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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 390**

**The Human Organ and Tissue Live  
Transplants (Scotland) Regulations 2006**

**PART 5**

**DECISION MAKING PROCESS**

**Right to reconsideration of Scottish Ministers' decision**

**6.—(1)** The Scottish Ministers may at their own instance reconsider any decision made by them under regulations 2(5), 3(7), 4(8) or 5(9)—

- (a) at any time before or after they give notice of that decision under regulations 2(10), 3(13), 4(15) or 5(16);
- (b) on the ground that—
  - (i) any information given for the purpose of the decision was in any material respect false or misleading;
  - (ii) new information (including information relating to a change of circumstances), which is relevant and material to their decision, becomes available to them; or
  - (iii) their decision was made in ignorance of, or was based on a mistake as to, some material fact.

(2) A specified person may in any case require the Scottish Ministers to reconsider any decision made by them which is notified to that specified person under regulations 2(10), 3(13), 4(15) or 5(16).

(3) The right under paragraph (2) is exercisable by giving to the Scottish Ministers, in such manner as they may direct, notice of exercise of the right.

(4) A notice under paragraph (3) shall contain or be accompanied by such other information as the Scottish Ministers may reasonably require.

(5) On receipt of the information required by paragraph (4), the Scottish Ministers shall provide to the person requiring the reconsideration—

- (a) a copy of each report made under regulation 2(4), 3(6), 4(7) or 5(8) of the interviews that were conducted in the case; and
- (b) a statement of the Scottish Ministers' reasons for their decision.

(6) The person requiring the reconsideration may also make prior to the reconsideration such written representations and comments as that person considers to be relevant to the reconsideration.

(7) Paragraphs (1) to (6) do not apply to a decision made by the Scottish Ministers on reconsideration in pursuance of a notice under this regulation.

(8) For the purposes of paragraph (2) a “specified person” is the recipient of a notice under regulation 2(10), 3(13), 4(15) or 5(16) or any person acting on the recipient’s behalf.

### **Procedure on reconsideration**

7.—(1) Reconsideration shall be by way of fresh decision made by the Scottish Ministers.

(2) Reconsideration shall take place as soon as reasonably practicable after the provision of the reports and statement required by regulation 6(5) and the provision of any written representations and comments allowed by regulation 6(6), having regard to the need to allow time for the information contained in that material to be taken into account.

(3) On reconsideration—

- (a) the person by whom the reconsideration is required under regulation 6(2) shall be entitled to require that they or their representative be given an opportunity to appear before and be heard by the Scottish Ministers at the time that the decision is reconsidered; and
- (b) the Scottish Ministers shall consider any written representations and comments provided to them under regulation 6(6).

(4) The Scottish Ministers shall give a notice of their decision—

- (a) to the person who required the reconsideration and to each of the persons mentioned in regulations 2(10), 3(13), 4(15) or 5(16) where the reconsideration was required under regulation 6(2); and
- (b) to the persons mentioned in regulations 2(10), 3(13), 4(15) or 5(16) where the Scottish Ministers initiated the reconsideration under regulation 6(1),

and a notice under this regulation is to be treated as if it were a decision under regulation 2(5), 3(7), 4(8) or 5(9) as the case may be.

(5) If on reconsideration the Scottish Ministers uphold their previous decision, the notice under paragraph (4) shall include a statement of the reasons for their decision.

(6) “Reconsideration” means reconsideration under regulation 6.

### **Appeal to the Court of Session**

8.—(1) Any specified person who is aggrieved by the decision in any notice under regulations 2(10), 3(13), 4(15), 5(16) or 7(4) may appeal to the Court of Session against that decision.

(2) For the purposes of paragraph (1) a “specified person” is the recipient of the notice or any person acting on the recipient’s behalf.