

Bird & Bird

# Key Changes to the TUE Regime under the 2015 Code and ISTUE

Jonathan Taylor

WADA TUE Symposium

Paris, October 2014

# 2015 Regime Overview (1)

- 1. No major changes to criteria for granting TUEs or to application process**
- 2. Broader discretion to grant retroactive TUEs**
- 3. Each NADO, IF and MEO has its own TUE jurisdiction**

# 2015 Regime Overview (2)

- 4. Each NADO, IF and MEO must recognize TUEs granted by others if they meet the ISTUE criteria**
- 5. Disputes resolved by WADA review/CAS appeal**
- 6. Clarity and support provided for athletes to navigate the system**

# No major changes to criteria for granting TUEs or to application process

- Based on stakeholder feedback, no major changes to criteria deemed necessary.
- All TUE decisions (grant or refusal of TUE; grant or refusal of recognition of TUE) must be reported through ADAMS or other system approved by WADA, together with details of relevant clinical information/reasons for refusal.
- Such transparency means WADA and other ADOs can see for themselves whether ISTUE criteria are met, so facilitating recognition of TUE decisions.

# Broader discretion to grant retroactive TUEs

**Basic rule remains that TUE must be obtained in advance**

**Retroactive TUEs may be granted:**

- where emergency treatment was required;
- where, exceptionally, there was insufficient time or opportunity to apply for a TUE;
- where rules require or permit application for retroactive TUE; or
- where WADA and relevant ADO agree fairness requires grant of retroactive TUE.

# Each NADO, IF and MEO has its own TUE jurisdiction

**NADOs** have the right to make TUE decisions in relation to athletes competing at national level or below (an athlete may appeal denial to national-level appeal body).

**IFs** have the right to make TUE decisions in relation to athletes who compete at international level (an athlete may appeal denial to CAS). Any NADO TUE is not valid at the international level unless recognized by the IF.

If the IF chooses to test a national-level athlete, it must recognize the TUE issued by his NADO.

# Each NADO, IF and MEO has its own TUE jurisdiction

**MEOs** have the right to make TUE decisions in relation to athletes who participate in their events (an athlete may appeal denial to event appeal body). Any TUE granted by a NADO or an IF is not valid for the Event unless recognized by the MEO (but would still be valid outside of that Event).

# Each must recognize ISTUE-compliant TUEs granted by another ADO

To minimize burden on athletes, an athlete with a TUE does not need to apply for another TUE

Instead, an IF must recognize a TUE granted by a NADO if it meets the ISTUE criteria; and an MEO must recognize a TUE granted by a NADO or an IF if it meets the ISTUE criteria.

IFs and MEOs can pre-recognize categories of TUEs granted by others (if they have been reported properly, so WADA can review them), or can require an athlete to apply for recognition of TUEs granted by others.



# Disputes resolved by WADA review/CAS appeal (1)

If an IF refuses to recognize a TUE granted by a NADO, the TUE is not valid for international-level competition. However, if athlete or NADO refers matter to WADA, the TUE remains valid for national-level competition pending WADA review. (If no referral within 21 days, TUE lapses for all purposes).

If a NADO disagrees with the TUE granted by the IF, the TUE is valid for international-level competition and out-of-competition testing, but (if a NADO refers matter to WADA) the TUE is not valid for national-level competition pending WADA review. (If no referral within 21 days, TUE becomes valid for national-level competition as well).

## Disputes resolved by WADA review/CAS appeal (2)

If a MEO refuses to recognize the TUE granted by a NADO or an IF, it is not valid for major event (unless successfully appealed), but remains valid for all other purposes.

WADA must review TUE decisions where IF and NADO disagree and NADO refers it to WADA. WADA may review any other TUE decisions (upon request or *sua sponte*). If ISTUE conditions are met, the TUE will be upheld and valid for all levels of competition. If ISTUE conditions are not met, the TUE will be overturned and not valid for any level of competition.

# Disputes resolved by WADA review/CAS appeal (3)

WADA decision upon review can be appealed to CAS

If WADA declines to review, the original decision stands, and the appeal is of that original decision, and is to the national-level body (NADO decision) or to CAS (IF decision).

The ultimate outcomes are harmonization and consistency of TUE practice across sports and nations.

# Clarity and support for athletes (1)

NADO/IF/MEO must publish TUE information on websites so that it is clear to athletes:

- to which ADO they should apply for a TUE;
- how to apply for a TUE;
- when they become subject to the TUE requirements of an IF/MEO, and so must apply for a TUE or seek recognition of an existing TUE; and
- when an IF/MEO will recognize another TUE automatically and when they will require the athlete to submit TUE for recognition.

## Clarity and support for athletes (2)

NADOs must warn athletes that any TUE it has issued will not apply automatically at international level, and must help athletes determine when they need to apply to IFs or MEOs for recognition of that TUE, and must support them in that process.

IF must make clear when it considers an athlete to have become an 'international-level athlete'. For example, if the athlete becomes an international-level athlete by participating in particular events, the IF must publish a list of those events.

Thank you & Bird & Bird

Jonathan Taylor

[jonathan.taylor@twobirds.com](mailto:jonathan.taylor@twobirds.com)

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 15 Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.

[twobirds.com](http://twobirds.com)