

CHAPTER 32

TRANSMISSION AND REMIT OF CAUSES

Remits to sheriff court

32.1.-(1) An application by a party under section 93 of the Act of 2014 (remit of cases from the Court of Session) shall be made by motion.

(2) Where an action is remitted to a sheriff, the Deputy Principal Clerk shall, within 4 days after the interlocutor remitting the cause has been pronounced, transmit the process to the sheriff clerk of the sheriff court specified in the interlocutor.

(3) When transmitting a process under paragraph (2), the Deputy Principal Clerk shall-

- (a) give written intimation of the transmission to the parties; and
- (b) certify on the interlocutor sheet that such written intimation has been given.

(4) Failure by the Deputy Principal Clerk to comply with paragraph (3) shall not affect the validity of a remit made under paragraph (1).

Transmissions on contingency

32.2.-(1) An application under section 33 of the Act of 1988**(b)** (transmission from sheriff on ground of contingency) shall be made-

- (a) by motion at the instance of a party to the cause depending before the court; or
- (b) by minute at the instance of any other person having an interest (including a party to the cause depending before the sheriff).

(2) A copy of the pleadings and the interlocutors in the cause depending before the sheriff, certified by the sheriff clerk, shall be lodged with any motion enrolled or any minute lodged under paragraph (1).

(3) A decision made on an application under paragraph (1) may not be reclaimed; but where an application has been refused, a subsequent application may be made where there has been a change of circumstances.

Form of remit request

32.2A.-(1) A request under section 92(4) of the Act of 2014 (request for remit to the Court of Session) is made by interlocutor.

(2) Within 14 days of the issuing of that interlocutor, the party seeking the remit must lodge-

- (a) a remit request, consisting of-
 - (i) the whole pleadings and interlocutors in the cause;
 - (ii) the note of the sheriff mentioned in rule 26.2A(2) of the Ordinary Cause Rules 1993 in Schedule 1 to the Sheriff Courts (Scotland) Act 1907;
- (b) a process in accordance with rule 4.4 (steps of process).

(a) 1985 c.73.

(b) 1988 c.36.

Determination of remit request

32.2B.-(1) Where a remit request is lodged, the court is to put the request out on the By Order roll in order that the party seeking the remit and any other party to the sheriff court proceedings may make submissions about whether the proceedings should be remitted.

(2) The Lord Ordinary, having heard parties, may-

- (a) refuse the request; or
- (b) make an order under section 92(5) of the Act of 2014 allowing the proceedings to be remitted.

(3) The Deputy Principal Clerk must, within 4 days after the interlocutor has been pronounced under paragraph (2), send a copy of the interlocutor to the sheriff clerk of the sheriff court specified in the interlocutor.

Intimation of receipt of process transmitted from sheriff court

32.3. On receipt of a process transmitted by a sheriff clerk by virtue of an order made under any enactment to remit a cause to the court, the Deputy Principal Clerk shall-

- (a) write the date of receipt on the interlocutor sheet of the sheriff court process; and
- (b) give written intimation of that date to each party.

Lodging of process and motion for further procedure

32.4.-(1) Within 14 days after the date of receipt of the sheriff court process, the party who sought the remit must make up and lodge in the General Department a process incorporating the sheriff court process.

(2) Where that party has already lodged a process under rule 32.2A(b), the party must incorporate the sheriff court process in that process within the same period.

(3) When the party who sought the remit has complied with paragraph (1) or (2)-

- (a) that party must apply by motion for an order for such further procedure as that party thinks fit,
- (b) the cause is to proceed as if it had been an action in the court initiated by a summons.

(4) A motion under paragraph (3)(a) is to be disposed of by the Lord Ordinary.

Reponing against failure to comply with rule 32.4

32.5.-(1) Where the party who sought the remit fails to comply with the requirements of rule 32.4(1), (2), or (3)(a) (lodging of process and motion for further procedure), that party may apply by motion to be reponed within 7 days after the expiry of the period specified in rule 32.4(1).

(2) Paragraph (3) applies where the failure mentioned in paragraph (1) is a failure to lodge a process under rule 32.4(1), or incorporate a process in accordance with rule 32.4(2).

(3) The party enrolling a motion under paragraph (1) must, on enrolling that motion-

- (a) lodge a process in accordance with rule 32.4(1), or, as the case may be, incorporate a process under rule 32.4(2);
- (b) apply by motion for an order for such further procedure as that party thinks fit.

(4) A motion under paragraph (1) is to be granted only on cause shown and on such conditions, if any, as to expenses or otherwise as the court thinks fit.

Insistence in remit by another party

32.6. Where the party who sought the remit has failed to comply with the requirements of rule 32.4(1), (2), or (3)(a) (lodging of process and motion for further procedure), any other party to the cause may, within 7 days after the expiry of the period specified in rule 32.4(1), comply with the requirements of those paragraphs and insist in the remit.

Re-transmission to sheriff clerk

32.7. Where, on the expiry of 21 days after the date of receipt of the process referred to in rule 32.3 (intimation of receipt of process transmitted from sheriff court), no motion has been enrolled under rule 32.5(1) (reponing against failure to comply with rule 32.4) and no motion has been enrolled under rule 32.6 (insistence in remit by another party), the remit shall be deemed to be abandoned and the Deputy Principal Clerk shall-

- (a) write on the interlocutor sheet the words "Re-ransmitted in respect that the remit has been abandoned.";
- (b) add his signature and the date; and
- (c) transmit the process to the sheriff clerk.

Transfer of application for forfeiture of property from the sheriff: proceeds of crime

32.8.-(1) This rule applies to an application under-

- (a) paragraph 10G(1)(b) of schedule 1 of the Anti-terrorism, Crime and Security Act 2001⁽¹⁾ for the forfeiture of property which has been transferred to the court by the sheriff under paragraph 10J(1) of that schedule;
- (b) section 303O(1)(b) of the Proceeds of Crime Act 2002⁽²⁾ for the forfeiture of property which has been transferred to the court by the sheriff under section 303R(1) of that Act.
- (c) article 213L(1) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005⁽³⁾ for the forfeiture of property which has been transferred to the court by the sheriff under article 213O(1) of that Order.

(2) Within 14 days after the date of receipt by the Scottish Ministers of written notice of the transfer from the sheriff clerk, the Scottish Ministers must apply to the court by motion for an order for further procedure.

(3) The application is to proceed as if it had been an action initiated by petition.

(4) On applying for an order for further procedure under paragraph (2), the Scottish Ministers must make up and lodge in the General Department a process incorporating the sheriff court process

(1) 2001 c.24. Paragraphs 10G and 10J of schedule 1 were inserted by the 2017 Act, section 39 and schedule 3, paragraph 2.

(2) 2002 c.29. Sections 303O and 303R were inserted by the 2017 Act, section 15.

(3) S.I. 2005/3181. Articles 213L and 213O were inserted by S.I. 2018/1078.