
STATUTORY INSTRUMENTS

2009 No. 1891

**The Human Fertilisation and
Embryology (Appeals) Regulations 2009**

PART 4

Procedure on reconsideration

Notice of exercise of right and accompanying documents

16.—(1) Where a person wishes to make an appeal, the person must provide to the Authority the information and documents specified in paragraph (2) at the same time as service of the notice of exercise of right.

(2) The information and documents that must be provided are—

- (a) the full name, address and telephone number of the appellant;
- (b) the appellant's licence number (where applicable);
- (c) whether or not the appellant intends to be represented at any hearing and if so, the full name, address and telephone number of any representative and whether the Committee should send replies or notices concerning the appeal to the representative rather than the appellant;
- (d) a copy of the original decision to be reconsidered;
- (e) the grounds on which the appellant requires the Committee to reconsider the decision;
- (f) a copy of the material submitted by the appellant to the Authority prior to the decision which is the subject of reconsideration;
- (g) a copy of new material not submitted by the appellant to the Authority which the appellant wishes the Committee to consider;
- (h) a skeleton argument;
- (i) whether the appellant intends to call any witnesses and if so the names and occupations of those witnesses;
- (j) whether the appellant wishes the reconsideration to be considered on the papers or at a hearing; and
- (k) in a case where a hearing is requested, whether the appellant would like a case management meeting and the issues to be considered at such a meeting.

(3) The Authority must provide to the Committee any notice of exercise of right received by the Authority and the information and documents provided with that notice pursuant to paragraphs (1) and (2) within 7 days beginning with the date of receipt.

(4) An appellant may withdraw a notice of exercise of right by written notice to the Chair at any time prior to the first day of the hearing, or the first day the Committee considers the case on the papers, as applicable.

Action following receipt of notice of exercise of right and accompanying documents

17.—(1) Following receipt of the notice of exercise of right and the information and documents specified in regulation 16(2) the Committee must—

- (a) acknowledge receipt of the notice of exercise of right and accompanying information and documents to the appellant or, where appropriate, the appellant's representative within 7 days beginning with the date of receipt of the notice;
- (b) require the Authority to provide to the Committee within 21 days of receipt by the Authority of the notice of exercise of right and the information and documents specified in regulation 16(2) copies of any documents the Authority intends to rely on in relation to the reconsideration; and
- (c) provide to the appellant or, where appropriate, the appellant's representative copies of any papers received under sub-paragraph (b) within 7 days of receipt from the Authority.

(2) In a case where the appellant has requested a hearing, or the Committee considers that a hearing is necessary the Chair shall ensure that a notice of hearing is sent to the parties within 28 days beginning with the date of receipt of the notice of exercise of right.

(3) In a case where the appellant has requested that the case be considered on the papers and the Committee considers this appropriate the Chair must ensure that the parties are—

- (a) informed of the date on which the Committee will reconsider the decision; and
- (b) required to submit any written submissions no later than 14 days before the date on which the Committee is to meet.

Notice of Hearing

18. The notice of hearing shall—

- (a) state the date, time and venue of the hearing;
- (b) inform the appellant of the right to attend and to be represented or accompanied at the hearing in accordance with regulation 26(2) and (3);
- (c) inform the appellant that the Committee may proceed with the hearing in the appellant's absence;
- (d) inform the appellant of the provisions relating to—
 - (i) evidence set out in regulation 21,
 - (ii) procedure at hearings set out in regulation 25, and
 - (iii) witnesses' evidence set out in regulation 27;
- (e) require the parties to inform the Committee, within 14 days beginning with the day of receipt of the notice of hearing, whether the parties intend to—
 - (i) attend the hearing,
 - (ii) be represented at the hearing, and if so, by whom, and
 - (iii) seek to call any witnesses at the hearing, and if so, whom.

Case management meetings

19.—(1) Where a hearing is to be held, a case management meeting may be convened by the Chair or at the request of one (or both) of the parties with the Chair's approval.

(2) Where a case management meeting is to be convened the Chair shall ensure that the parties are given reasonable notice of the meeting.

(3) At a case management meeting the Chair may—

- (a) if satisfied that case management directions are necessary for the just and expeditious management of the case, issue such directions; and
 - (b) give preliminary rulings on questions of law and admissibility of evidence.
- (4) Subject to paragraphs (1) to (3) the Chair may regulate any case management meeting as the Chair considers appropriate.

Multiple reconsideration

20. The Committee may consider and determine together two or more requests made by the same person to reconsider a licensing decision in accordance with section 20 of the Act (right to reconsideration of licensing decisions), where it is satisfied that it would be appropriate to do so.

Evidence

21.—(1) All questions of admissibility of evidence and law before the Committee shall be decided by the Chair.

(2) Subject only to the requirements of relevance and fairness, and with the permission of the Chair, the Committee may receive—

- (a) any documentary or physical evidence; and
- (b) where a hearing is held, any oral evidence,

whether or not such evidence would be admissible in any civil proceedings in that part of the United Kingdom where the hearing before the Committee is taking place.

(3) Where a party wishes to adduce written evidence from a witness other than a letter of testimonial, the Committee shall only receive such evidence if the statement—

- (a) contains an attestation, in a format acceptable to the Committee, that the statement is true; and
- (b) is signed by the person making it.

(4) Where an appellant has been convicted of a criminal offence in the British Isles (and has not successfully appealed against the conviction), a copy of the certificate of conviction certified by a competent officer of the court (or in Scotland, an extract conviction) shall be admissible as conclusive proof of that conviction and the findings of fact on which it was based.

(5) The only evidence that may be adduced by the appellant in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose that the appellant is not the person referred to in the certificate or extract.

(6) A formal notification of a determination about an appellant's fitness to practice made by a body responsible under any enactment for the regulation of a health or social care profession (in the United Kingdom or elsewhere), and signed by an officer authorised by that body to sign such a notification, shall be sufficient evidence, unless the contrary is proved, of any facts found proved by that body.

(7) Written evidence which has not been submitted by either party in accordance with regulations 16 and 17 and this regulation, shall only be considered by the Committee if, in the opinion of the Chair, there are exceptional circumstances.

Power to require witnesses and documents

22.—(1) Subject to paragraph (3), the Committee may by notice require any person (“P”) in the United Kingdom to produce any documents in P's custody or control which the Committee considers relevant to the proceedings before it and P must do so.

(2) Subject to paragraph (3), the Committee may by notice require any person except the appellant to attend as a witness at a hearing of an appeal at such time and place as may be specified in the notice.

(3) A person shall not be required in obedience to a notice under paragraph (1) or (2) to attend and give evidence or to produce any document unless—

- (a) that person has been given at least 7 days notice of the hearing or, if less than 7 days, has accepted such notice by informing the Committee; and
- (b) except in the case of the appellant, confirmation has been provided that reasonable and necessary travel and subsistence expenses will be paid by the Authority.

(4) The Committee may, on an application by a person to whom it is addressed, set aside or vary a notice under paragraph (1).

(5) A person shall not be compelled to give any evidence or produce any document or other material that they could not be compelled to give or produce on a trial of any action in a civil court of law in that part of the United Kingdom where the hearing before the Committee is to take place.

(6) Each notice under paragraph (1)—

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

Burden and standard of proof

23.—(1) The appellant shall bear the burden of establishing to the Committee that the decision of the Authority being reconsidered should be overturned.

(2) Where facts are in dispute, the Committee shall consider whether they have been established in accordance with the civil standard of proof.

Reconsideration on the papers

24.—(1) The Committee may reconsider a decision on the papers following receipt of a notice of exercise of right and the information and documents specified in regulation 16(2), unless the appellant has requested a hearing.

(2) Written evidence which has not been submitted by either party in accordance with regulations 16, 17 and 21 shall only be considered by the Committee if, in the opinion of the Chair, there are exceptional circumstances.

(3) Before making its decision the Committee may obtain advice from an adviser.

(4) The Chair shall ensure that a written record (in addition to that required by regulation 13(1) and (2)) is kept of—

- (a) any rulings on questions of law or admissibility made by the Chair;
- (b) the decision of the Committee; and
- (c) the reasons for the Committee's decision.

Procedure at hearings

25.—(1) The order of proceedings at the hearing shall be as follows—

- (a) the Chair shall declare the meeting open;

- (b) where the appellant is not present or represented at the hearing, if the Chair is satisfied that all reasonable efforts have been made to provide the appellant with the notice of hearing, having consulted the Committee, the Chair may—
 - (i) proceed with the hearing in the absence of the appellant, or
 - (ii) adjourn the hearing and issue appropriate directions;
- (c) the presenter shall make an opening statement outlining the facts of the case;
- (d) the appellant or, where appropriate, the appellant’s representative may—
 - (i) adduce evidence, and
 - (ii) call witnesses, subject to regulations 22(3) and 27 (provided that the Chair is satisfied that the witness is in a position to provide the relevant testimony);
- (e) the presenter may—
 - (i) adduce evidence in rebuttal of the position of the appellant and in support of the position of the Authority, and
 - (ii) call witnesses, subject to regulations 22(3) and 27 (provided that the Chair is satisfied that the witness is in a position to provide the relevant testimony);
- (f) the appellant or, where appropriate, the appellant’s representative may make a closing statement; and
- (g) the Committee shall hold private deliberations and shall then announce its decision in the presence of the parties (where present), together with the reasons for its decision.

(2) The Chair may refuse to allow a witness to give oral evidence, or to give evidence on a particular matter, if in the opinion of the Chair all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.

Representation

26.—(1) The presenter shall be a person who is—

- (a) a barrister, advocate or solicitor; or
- (b) an employee of the Authority,

or both.

(2) The appellant may be represented by a person who is—

- (a) a barrister, advocate or solicitor; or
- (b) a representative from the appellant’s defence organisation or trade union,

or both.

(3) Where the appellant is not represented, a supporter may accompany and advise the appellant, but the supporter must not be—

- (a) a member or employee of the Authority; or
- (b) a witness at the hearing.

(4) A supporter under paragraph (3) shall only be entitled to address the Committee with the permission of the Chair.

(5) The presenter, the appellant and the appellant’s representative shall be entitled to attend any hearing of the Committee of which notice is given in accordance with regulation 18 or a case management meeting under regulation 19, and to be heard by the Committee at that hearing.

Witness evidence

27.—(1) A witness shall be required to take an oath, or to affirm, before giving oral evidence.

(2) The Chair has the power to administer an oath to, or take the affirmation of, any person who gives oral evidence to the Committee.

(3) A party may not call a person to be a witness unless the party has provided to the other party concerned a written statement of evidence to be given by the witness at least 7 days before the hearing, unless the Chair determines otherwise.

(4) The Committee may, upon the application of the party calling a witness, direct that any details which may identify that witness shall not be revealed in public.

(5) A witness—

- (a) shall first be examined by the party calling them;
- (b) may be cross examined;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned by the Committee through the Chair.

(6) The parties may then question a witness on matters arising out of the Committee's questions, with the party calling the witness being given the last opportunity to do so (as between the parties).

(7) Any further questioning of a witness shall be at the discretion of the Chair.

(8) Except in the case of an expert witness, the appellant, or where appropriate, the appellant's representative, a witness shall not be allowed to attend the proceedings until after the witness has completed giving evidence and been formally released by the Chair.

Postponement and adjournments

28.—(1) The Chair may, following the Chair's own motion, or upon the application of a party, postpone any meeting or hearing of which notice has been given under these Regulations before such meeting or hearing begins.

(2) The Chair may, following the Chair's own motion, or upon the application of a party, adjourn the proceedings at any stage, provided that—

- (a) no injustice is caused to the parties; and
- (b) the decision to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant an application for postponement or adjournment, the Chair shall, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party;
- (c) the conduct of the party seeking the postponement or adjournment; and
- (d) fairness to the parties.

(4) Where the proceedings have been postponed or adjourned, the Chair shall ensure, as soon as practicable that the parties are notified of the date, time and venue of the postponed or resumed meeting or hearing.

Decision of the Committee

29.—(1) No later than 7 days after the date on which the Committee has made its decision, the Chair shall ensure that—

- (a) a written notice of the Committee's decision; and

(b) a statement of reasons for the Committee's decision, are provided to the parties, and to any other person whom the Committee considers, in the public interest, ought to be informed of the Committee's decision.

(2) The written notice provided to the appellant shall be accompanied by a record of any rulings on questions of law or admissibility of evidence made by the Chair.

Notes and transcripts of hearings

30.—(1) Subject to paragraph (3), the Chair shall ensure that all hearings are recorded in writing or electronic form.

(2) Any party to the proceedings shall, on application to the Committee, be furnished with a transcript of the record of any part of the hearing at which the appellant was entitled to be present.

(3) The private deliberations of the Committee shall not be recorded.

Powers and functions of the Chair

31. Any power or function conferred by these Regulations on the Chair may be exercised or discharged by the Deputy Chair.

Revocation and saving

32.—(1) Subject to paragraph (2), the 1991 Regulations are revoked.

(2) The 1991 Regulations shall continue to have effect for the purposes of paragraphs 9 (transitional and saving provisions relating to procedure for refusal, variation or revocation of licence) and 10 (transitional provisions relating to reconsideration of licensing decisions) of Schedule 3 to the Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009(1).