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STATUTORY INSTRUMENTS

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**1971 No. 1861**

**EVIDENCE**

**The Blood Tests (Evidence of Paternity) Regulations 1971**

<i>Made</i>	- - - -	<i>12th November 1971</i>
<i>Laid before Parliament</i>		<i>24th November 1971</i>
<i>Coming into Operation</i>		<i>1st March 1972</i>

In pursuance of section 22 of the Family Law Reform Act 1969, I hereby make the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Blood Tests (Evidence of Paternity) Regulations 1971 and shall come into operation on 1st March 1972.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires,—

“the Act” means the Family Law Reform Act 1969;

“court” means a court which gives a direction for the use of blood tests in pursuance of section 20(1) of the Act;

“direction” means a direction given as aforesaid;

“direction form” means Form 1 in Schedule 1 to these Regulations;

“photograph” means a recent photograph, taken full face without a hat, of the size required for insertion in a passport;

“sample” means blood taken for the purpose of tests;

“sampler” means a registered medical practitioner or tester nominated in a direction form to take blood samples for the purposes of the direction;

“subject” means a person from whom a court directs that blood samples shall be taken;

“tester” means a person appointed by the Secretary of State to carry out blood tests;

“tests” means blood tests carried out under Part III of the Act and includes any test made with the object of ascertaining the inheritable characteristics of blood.

(2) A reference in these Regulations to a person who is under a disability is a reference to a person who has not attained the age of 16 years or who is suffering from a mental disorder within the

meaning of the Mental Health Act 1959 and is incapable of understanding the nature and purpose of blood tests.

(3) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

### **Direction form**

3. A sampler shall not take a sample from a subject unless Parts I and II of the direction form have been completed and the direction form purports to be signed by the proper officer of the court or some person on his behalf.

### **Subjects under disability to be accompanied to sampler**

4. A subject who is under a disability who attends a sampler for the taking of a sample shall be accompanied by a person of full age who shall identify him to the sampler.

### **Taking of samples**

5.—(1) Without prejudice to the provisions of rules of court, a sampler may make arrangements for the taking of samples from the subjects or may change any arrangements already made and make other arrangements.

(2) Subject to the provisions of these Regulations, where a subject attends a sampler in accordance with arrangements made under a direction, the sampler shall take a sample from him on that occasion.

(3) A sampler shall not take a sample from a subject if—

(i) he has reason to believe that the subject has been transfused with blood within the three months immediately preceding the day on which the sample is to be taken; or

(ii) in his opinion, tests on a sample taken at that time from that subject could not effectively be carried out for the purposes of and in accordance with the direction; or

(iii) in his opinion, the taking of a sample might have an adverse effect on the health of the subject.

(4) A sampler may take a sample from a subject who has been injected with a blood product or blood plasma if, in his opinion, the value of any tests done on that sample would not be thereby affected, but shall inform the tester that the subject was so injected

(5) Where a sampler does not take a sample from a subject in accordance with arrangements made for the taking of that sample and no other arrangements are made, he shall return the direction form relating to that subject to the court, having stated on the form his reason for not taking the sample and any reason given by the subject (or the person having the care and control of the subject) for any failure to attend in accordance with those arrangements.

(6) A subject who attends a sampler for the taking of a sample may be accompanied by his legal representative.

### **Sampling procedure**

6.—(1) A sampler shall comply with the provisions of this Regulation, all of which shall be complied with in respect of one subject before any are complied with in respect of any other subject; so however that a report made in accordance with the provisions of section 20(2) of the Act or any other evidence relating to the samples or the tests made on the samples shall not be challenged solely on the grounds that a sampler has not acted in accordance with the provisions of this Regulation.

(2) Before a sample is taken from any subject who has attained the age of 12 months by the date of the direction, the sampler shall ensure that a photograph of that subject is affixed to the direction form relating to that subject unless the direction form is accompanied by a certificate from a medical

practitioner that the subject is suffering from a mental disorder and that a photograph of him cannot or should not be taken.

(3) Before a sample is taken from a subject, he, or where he is under a disability the person of full age accompanying him, shall complete the declaration in Part V of the direction form (that that subject is the subject to whom the direction form relates and, where a photograph is affixed to the direction form, that the photograph is a photograph of that subject) which shall be signed in the presence of and witnessed by the sampler.

(4) Where a subject is suffering from a mental disorder, the sampler shall not take a sample from him unless the sampler is in possession of a certificate from a medical practitioner that the taking of a blood sample from the subject will not be prejudicial to his proper care and treatment.

(5) A sample shall not be taken from any subject unless—

- (a) he or, where he is under a disability, the person having the care and control of him, has signed a statement on the direction form that he consents to the sample being taken; or
- (b) where he is under a disability and is not accompanied by the person having the care and control of him, the sampler is in possession of a statement in writing, purporting to be signed by that person that he consents to the sample being taken.

(6) The sampler shall affix to the direction form any statement referred to in sub-paragraph (b) of the preceding paragraph.

(7) If a subject or, where he is under a disability, the person having the care and control of him, does not consent to the taking of a sample, he may record on the direction form his reasons for withholding his consent.

(8) When the sampler has taken a sample he shall place it in a suitable container and shall affix to the container a label giving the full name, age and sex of the subject from whom it was taken and the label shall be signed by the sampler and by that subject or, if he is under a disability, the person accompanying him.

(9) The sampler shall state in Part VII of the direction form that he has taken the sample and the date on which he did so.

### **Despatch of samples to tester**

7.—(1) When a sampler has taken samples, he shall, where he is not himself the tester, pack the containers together with the relevant direction forms and shall despatch them forthwith to the tester by post by special delivery service or shall deliver them or cause them to be delivered to the tester by some person other than a subject or a person who has accompanied a subject to the sampler.

(2) If at any time a sampler despatches to a tester samples from some only of the subjects and has not previously despatched samples taken from the other subjects, he shall inform the tester whether he is expecting to take any samples from those other subjects and, if so, from whom and on what date.

### **Procedure where sampler nominated is unable to take the samples**

8.—(1) Where a sampler is unable himself to take samples from all or any of the subjects, he may nominate another medical practitioner or tester to take the samples which he is unable to take.

(2) The sampler shall record the nomination of the other sampler on the relevant direction forms and shall forward them to the sampler nominated by him.

### **Testing of samples**

9.—(1) Samples taken for the purpose of giving effect to a direction shall (so far as practicable) all be tested by the same tester.

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(2) A tester shall not make tests on any samples for the purpose of a direction unless he will, in his opinion, be able to show from the results of those tests (whether alone or together with the results of tests on any samples which he has received and tested or expects to receive subsequently) that a subject is or is not excluded from being the father of a subject whose paternity is in dispute.

#### **Report by tester**

**10.** On completion of the tests in compliance with the direction, the tester shall forward to the court a report in Form 2 in Schedule 1 to these Regulations, together with the appropriate direction forms.

#### **Procedure where tests not made**

**11.** If at any time it appears to a tester that he will be unable to make tests in accordance with the direction, he shall inform the court, giving his reasons, and shall return the direction forms in his possession to the court.

#### **Fees**

**12.** The fees payable to samplers and testers shall be those specified in Schedule 2 to these Regulations.

Home Office, Whitehall  
12th November 1971

*R. Maudling*  
One of Her Majesty's Principal Secretaries of  
State

SCHEDULE 1

Regulations 2(1) and 10

Form 1 Direction Form

Form 2 REPORT BY TESTER

SCHEDULE 2

Regulation 12

FEES

*Samplers*

The fees which may be charged by a sampler in respect of one direction requesting him to take samples shall be as follows:—

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For making all necessary arrangements (whether or not samples are taken)	£2
For making further arrangements (whether or not samples are taken) to give effect to a variation by the court of a direction	£2
For taking sample—	
from first subject	£2
from each subject after the first	£1
For taking second or subsequent samples from one or more subjects—	
if one such sample	£2
if two such samples	£3
if three or more such samples	£5

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*Testers*

The fees which may be charged by a tester in respect of tests for the purpose of giving effect to one direction shall be as follows:—

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For making a report in accordance with the direction and testing four or less samples	£25
For testing each sample after the fourth covered by a report	£5
For testing samples where no report is made—	
in respect of the first sample	£10
in respect of each subsequent sample	£5

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### EXPLANATORY NOTE

Part III of the Family Law Reform Act 1969 (which comes into force on 1st March 1972) makes provision for the use of blood tests in determining paternity in civil proceedings. Under section 20 of that Act the court may give a direction for the use of blood tests. These Regulations make provisions as to the manner of giving effect to directions under section 20 and prescribe, in particular, the procedure for taking blood samples, testing samples and providing a report for the court.