

2010 No. 726

HUMAN FERTILISATION AND EMBRYOLOGY

The Human Fertilisation and Embryology (Procedure on Applications and Execution of Warrants) Regulations 2010

<i>Made</i> - - - -	<i>8th March 2010</i>
<i>Laid before Parliament</i>	<i>15th March 2010</i>
<i>Coming into force</i> - -	<i>6th April 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 19B(2) and (3)(a), and 45(3) and (3A) of, and paragraph 6(5) of Schedule 3B to, the Human Fertilisation and Embryology Act 1990(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Human Fertilisation and Embryology (Procedure on Applications and Execution of Warrants) Regulations 2010 and shall come into force on 6th April 2010.

(2) In these Regulations, “the 1990 Act” means the Human Fertilisation and Embryology Act 1990.

Hearing before Licence Committee - power to require witnesses and documents

2.—(1) This regulation applies where—

- (a) an application has been made for the grant, revocation or variation of a licence;
- (b) the Authority has given notice of its proposed decision under section 19(1) or (3) of the 1990 Act (procedure in relation to licensing decisions);
- (c) a person (“the applicant”) is exercising the right to make representations about the proposed decision(b); and
- (d) the Licence Committee is to determine the matter at a hearing(c).

(2) The Licence Committee may issue a notice to require any person present in the United Kingdom—

- (a) to attend as a witness at a hearing at the time and place specified in the notice; or

(a) 1990 c.37. Section 19B was inserted by section 19 of the Human Fertilisation and Embryology Act 2008 (c.22). Schedule 3B has effect by virtue of section 38A(1) of the 1990 Act, both of which were inserted by section 28 of the 2008 Act. Section 45(3) and (3A) were inserted by section 30(4) of the 2008 Act. See section 45(6) of the 1990 Act for the meaning of “regulations”.

(b) The right to make representations is conferred by section 19(4) of the 1990 Act.

(c) A hearing must be arranged if requested by a person who is exercising the right to make representations, see regulation 5(1)(e) of the Human Fertilisation and Embryology (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009 (S.I. 2009/1397, as amended by S.I. 2009/2088).

- (b) to produce any documents in that person's custody or control which the Licence Committee considers relevant to the proceedings before it.
- (3) A notice under paragraph (2)(a) may not require the applicant to attend as a witness.
- (4) No person is required to attend in response to a notice under paragraph (2)(a) unless—
- (a) the person is given at least 7 days notice of the hearing, beginning with the date of receipt of the notice, or agrees to accept a shorter period of notice; and
 - (b) the Authority confirms that it will pay the person's reasonable and necessary travel and subsistence expenses.
- (5) No person may be compelled to give any evidence, or produce any document, that the person could not be compelled to give or produce on a trial of an action in a civil court of law in that part of the United Kingdom where the hearing before the Licence Committee is to take place.
- (6) A notice under paragraph (2) must state that—
- (a) the person to whom it is addressed may apply to the Licence Committee to vary or set aside the notice; and
 - (b) it is an offence to fail without reasonable excuse to comply with the notice(a).
- (7) The Licence Committee may, on an application by a person to whom it is addressed, set aside or vary a notice.
- (8) In this regulation, "the Licence Committee" means the committee established by the Authority under section 9A(2) of the 1990 Act (power to delegate and establish committees) to which the Authority has delegated its function of considering representations under section 19(4) of that Act.

Execution of warrants - contents of appropriate statement

- 3.—(1) An appropriate statement which is given under paragraph 6 of Schedule 3B (execution of warrants) must contain the following information—
- (a) a statement that the investigator is authorised by the Authority to act for the purposes of paragraph 5 of Schedule 3B (entry and search in connection with a suspected offence);
 - (b) a statement that the person to whom the appropriate statement is given may require the investigator to produce evidence of the investigator's identity and authorisation;
 - (c) a statement that the investigator is entitled, if need be, to enter the premises by force;
 - (d) a description of the investigator's powers under paragraphs 7(2) to (4) of Schedule 3B (seizure in the course of inspection or search) to seize anything on the premises;
 - (e) a description of the requirement under paragraph 7(5) of Schedule 3B, where anything is seized, for the investigator to leave on the premises a statement giving particulars of what the investigator has seized and stating that the investigator has seized it;
 - (f) a description of the investigator's powers under paragraph 8 of Schedule 3B (supplementary provision)—
 - (i) to bring such other persons and equipment as the investigator reasonably considers necessary;
 - (ii) to inspect equipment;
 - (iii) to inspect and take copies of records;

(a) Section 41(7) of the 1990 Act provides that a person who without reasonable excuse fails to comply with a requirement imposed by regulations made by virtue of section 19B(3)(a) of that Act, is guilty of an offence.

- (iv) to observe the carrying on of licensed activity on the premises, where applicable;
- (v) to require any person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power of entry, inspection or search to be exercised;
- (g) a description of the requirement under paragraph 9(2) of Schedule 3B for the investigator to prepare a written report of the search and to give a copy of the report to the appropriate person(a) if requested to do so;
- (h) a statement that it is an offence under paragraph 10 of Schedule 3B (enforcement) for a person—
- (i) to fail without reasonable excuse to comply with a requirement under paragraph 8(3) of Schedule 3B(b); or
- (ii) intentionally to obstruct the exercise of any right under Schedule 3B.

(2) In this regulation—

“Schedule 3B” means Schedule 3B to the 1990 Act; and

“investigator” means a person who is a duly authorised person for the purposes of paragraph 5 of Schedule 3B and who is executing a warrant issued under that paragraph.

Signed by authority of the Secretary of State for Health.

Gillian Merron
Minister of State,
Department of Health

8th March 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in consequence of amendments to the Human Fertilisation and Embryology Act 1990 (“the 1990 Act”) made by the Human Fertilisation and Embryology Act 2008. They cover two separate matters relating to the procedures of the Human Fertilisation and Embryology Authority (“the Authority”).

Regulation 2 empowers the Licence Committee of the Authority, when it is to determine an application for the grant, revocation or variation of a licence at a hearing, to require a person to attend and give evidence, or to produce documents.

Regulation 3 makes provision relating to the execution of warrants. By paragraph 6 of Schedule 3B to the 1990 Act, a person entering and searching premises under a warrant must give the occupier or person in charge of the premises a copy of the warrant and “an appropriate statement”. This regulation sets out the information which must be included in that statement.

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- (a) The “appropriate person” is defined in paragraph 9(3) of Schedule 3B and means, in relation to licensed premises, the person responsible, and in any other case, the occupier.
 - (b) Paragraph 8(3) confers power to require a person to afford such facilities and assistance with respect to matters under that person's control as are necessary to enable the power of entry, inspection or search to be exercised.

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