

CHAPTER 31

MINUTES OF SIST AND TRANSFERENCE

Minutes of sist

31.1.-(1) Where a party dies or comes under legal incapacity while a cause is in dependence, any person claiming to represent that party or his estate may apply to the court by minute to be sisted as a party to the cause.

(1A) Where –

- (a) a question of liability is the subject of proceedings before the court; and
- (b) the effect of any statutory transfer while the cause is depending before the court is to transfer the liability if proved to a person other than an existing party to the cause,

any party to the proceedings may apply to the court by minute to have the cause transferred in favour of or against, as the case may be, the person to whom the liability has been transferred.

(2) Intimation of such an application shall be made to each party.

Minutes of transference

31.2.-(1) Where a party dies or comes under legal incapacity while a cause is depending before the court and the provisions of rule 31.1 (minutes of sist) are not invoked, any other party may apply to the court by minute to have the cause transferred in favour of or against, as the case may be, any person who represents that party or his estate.

(2) Where a minute of transference has been lodged in process, the court shall pronounce an interlocutor-

- (a) granting warrant for service of a copy of the minute of transference, a copy of the pleadings (including any adjustments and amendments) and a copy of that interlocutor on such person; and
- (b) allowing such person to lodge a minute of objection to the minute of transference within such period as the court thinks fit.

Death of party: further provisions

31.3. -(1) Subject to rule 43.20 (Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007), as soon as reasonably practicable after the death of a party, any agent who immediately prior to the death was instructed in a cause by that party shall notify the court of the death.

(2) The notification under paragraph (1) shall be by letter to the Deputy Principal Clerk and shall be accompanied by a certified copy of the death certificate relative to the deceased party.

(3) The letter shall include an estimate of the length of time required for confirmation to the deceased party's estate by an executor.

(4) On receipt of the letter, the Deputy Principal Clerk shall place it in the process and shall place the cause before a Lord Ordinary in chambers.

(5) The Lord Ordinary may, if satisfied that the party has died and after considering the estimate provided under paragraph (3), pronounce a sist in the cause for a specified period of not less than three months.

(6) A party may apply by motion for—

- (a) recall of a sist pronounced under paragraph (5); or

(b) variation of the specified period referred to in paragraph (5).

(7) A motion under paragraph (6)(b) shall be granted only on cause shown.

(8) On pronouncing a sist under paragraph (5); recalling a sist under paragraph (6)(a); or, varying a specified period under paragraph (6)(b), the Lord Ordinary may make such order as regards further procedure as he thinks fit including, in the case of a personal injuries action, such variation of the timetable issued under rule 43.6 as he thinks fit.

(9) Any personal injuries action in which a sist has been pronounced under paragraph (5) and the period of sist has expired may be put out by order by the Keeper of the Rolls.

(10) In this rule, “personal injuries action” has the same meaning as in rule 43.1(2).