



Statutory Document No. 72/93

THE FAMILY LAW REFORM (ISLE OF MAN) ACT 1971

THE BLOOD TESTS (EVIDENCE OF PARENTAGE) REGULATIONS 1993

Approved by Tynwald

16th March 1993

Coming into operation

1st April 1993

In exercise of the powers conferred on the Clerk of the Rolls by section 14 of the Family Law Reform (Isle of Man) Act 1971(a), and of all other enabling powers, the following Regulations are hereby made:-

Citation and commencement

1. These Regulations may be cited as the Blood Tests (Evidence of Parentage) Regulations 1993 and, subject to section 14(2) of the Act, shall come into operation on the 1st April 1993.

Interpretation

2. (1) In these Regulations —
"the Act" means the Family Law Reform (Isle of Man) Act 1971;
"court" means a court which gives a direction for the use of scientific tests in pursuance of section 12(1) of the Act;
"direction" means a direction so given;
"direction form" means Form 1 in the Schedule;
"photograph" means a recent photograph, taken full face without a hat, of the size required for insertion in a passport;
"sample" means a bodily sample taken for the purpose of tests;
"sampler" means a registered medical practitioner or tester nominated in a direction form to take bodily samples for the purposes of the direction;
"subject" means a person from whom the court directs that bodily samples shall be taken;
"tester" means a person appointed by the Department of Health and Social Security to carry out blood tests;

(a) 1971 c.26

"tests" means scientific tests carried out under Part II 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 1974(b) and is incapable of understanding the nature and purpose of scientific tests.

Bodily samples to be taken

3. Samples of blood are prescribed as the bodily samples to be taken for the purpose of section 12 of the Act.

Direction form

4. A sampler shall not take a sample from a subject unless Parts 1 and 2 of the direction form have been completed and the direction form purports to be signed by a member of officer of the court.

Subjects under disability to be accompanied to sampler

5. 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

6. (1) Without prejudice to 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 3 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.

(b) 1974 c.34

(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

7. (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 12(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 5 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 paragraph (5)(b).

(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 7 of the direction form that he has taken the sample and the date on which he did so.

Despatch of samples to tester

8. (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

9. (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

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

(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 or mother of a subject whose parentage is in dispute.

Report by tester

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

Procedure where tests not made

12. 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.

Revocation

13. The Blood Tests (Evidence of Paternity) Regulations 1971(c) and the Blood Tests (Evidence of Paternity) (Charges) Regulations 1988(d) are revoked.

Name of person from whom sample
will be taken

Name, address and telephone number
of sampler

(Signed)]

**To be completed where all the samples from the parties named in Part 1 are not to be taken by the same sampler.*

§[Being unable to comply with the request set out above, I have nominated
[name and address of nominee] to take the sample.

(Signed)]

§For use where sampler named above nominates another sampler.)

PART 3

Photograph

Below is a photograph of the person to whom this form relates, being a person who has attained the age of 12 months.

PART 4

(To be completed by sampler)

I have questioned [name of person to whom form relates or, in the case of person under 16 or suffering from mental disability, person accompanying that person] and it appears that [he][she][the person to whom this form relates] —

*[has][has not] been transfused with blood in the last 3 months;

*[has not been injected with a blood product or plasma substitute;] [has been injected with [a blood product][blood plasma] on or about] and that the value of any tests will thereby [be][not be] affected.

(Signed)

(Sampler)

**Delete as appropriate.*

PART 5

Declaration

(To be completed where the person to whom the form relates has attained the age of 16 years and is not suffering from a mental disability.)

I [full name and address of person to whom the form relates] declare that the photograph affixed to Part 3 of this form is a photograph of me and that I am a person in respect of whom the above-named court gave a direction that blood tests be made. I hereby [consent][do not consent] to the taking of a blood sample from me for the purpose of such tests.

[I do not consent because _____]
(To be deleted unless the person making the declaration withholds consent and wishes to record the reason for so doing.)

I understand that it is a serious offence punishable by imprisonment to personate another person for the purpose of providing a blood sample.

Date 19

(Signed)

The above was explained to the declarant who stated that [he][she] understood it and signed it in my presence.

Date 19

(Signed)

(Sampler)

**Delete as appropriate*

PART 6
Declaration

(To be completed where the person to whom the form relates has not attained the age of 16 years or is suffering from a mental disability.)

I _____ *[full name and address of person accompanying the subject]* **[being the person having the care and control of [name of person to whom form relates]]* declare that the person whom I identify to *[name of sampler]* **[and whose photograph is affixed to Part 3 of this form]* is, to the best of my knowledge and belief who is the [son][daughter] of *[name of mother of person identified].*
**Delete as appropriate*

I, being the person having the care and control of the person to whom this form relates, [consent][do not consent] to the taking of a sample.

[I do not consent because _____]

(To be deleted unless the person making the declaration withholds consent and wishes to record the reason for so doing.)

I understand that it is a serious offence punishable by imprisonment to personate another person for the purpose of providing a blood sample or to proffer the wrong child for that purpose.

Date 19

(Signed)

The above was explained to the declarant who stated that [he][she] understood it and signed it in my presence.

Date 19
(Signed) (Sampler)

PART 7
(To be completed by sampler)

I have today taken a blood sample from _____ to whom this form relates, whose [apparent] age is _____ years. [I identified [him][her] from the photograph affixed to this form.] [[He][She] was [also] identified to me by _____]
(Delete as appropriate)

Date 19
(Signed) (Sampler)

OBSERVATIONS
(Any observations by the sampler which may assist the tester shall be inserted here)

PART 8
(To be completed by sampler)
Delete if inappropriate

The person to whom this form relates did not attend on the date originally arranged [or on a new date arranged by me].

[His][Her] reasons given to me for failing to attend were as follows:--

Date 19
(Signed) (Sampler)

PART 9
(To be completed by tester)

I have today received at _____ [place of receipt] the sample referred to in Part 7 of this form.

[It was received by special delivery service.] [It was handed to me by _____]
Delete as appropriate

Date 19
(Signed) (Tester)

Form 2
Report by Tester

[Title of proceedings]

Reference No. of Direction

To:
(Complete as appropriate)

PART 1

I, _____, being a blood tester appointed by the Department of Health and Social Security of the Isle of Man for the purpose of Part II of the Family Law Reform (Isle of Man) Act 1971, certify that I have carried out blood tests (the details of which are given in Part 2 of this Report) on samples provided by the persons named in this direction, viz.,

From the results obtained _____ [is excluded]
[is not excluded] from possible parentage of _____

Reason for conclusion:—

Comments on value, if any, of tests in determining whether any person tested is the father or mother of the person whose parentage is in dispute:--

(Signed)

Status

Address

PART 2
Test Report

MADE 8th February 1993

J. W. Corrin
Her Majesty's First Deemster and Clerk of the Rolls

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, made under the Family Law Reform (Isle of Man) Act 1971, prescribe the procedure and forms for obtaining blood tests in order to provide evidence of parentage. They replace the Blood Tests (Evidence of Paternity) Regulations 1971 with minor amendments to take account of changes made by the Family Law Act 1991 s.21 (which, inter alia, provides for tests to ascertain maternity as well as paternity), the availability of tests of blood for factors other than blood groups, and the transfer to the Department of Health and Social Security of the Governor's function of approving testers. They also revoke the Blood Tests (Evidence of Paternity) (Charges) Regulations 1988, which are redundant (the charges fixed under the corresponding United Kingdom legislation now apply to blood tests under the 1971 Act).