
STATUTORY INSTRUMENTS

1991 No. 1889

HUMAN FERTILISATION AND EMBRYOLOGY

**The Human Fertilisation and Embryology Authority
(Licence Committees and Appeals) Regulations 1991**

<i>Made</i>	- - - -	<i>20th August 1991</i>
<i>Laid before Parliament</i>		<i>21st August 1991</i>
<i>Coming into force</i>	- -	<i>29th August 1991</i>

The Secretary of State for Health, in exercise of powers conferred by sections 9(5), 10, and 45 of the Human Fertilisation and Embryology Act 1990⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

PART I

General

Citation and commencement

1. These Regulations may be cited as the Human Fertilisation and Embryology Authority (Licence Committees and Appeals) Regulations 1991 and shall come into force on 29th August 1991.

Interpretation

2. In these Regulations—

the “Act” means the Human Fertilisation and Embryology Act 1990, and

“application”, except where the context otherwise requires, means an application to the Authority⁽²⁾ for a licence⁽³⁾ or for revocation or variation of a licence, and “applicant” is to be construed accordingly.

⁽¹⁾ 1990 c. 37.

⁽²⁾ The “Authority” is the Human Fertilisation and Embryology Authority established under section 5 of the Act on 7th November 1990 (S.I.1990/2165): *see* section 2(1) of the Act.

⁽³⁾ A “licence” is a licence under Schedule 2 to the Act: *see* section 2(1) of the Act.

General

3. Subject to the provisions of the Act and of these Regulations, the Authority may regulate its own proceedings.

PART II

Composition and procedure of licence committees

Composition of licence committees

4.—(1) A licence committee~~(4)~~ shall have five members, one of whom shall be its chairman who shall be appointed as such by the Chairman of the Authority.

(2) A member of the Authority may be a member of more than one licence committee.

(3) A licence committee may continue to act even if there is a temporary vacancy among its members.

(4) If the chairman of a licence committee is unable to attend a meeting, or part of a meeting, of the committee, the committee shall appoint another member of the committee to act as substitute chairman in the chairman's absence.

Quorum and voting

5.—(1) The quorum for a meeting of a licence committee is 3.

(2) A member who has not been present throughout the committee's deliberations preceding a determination may not take part in the determination and does not count towards the quorum.

(3) A determination of a licence committee is that of the majority of the members present and entitled to take part in the determination, except in the case of a determination to grant a licence, when all such members must agree.

(4) Subject to paragraphs (5) and (6) below, a determination or resolution which is in writing and signed by at least three of the members of the licence committee is as valid as if the determination or resolution had been made at a meeting of the committee, and may consist of several documents in the same form each signed by one or more members; and the date of such a written determination or resolution is the date on which the last member signs it.

(5) Where deliberations relevant to a determination or resolution have taken place at a meeting, such a determination or resolution in writing as is referred to in paragraph (4) above is valid only if all the members signing it were present throughout those deliberations.

(6) Paragraph (4) above does not apply to—

- (a) a determination to grant a licence, or
- (b) a determination following representations made to the committee by virtue of section 19(3) of the Act~~(5)~~ or of Regulation 7 below.

(4) Licence committees are provided for in section 9(1) of the Act, and the functions and certain elements of the procedure of licence committees relating to the grant, refusal, revocation, variation and suspension of licences are set out in sections 9, 16, 18, 19 and 22 of the Act.

(5) Section 19(3) of the Act confers upon—

- (a) the person responsible under a licence, and the nominal licensee, the right in certain circumstances to make representations about a licence committee's proposal to vary or revoke a licence; and
- (b) an applicant for a licence, or for a variation of a licence so as to designate another individual in place of the person responsible, the right to make representations about a licence committee's proposal to refuse the application.

Multiple applications

6. A licence committee may consider and determine together two or more applications made by the same applicant, unless the applicant objects.

Objection to conditions to be imposed by licence

7.—(1) This regulation applies where—

- (a) a copy of the conditions to be imposed by a licence has (pursuant to section 16(5) of the Act⁽⁶⁾) been shown to the applicant and (where different) the person under whose supervision the activities are to be carried on, and
- (b) within the period of 28 days (or more with the consent of the licence committee) beginning with the day on which that was done, either of those persons gives notice to the committee of a wish to make to the committee representations about the proposed conditions in any way mentioned in paragraph (3) below.

(2) In such a case the committee must, before determining whether or not to grant the licence, give the person an opportunity to make representations in that way within the period of 42 days (or more with the consent of the committee) beginning with the day on which his notice was given.

(3) The representations referred to in paragraph (1) above may be—

- (a) oral representations made by the person, or another acting on behalf of the person, at a meeting of the committee, and
- (b) written representations made by the person.

PART III

Appeals

Interpretation of this Part and of Part IV

8. In this Part of these Regulations and in Part IV below, “appeal” means an appeal under section 20 of the Act⁽⁷⁾, and references in this Part to a licence committee are to the licence committee whose determination is appealed against.

Quorum and voting

9.—(1) The quorum for a meeting of the Authority for the purpose of hearing and determining an appeal is 5.

(2) At least two members of the Authority present at such a hearing must be people who are not authorised to carry on or participate in any activity under the authority of a licence and would not be so authorised if outstanding applications were granted.

(3) A member who has not been present throughout the hearing of an appeal may not take part in the Authority’s determination and does not count towards the quorum.

(4) The determination of the Authority is that of the majority of the members present and entitled to take part in the determination.

(5) If there is a tie vote, the Chairman of the Authority has a second, casting vote.

(6) Section 16(5) of the Act provides that a licence committee shall not grant a licence unless a copy of the conditions to be imposed by the licence has been shown to, and acknowledged in writing by, the applicant and (where different) the person under whose supervision the activities are to be carried on.

(7) The procedure for giving notice of appeal is set out in section 20(1) and (2) of the Act.

Notice of hearing and of grounds of appeal

10.—(1) The Authority must, within 28 days of the date on which notice of the appeal was served on the Authority, fix a date, time and place for the hearing of the appeal, and must give notice of them to the appellant not less than 42 days (or fewer with the consent of the appellant) before the date so fixed.

(2) Not less than 28 days before the date fixed for the hearing (or fewer with the consent of the Chairman of the Authority), the appellant must give to the Authority and to the licence committee a notice signed by him or on his behalf, stating—

- (a) the grounds of appeal,
- (b) whether or not the appellant intends to appear or be represented,
- (c) if the appellant intends to be represented, the name and address of the representative and whether the Authority should send replies or notices concerning the appeal to the representative instead of the appellant, and
- (d) if the appellant intends to call any witnesses, their names and occupations.

(3) If—

- (a) the licence committee intends to be represented at the hearing, or any member of the committee intends to appear, or
- (b) the licence committee or any member intends to call any witnesses,

the licence committee must, not less than 28 days before the date fixed for the hearing (or fewer with the consent of the appellant and of the Chairman of the Authority), give to the Authority and to the appellant a notice stating, as appropriate, the name and address of the representative, the intention of the member to appear, and the names and occupations of the witnesses.

Evidence

11.—(1) The Authority may before or during the hearing of an appeal require the appellant or the licence committee to produce any document or information which the Authority may require and which it is within the power of the appellant or the licence committee (as the case may be) to deliver.

(2) Where the Authority is of the view that any medical or other technical question arises upon which it would be desirable to have the assistance of an expert, it may make arrangements for a person having appropriate qualifications or experience to inquire into and report on the matter and, if the Authority thinks it appropriate (whether because the appellant or the licence committee has so requested, or for any other reason), to attend at the hearing and give evidence.

(3) A copy of a report received from the expert must be supplied to each party in advance of the hearing or any resumed hearing.

(4) The Chairman of the Authority has power to administer an oath to, or take the affirmation of, any person who gives oral evidence to the Authority.

(5) For the purposes of an appeal there may be produced in evidence to the Authority any document or information even if it would be inadmissible in a court of law, and the Authority may receive in evidence such document or information if the Authority is satisfied that it is desirable in the interests of justice to receive it.

Summoning of witnesses

12.—(1) The Authority may by summons require any person in the United Kingdom to attend as a witness at a hearing of an appeal at such time and place as may be specified in the summons and, subject to paragraph (2) below, at the hearing to answer any questions or produce any documents in

his custody or under his control which relate to any matter in question in the appeal, and any person so required must do so; but

- (a) no person shall be required to attend in obedience to such a summons unless he has been given at least 7 days notice of the hearing or, if less than 7 days, he has informed the Authority that he accepts such notice as he has been given, and
- (b) no person, other than the appellant, shall be required in obedience to such a summons to attend and give evidence or to produce any document unless his necessary travel and subsistence expenses are paid or tendered to him.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in that part of the United Kingdom where the appeal is heard.

(3) Each summons under paragraph (1) above—

- (a) must refer to the fact that by virtue of section 41(7) of the Act a person who without reasonable excuse fails to comply with the requirement of that paragraph is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale or both, and
- (b) must contain a statement to the effect that the person to whom it is addressed may apply to the Authority to vary or set aside the summons.

Adjournment of hearing

13.—(1) The Authority may from time to time adjourn the hearing and when doing so may either fix the date, time and place at which the hearing is to be resumed, or leave them to be decided later; but the hearing shall not be resumed at any time, date or place unless the Authority is satisfied that the appellant and the licence committee have been given at least 14 days notice of them (or fewer with the consent of the appellant and of the licence committee).

(2) When any hearing is adjourned in order that further information or evidence may be obtained, the Authority may give instructions about—

- (a) the disclosure of such information or evidence to, and
- (b) the filing of comments on such information or evidence by,

the appellant and the licence committee prior to the resumption of the hearing.

Procedure on failure to appear

14. If—

- (a) the appellant has been duly notified of the hearing and has given notice that he intends to appear or be represented, but he fails to appear or be represented (as the case may be), or
- (b) the licence committee has given notice that it intends to be represented, or that any of its members intends to appear, but it fails to be represented or the member fails to appear (as the case may be),

the Authority may, unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the absence of the missing party, or may adjourn the hearing.

Multiple appeals

15. The Authority may hear and determine together two or more appeals by the same appellant against determinations of the same licence committee, unless the appellant or the licence committee objects.

PART IV

Provisions applying both to licence committee proceedings and to appeals

Address for service

16. An applicant or appellant must give the Authority when he applies or gives notice of appeal an address at which notices and other documents may be served upon him.

Withdrawal of application or appeal

17. An applicant or appellant may withdraw his application or appeal at any time by written notice to the Authority.

Powers and functions of the Chairman of the Authority

18. Any power or function conferred by these Regulations upon the Chairman of the Authority may be exercised or discharged by the deputy Chairman of the Authority or some other member of the Authority authorised to do so by the Chairman or in his absence the deputy Chairman, or (in accordance with any procedure the Authority may have arranged for this purpose) by the Authority or any one or more of its members.

Signed by authority of the Secretary of State for Health.

20th August 1991

Virginia Bottomley
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the composition of licence committees of the Human Fertilisation and Embryology Authority and the procedure to be adopted by those committees.

The Regulations also prescribe the procedure to be adopted by the Authority when hearing an appeal against a determination of a licence committee.

The Authority may regulate its own procedure in so far as it is not provided for in the Human Fertilisation and Embryology Act 1990 or in these Regulations. Licence committees must discharge the functions given to them in accordance with any general directions of the Authority.