In terms of section 3(1) of the 2019 Act if the European Council agrees to an extension to 11.00 pm on 31 January 2020, the Prime Minister must immediately notify the President of the European Council that the UK agrees to the proposed extension.

[19] If the European Council decides to agree to an extension to another point in time, the Prime Minister must, within two days from the end of the day on which that decision is made or before the end of 30 October 2019, whichever is sooner, notify the President of the European Council that the UK agrees to the proposed extension (2019 Act, section 3(2)). That latter obligation will not arise, however, if the House of Commons does not approve the extension on a motion by a Minister of the Crown (2019 Act, section 3(3)), but the Prime Minister is permitted to agree such an extension (2019 Act, section 3(4)) even if that does not happen.

[20] Section 5(3) states that the provisions of the Act override any statutory or other provision which would otherwise require the UK to leave the EU on any specified date.

[21] From these carefully crafted provisions it can be seen that the UK Parliament intended that the government should be given what Parliament regarded as sufficient time and space to attempt to agree upon the terms of a withdrawal agreement with the European Council. In the event that the government was unable to do so, then the Prime Minister would be required to request a further extension under Article 50. The content of the duty imposed on the Prime Minister and the circumstances in which he becomes liable to fulfil that duty are carefully and precisely spelled out. The obligations created by the 2019 Act do not extend beyond taking the particular steps set out in the legislation in the event that the conditions referred to are not satisfied.

[22] In passing, it may be noted that the 2019 Act says nothing about how the Prime Minister or the government should conduct the negotiations on the withdrawal agreement.

[23] It is perhaps also worth recalling that the government's conduct of the negotiations with the EU with the aim of reaching a withdrawal agreement is not a matter that is justiciable in the courts (*R (Webster)* v *Secretary of State for Exiting the EU* [2019] 1 CMLR 8 per Gross LJ at para 20; *Re McCord* (Northern Ireland Court of Appeal, unreported, 27 September 2019) per Morgan LCJ at para 127).

Section 45 of the Court of Session Act 1988

[24] At this point it is convenient to set out the relevant part of section 45 of the Court of Session Act 1988 ("the 1988 Act"), on which the petitioners rely.

> **"45. Restoration of possession and specific performance.**
>
> The Court may, on application by summary petition—…

> (b) order the specific performance of any statutory duty, under such conditions and penalties (including fine and imprisonment, where consistent with the enactment concerned) in the event of the order not being implemented, as to the Court seem proper."

A number of observations may be made about this provision. First, as Lord Dundas explained in *Carlton Hotel Co* v *Lord Advocate* 1921 SC 237 at 246, the remedy created by section 45(b) is "peculiar and drastic". His Lordship went on to say that parties seeking to invoke the remedy must be careful to aver a clear statutory duty which those on whom its performance is incumbent have refused, or unduly delayed, to perform; and to state in precise terms the order which is sought from the court. So, the boundaries of any order under section 45(b) must be fenced by clear and precise reference to the statutory duty, performance of which is sought. Secondly, the court is given a discretionary power to determine whether, in the particular circumstances of the case before it, an order for specific performance of the statutory duty should be made. Thirdly, the procedure for obtaining such an order is to be summary in nature; this suggests that the issue will usually be capable of being determined on the basis of the averments made by the parties in their pleadings; elaborate inquiry into the facts is not what is envisaged by this statutory provision.

The petitioners' case

[25] In their averments in the petition (supplemented by their productions, affidavits and note of argument) the petitioners rely on statements made by or on behalf of the first respondent in Parliament, in speeches outside Parliament, and to the media. Some of these were made before the enactment of the 2019 Act; others after it had been brought into effect. For present purposes, it is sufficient to give just a few examples of the statements on which the petitioners found.

[26] Reference is made to statements made by the Prime Minister in press conferences on 2 and 3 September 2019, in his response to oral questions raised by members of the public after a speech before police recruits in Wakefield on 5 September 2019, and during a visit to Aberdeen on 7 September 2019. On 2 September 2019, while the Bill which became the 2019 Act was still being considered by the UK Parliament, the first respondent said:

> "I want everybody to know – there are no circumstances in which I will ask Brussels to delay. We are leaving on the 31st of October, no ifs or buts. We will not accept any attempt to go back on our promises or scrub that referendum."

[27] The petitioners refer also to the contents of an email of 6 September 2019, sent by the Conservative Party to its members, in which the first respondent is quoted as saying amongst other things:

> "They just passed a law that would force me to beg Brussels for an extension to the Brexit deadline. This is something I will never do."

[28] The petitioners aver that on 9 September 2019 the first respondent stated in a debate in the House of Commons on a motion tabled pursuant to section 2 of the Fixed Term Parliaments Act 2011 the following:

> "I say again to the Opposition Benches: if you really want to delay Brexit beyond 31 October, which is what you seem to want to do, then vote for an election and let the people decide whether they want to delay or not. If you refuse to do that tonight, I will go to Brussels – our Government will go to Brussels – on 17 October and negotiate our departure on 31 October, hopefully with a deal, but without one if necessary. I will not ask for another delay."

[29] On 10 September 2019 (the day after the 2019 Act received royal assent) in a response to a petition hosted on the UK Parliament's website, the government stated:

> "The UK will be leaving the EU on 31 October whatever the circumstances. We must respect the referendum result."

[30] In an interview with the BBC on 16 September 2019, the first respondent said:

> "We're going to come out on 31 October and it's vital that people understand that the UK will not extend. We won't go on remaining in the EU beyond October. What on earth is the point? Do you know how much it costs?"

[31] On 25 September 2019 the first respondent was asked in the House of Commons by Mr Ian Murray MP whether he would seek an extension if he was unable to negotiate a withdrawal agreement or "get no deal through this House". The first respondent replied in the negative to Mr Murray's question.

[32] It seems to me that, in the particular circumstances of the present case, the principle of Parliamentary privilege does not operate as a barrier against the petitioners drawing attention to statements made in Parliament. The statements form part of the relevant factual background (c.f. *Wilson* v *First County Trust Ltd (No 2)* [2004] 1 AC 816, per Lord Nicholls of Birkenhead at para 60; *Toussaint* v *Attorney-General of St Vincent and the Grenadines* [2007] 1 WLR 2825 per Lord Mance at paras 16 and 17).

[33] The general import of these various statements is, according to the petitioners, that the Prime Minister and the government intend unlawfully to refuse to carry out the statutory obligation imposed on the Prime Minister by section 1 of the 2019 Act. The petitioners contend that the clear implication from the words of the Prime Minister and other ministers of the Crown is that the government intends to act unlawfully by refusing to carry out a statutory obligation incumbent on the first respondent. The petitioners say that as a result of the statements made by the Prime Minister and other ministers, they have a reasonable apprehension that the Prime Minister intends to act unlawfully. Therefore, according to the petitioners, the court should intervene by granting coercive orders so as to secure compliance with the law.

[34] The petitioners acknowledge that the Prime Minister has also stated (before the raising of the present proceedings) that he will comply with the law. They maintain,

however, that a general assurance that the first respondent will comply with the law is not, in the circumstances, sufficient to displace what the petitioners say is their reasonable apprehension generated by the first respondent having stated explicitly that he will not comply with the statutory obligations imposed by the 2019 Act on the office of Prime Minister.

[35] On the basis of this apprehension, which the petitioners maintain to be a reasonable one, they claim to be entitled to an order under section 45(b) of the 1988 Act and to an order for interdict in the terms I have summarised above.

The Advocate General's answers to the petition

[36] As I have explained already, the petition was served on the respondents on 1 October 2019. As required by the interlocutor appointing intimation and service of the petition, answers to the petition for the Advocate General for Scotland were lodged on 3 October. It was not until the second respondent lodged in court his written answers to the petition that the Prime Minister's and the government's position in law in response to the case advanced in the petition was capable of being fully appreciated.

[37] In paragraph 8 of the answers lodged on behalf of the Advocate General the following averments are set out:

> "… Explained and averred that the Prime Minister accepts in relation to the 2019 Act:
>
> (a) That, subject to section 1(5), in the event that neither of the conditions set out in section 1(1) and (2) is satisfied, he will send a letter in the form set out in the schedule by no later than 19 October 2019: section 1(3) and (4).
>
> (b) That, subject to section 1(5), in the event that the European Council ("EC") decides to agree to any extension for the period specified in the letter, he is obliged immediately to notify the President of the EC that the United Kingdom agrees to that extension: section 3(1).

(c) That, subject to section 1(5), in the event that the EC decides to agree to an extension until a date other than the date specified in the letter, he is obliged to notify the President of the EC within the period specified in section 3(2) that the United Kingdom agrees to that extension, this obligation being disapplied if the House of Commons has decided not to pass a motion of the kind specified in section 3(3).

(d) That he is subject to the public law principle that he cannot frustrate its purpose or the purpose of its provisions. Thus he cannot act so as to prevent the letter requesting the specified extension in the Act from being sent."

[38] Mr Webster confirmed in the course of the hearing that these averments contained the first detailed public expression of the Prime Minister's intentions with regard to the legal obligations imposed on him by the 2019 Act.

Analysis and decision

Should the orders sought be granted?

[39] It was common ground between counsel at the hearing that this question was one that fell to be answered on the basis of the totality of the information and material now before the court.

[40] Mr O'Neill submitted that in view of the earlier statements to contrary effect, the court should attach no (or at least no significant) weight to the averments in paragraph 8 of the answers. They were inconsistent with what the first respondent and other members of the government had said on many earlier occasions. Moreover, the respondents had offered no undertakings to the court that they would do what was set out in the averments in paragraph 8 of the answers for the Advocate General; nor had they tendered any affidavit evidence. It would be appropriate, Mr O'Neill said, for undertakings to be given for the avoidance of doubt. In these circumstances, the court should exercise its discretion in favour of granting the orders sought.

[41] Mr Webster, for his part, submitted that the Prime Minister and the government had now made their intentions entirely clear. They would comply fully with all the requirements imposed on the first respondent by the 2019 Act and would not seek to frustrate its purpose. There was, therefore, no need for the court to pronounce any order, whether for interdict or in terms of section 45(b) of the 1988 Act.

[42] In my opinion, it is neither necessary nor appropriate that either of the orders for which Mr O'Neill moved at the hearing should be granted. Importantly, Mr O'Neill did not suggest that, on their face, the averments in paragraph 8 of the answers fell short of encapsulating what would have to be done in order to ensure compliance by the first respondent with his obligations under and in terms of the 2019 Act. I agree. In particular, I consider that the averments (and the intentions of the Prime Minister as set out by Mr Webster) confirm the position to be that (a) the first respondent is subject to the obligations of the 2019 Act; (b) in the event of neither of the conditions in section 1(1) or (2) being satisfied, the first respondent will comply with section 1(4) no later than 19 October 2019; and (c) that he will not frustrate the purpose of the 2019 Act or the purpose of any of its provisions. In other words, there can be no doubt that the first respondent now accepts that he must comply with the requirements of the 2019 Act and has affirmed that he intends to do so.

[43] I do not consider that this analysis is somehow undermined, as Mr O'Neill sought to argue, by the fact that the respondents have not offered separate undertakings or tendered affidavits echoing what is said in the averments in paragraph 8 of the answers. The Advocate General has set out clearly and unequivocally the Prime Minister's intention to comply with his statutory duties under the 2019 Act. This has been done so by way of detailed and specific averments in written pleadings put before the court on the professional

responsibility of those acting for the Prime Minister and the government and with the express authority of the Advocate General for Scotland; he himself is, of course, an officer of the court. The Prime Minister and the government having thus formulated and presented to the court their considered legal position, there is no proper basis on which the court could hold that they are nonetheless liable to fail to do what they have in effect undertaken to the court that they will do. It is accepted by the petitioners that what the Prime Minister has said that he will do would amount to compliance with all his statutory obligations under the 2019 Act and with his obligation not to frustrate the purpose of the legislation. I consider that acceptance to be well-founded.

[44] In my opinion, the extra-judicial statements on which the petitioners rely must be understood in the political context in which they were made; that is as expressions of the government's political policy. They were clearly not intended to be taken as conclusive statements of the government's understanding of its legal obligations. In paragraph 15 of the answers it is made clear that neither the policy of the government nor its actions in implementation of the policy necessitate non-compliance with the 2019 Act. If I may put the point another way, the government accepts that in executing its political policy it must comply with the 2019 Act. That being the government's clearly stated position before the court, there is no need for coercive orders against it or against the Prime Minister to be pronounced. The court should not pronounce coercive orders (or decree for interdict) unless it has been established on the basis of cogent evidence that it is truly necessary for such orders to be granted. In my opinion, that has not been done in the present case.

[45] I would add only this. I approach matters on the basis that it would be destructive of one of the core principles of constitutional propriety and of the mutual trust that is the bedrock of the relationship between the court and the Crown for the Prime Minister or the

government to renege on what they have assured the court that the Prime Minister intends to do. As the Advocate General's note of argument says:

> "As already noted, the Prime Minister is well aware of his duty to obey the law, including the frustration principle, and is and will continue to be advised in the usual way on any issues as to the lawfulness of his proposed actions."

[46] My conclusion on the main issue of substance raised in the present proceedings may, therefore, be expressed as follows. Having regard to the Prime Minister's and the government's unequivocal assurances before the court in the pleadings, in the note of argument and in oral submissions that they will comply with the 2019 Act, I am not persuaded that it is necessary for the court to grant the orders sought or any variant of them. I am not satisfied that the petitioners have made out their case based on reasonable apprehension of breach of statutory duty on the part of the Prime Minister.

Competency of the petition

[47] Mr Webster raised a short point challenging the competency of the petition. He submitted that it should have been brought in the form of a petition for judicial review and not as a petition under Chapter 14 of the Rules of the Court of Session. This was because rule of court 58.2 says that an application to the supervisory jurisdiction of the court includes an application made under section 45(b) of the 1988 Act. According to rule of court 58.1(2), an application to the supervisory jurisdiction of the court must be made by petition for judicial review.

[48] In *McKenzie* v *Scottish Ministers* 2004 SLT 1236, the Lord Ordinary (Lord Carloway) expressed reservations as to whether an application under section 45(b) of the 1988 Act necessarily had to be brought by means of a petition for judicial review. He acknowledged that such an application could and often did arise in the context of a judicial review. Hence

the version of the court rule then in force (58.3) provided that, where that was the case, the form of application had to be by petition for that remedy rather than separate process. His Lordship drew attention to the use of the word "including" in the rule; this pointed towards it only being where the application was one to the supervisory jurisdiction of the court that it was appropriate to proceed by petition for judicial review.

[49] Mr Webster submitted that it was significant that the word "including" had been changed to "includes" in the current version of the rule. This was, he said, a stronger and more categorical term; it meant that any application under section 45(b) of the 1988 Act could only competently be brought by way of a petition for judicial review.

[50] Whilst there may be some force in Mr Webster's submission as a matter of pure construction of the terms of the rule of court in its current formulation, it seems to me that the argument ignores the terms of section 45(b) itself. The section says that an application may be brought by a summary petition to the court. That is, in effect, what the petitioners have done in the present case. A rule of court cannot, as it seems to me, derogate from the petitioners' entitlement to proceed in the manner expressly authorised by statute. I do not, therefore, consider the present petition to be incompetent.

[51] In a matter of this importance, I would be most reluctant in any event to decide the case on the basis of a point of some considerable technicality.

Prematurity

[52] Mr Webster submitted also that the petition is premature because it has been brought before 19 October 2019. He argued that it remained to be seen exactly what factual matrix would exist on that date, including whether, in the light of Parliamentary scrutiny, the requirements of section 1 of the 2019 Act remained applicable. An order under section 45(b)

could not competently be granted until there had been a breach of statutory duty. If necessary, an order under section 45(b) of the 2019 Act could be granted on 20 October 2019 without material prejudice to the petitioners.

[53] In my opinion, the petition is not premature. The petitioners advance a case based on reasonable apprehension that the requirements of section 1(4) of the 2019 Act will not be met. I see no reason in principle why an application under section 45(b) of the 1988 Act and for interdict should not be brought before the court on the basis of averments of reasonable apprehension that a statutory duty will not be performed as and when the time arrives for it to be performed. It would make little sense to have to wait until the breach had actually occurred in circumstances where a reasonable apprehension of breach could be made out on the facts of the case.

Terms of the orders sought

[54] Had I been minded to grant the orders sought, I would not have been willing to do so without significant amendment of their terms.

[55] In my opinion, the terms of the interdict are not sufficiently precise and clear (c.f. *Murdoch* v *Murdoch* 1973 SLT (Notes) 13). The wording in the prayer of the petition refers to "taking any action that would undermine or frustrate the will of the Union Parliament as enacted in (the 2019 Act)". In my view, this language is too broad.

[56] The same may be said in regard to other parts of the crave for interdict: for example, the reference to "encouraging (or causing to be encouraged) any other Member State … either directly or indirectly to disagree with any proposed extension …"

[57] As to the order sought under section 45(b) of the 1988 Act, this is not drafted in terms which properly align with the statutory duty on which it is based. It is unclear why it refers

to 11.00 pm on 18 October 2019; the 2019 Act allows satisfaction of the conditions in section 1(1) and (2) no later than 19 October 2019.

[58] Similarly, it is unclear why the proposed order refers to the letter of request having to be sent prior to 3.00 pm on 19 October 2019. That is not a requirement of the statutory provisions.

[59] I note also that the order sought would require the first respondent to "take all steps that shall be required in order to obtain from the European Council an extension of the period under Article 50(3) of the Treaty on European Union …" This goes beyond what the first respondent is obliged to do under the 2019 Act.

Disposal of the petition

[60] At the hearing Mr O'Neill asked for consideration of heads (iii) and (iv) of the prayer to be "held over". I am not persuaded that this unusual step would be appropriate. I have concluded that the petitioners have not made out their case based on reasonable apprehension of breach of statutory duty. For the reasons I have set out, I am not prepared to grant either of the orders for which the petitioners moved at the hearing. Insofar as the petitioners elected not to move for any other heads of the prayer to be granted, they must be taken not to have insisted on those aspects of the petition. The court's practice is to dispose of a case brought by a petition under Chapter 14 at a hearing on the petition and answers. Such a hearing is not, in any sense, an *interim* one.

[61] Accordingly, I shall sustain the Advocate General's fourth and fifth pleas-in-law and refuse the petition.

[62] I shall reserve all questions as to expenses.