

COURT OF SESSION

PRACTICE NOTE

No. 3 of 2008

Applications for Judicial Review: discretionary transfers to the Upper Tribunal

1. This practice note has effect from 3rd November 2008 and is without prejudice to the terms of Practice Note No. 4 of 2007.
2. The purpose of this practice note is to provide guidance where an application is made to the supervisory jurisdiction of the Court of Session and that application does not fall within a class specified by act of sederunt for the purposes of section 20(3) of the Tribunals, Courts and Enforcement Act 2007.
3. When the petitioner is enrolling a motion for a first order in respect of an application as described in paragraph 2, the petitioner should, within the terms of that motion, indicate whether he or she considers it appropriate for the application to be transferred by the Court to the Upper Tribunal, in terms of section 20(1)(b) of the Tribunals, Courts and Enforcement Act 2007. In doing so, the petitioner should consider whether or not the conditions referred to in that provision are met.
4. Where, following the enrolment of a motion for a first order, the attendance of parties before the Lord Ordinary is required in order for the Lord Ordinary to consider at that stage whether or not to make an order transferring the application to the Upper Tribunal, this will be intimated to the petitioner and to any respondent named in the petition by the Keeper of the Rolls or the Clerk of Court. For the avoidance of doubt, the Lord Ordinary may hear parties on a possible transfer of the application before granting a first order.
5. Where—
 - (a) a motion for a first order is enrolled as described in paragraph 3;
 - (b) the Lord Ordinary has not heard parties as described in paragraph 4;and
 - (c) a first order is granted and the petition for judicial review is served on a respondent,if the respondent wishes to argue for the transfer of the application from the Court to the Upper Tribunal, the respondent should intimate this to the petitioner upon service of the petition.
6. Thereafter, if either the petitioner or any respondent, or both or all parties, wish the application to be transferred to the Upper Tribunal, that party or

those parties should enrol a motion for the transfer of the application. Such a motion may be considered and dealt with by the Lord Ordinary at the first hearing or at any subsequent hearing.

Lord President

Edinburgh
24th October 2008