

Annex A

Legal and governance framework

This annex is a brief guide to the legal and governance framework relevant to research in the UK. It is not intended to be a comprehensive statement of the law or a list of all relevant legislation, nor is it a substitute for independent, up-to-date legal advice.

The laws and governance arrangements that apply to research vary depending on the type of research, the participants involved, how it is funded, and where in the UK it is undertaken. If you are unsure about how the law applies in a particular situation, you should consult your defence body or professional association, or seek independent legal advice.

Governance framework

The UK health departments publish good practice frameworks for the governance of research in health and social care.¹ You must follow the relevant framework if it applies to the research you are undertaking.

The *International Conference on Harmonisation Guideline for Good Clinical Practice*² sets out the international standards for conducting clinical trials of investigational medicinal products.

Certain types of research must be approved or licensed by a relevant authority in the UK. These authorities include, for example, the Medicines and Healthcare products Regulatory Agency, the Human Tissue Authority, the Human Fertilisation and Embryology Authority, and the Gene Therapy Advisory Committee.

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- Research Governance Framework for Health and Social Care* (Department of Health, 2005).
See www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4108962

Research Governance Framework for Health and Community Care (Scottish Executive Health Department, 2006).
See www.cso.scot.nhs.uk/Publications/ResGov/Framework/RGFEdTwo.pdf

Research Governance Framework for Health and Social Care in Northern Ireland (Department of Health, Social Services and Public Safety, Northern Ireland, 2006).
See www.dhsspsni.gov.uk/research_governance_framework.pdf

Research Governance Framework for Health and Social Care in Wales (National Assembly for Wales, 2009).
See <http://wales.gov.uk/topics/health/research/word/publications/researchgovernance/?jssessionid=QKVBKyDGI23PvyKp19sWTy9JZnptMzHW4V8mWYhmXyrmMQFW9nht!2078297436?lang=en>
 - International Conference on Harmonisation Topic E 6 Note for Guidance on Good Clinical Practice* (2002).
See www.emea.europa.eu/pdfs/human/ich/013595en.pdf

Clinical trials of investigational medicinal products

Clinical trials of investigational medicinal products³ are governed by the *Medicines for Human Use (Clinical Trials) Regulations 2004*, which apply in all four UK countries.⁴ The regulations implement the provisions of the *European Clinical Trials Directive (EC2001/20)* into UK law. The regulations set out good clinical practice in the conduct of clinical trials of investigational medicinal products, including trials involving children or young people, and adults who lack capacity.

Other types of research involving people

Common law

The common law principles in relation to confidentiality and consent apply to research in which an adult has the capacity to consent to take part, and the research is not a clinical trial of investigational medicinal products.

Adults without capacity

Other than clinical trials of investigational medicinal products, research involving people over 16 who lack capacity is governed in England and Wales by the *Mental Capacity Act*

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- 3 Under the *Medicines for Human Use (Clinical Trials) Regulations 2004* a clinical trial means 'any investigation in human subjects, other than a non-interventional trial, intended –
- (a) to discover or verify the clinical, pharmacological or other pharmacodynamic effects of one or more medicinal products,
 - (b) to identify any adverse reactions to one or more such products, or
 - (c) to study absorption, distribution, metabolism and excretion of one or more such products,
- with the object of ascertaining the safety or efficacy of those products'.

An investigational medicinal product 'means a pharmaceutical form of an active substance or placebo being tested, or to be tested, or used, or to be used, as a reference in a clinical trial, and includes a medicinal product which has a marketing authorization but is, for the purposes of the trial –

- (a) used or assembled (formulated or packaged) in a way different from the form of the product authorised under the authorization,
- (b) used for an indication not included in the summary of product characteristics under the authorization for that product, or
- (c) used to gain further information about the form of that product as authorised under the authorization'.

- 4 *Medicines for Human Use (Clinical Trials) Regulations 2004*.
See www.uk-legislation.hmsso.gov.uk/si/si2004/20041031.htm

Amendments to the *Medicines for Human Use (Clinical Trials) Regulations 2004*:

Medicines for Human Use (Clinical Trials) Amendment Regulations 2006.
See www.opsi.gov.uk/si/si2006/20061928.htm

Medicines for Human Use (Clinical Trials) Amendment (No.2) Regulations 2006.
See www.opsi.gov.uk/si/si2006/20062984.htm

Medicines for Human Use (Miscellaneous Amendments) Regulations 2009.
See www.opsi.gov.uk/si/si2009/uksi_20091164_en_1

Medicines for Human Use (Clinical Trials) and Blood Safety and Quality (Amendment) Regulations 2008.

2005 and in Scotland by the *Adults with Incapacity (Scotland) Act 2000*.⁵ In Northern Ireland, there is currently no relevant primary legislation setting out the circumstances in which research (except for clinical trials of investigational medicinal products) involving adults who lack capacity to consent may be undertaken. At the time of publication, a legislative framework for new mental capacity legislation and revised mental health legislation is being developed. See *Consent to research* for further guidance on seeking consent to involve people who lack capacity in research.

Regulation of human tissue research

The *Human Tissue Act 2004*⁶ provides the framework for the regulation of human tissue research in England, Wales and Northern Ireland. Scotland has its own *Human Tissue (Scotland) Act 2006*.⁷ The *Medicines for Human Use (Clinical Trials) Regulations 2004* apply to the use of human tissue in clinical trials of investigational medicinal products.

The *Human Fertilisation and Embryology Act 1990 (as amended)*⁸ regulates research in the UK that involves the creation, use and storage of human embryos and human admixed embryos (embryos combining both human and animal material). It also defines access by researchers to data collected by the Human Fertilisation and Embryology Authority.

Records-based research

*Confidentiality*⁹ provides guidance to doctors undertaking records-based research that does not involve participants directly. It gives guidance on disclosing identifiable information for research or other secondary uses if the disclosure is required by law.

5 *Mental Capacity Act 2005*. See www.opsi.gov.uk/acts/acts2005/ukpga_20050009_en_1

Mental Capacity Act Code of Practice. See www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf

Adults with Incapacity (Scotland) Act 2000.

See www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000004_en_1

Adults with Incapacity (Scotland) Act 2000 Part 5 Code of Practice.

See www.scotland.gov.uk/Publications/2008/06/13114117/0

6 *Human Tissue Act 2004*. See www.opsi.gov.uk/ACTS/acts2004/ukpga_20040030_en_1

Human Tissue Authority – Codes of Practice.

See www.hta.gov.uk/policiesandcodesofpractice/codesofpractice.cfm

7 *Human Tissue (Scotland) Act 2006*.

See http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060004_en_1

The Human Tissue Authority was set up under the *Human Tissue Act 2004* but performs certain tasks on behalf of the Scottish Executive (approval of living donation and licensing of establishments storing tissue for human application).

8 *Human Fertilisation and Embryology Act 1990 (as amended)*.

See www.opsi.gov.uk/Acts/acts1990/Ukpga_19900037_en_1.htm

www.opsi.gov.uk/acts/acts2008/ukpga_20080022_en_1

9 *Confidentiality*.

See www.gmc-uk.org/guidance/ethical_guidance/confidentiality_40_50_research_and_secondary_issues.asp

Annex B

Key elements of the legislation on clinical trials of investigational medicinal products

This annex highlights some of the specific legal requirements for conducting clinical trials of investigational medicinal products in the UK. It complements the high-level principles set out in *Good practice in research* and *Consent to research*. It is not intended to be a comprehensive statement of the law or a list of all legislative requirements, nor is it a substitute for independent, up-to-date legal advice.

Consent to research gives further advice about involving adults who lack capacity in clinical trials of investigational medicinal products (see paragraphs 23-35).

The *Medicines for Human Use (Clinical Trials) Regulations 2004*¹⁰ set out good clinical practice in the conduct of clinical trials of investigational medicinal products for human use (see schedule 1 of the regulations for the conditions and principles which apply to all trials). They apply in all four UK countries. You must be familiar with and follow the regulations at all times when conducting clinical trials of investigational medicinal products in the UK.

You should also be familiar with the guidance about conducting clinical trials of investigational medicinal products published by other organisations, such as the Medical Research Council and the Medicines and Healthcare products Regulatory Agency (MHRA).

Before starting a trial

The regulations prohibit anyone from starting or conducting a clinical trial of investigational medicinal products, and from beginning the process of recruiting participants to such a trial, until there is approval from a research ethics committee and authorisation from the MHRA. The research ethics committee must be one recognised by the United Kingdom Ethics Committee Authority.

It is a requirement for clinical trials of investigational medicinal products to be registered on the European Clinical Trials database (Eudract).

¹⁰ *Medicines for Human Use (Clinical Trials) Regulations 2004*.
See www.legislation.gov.uk/si/si2004/20041031.htm

Seeking and withdrawing consent

It is a legal requirement to get written consent from a person to participate in a clinical trial of investigational medicinal products. The person with parental responsibility or a legal representative must give written consent for a child or young person, or for an adult who lacks capacity, to participate in a trial.

The regulations require that a person, or if relevant the person with parental responsibility or a legal representative, must have an interview with a member of the research team. The interviewer is required to give them the information they need to understand the aims, risks and burdens of the trial, and the conditions under which it will be conducted. The person must be informed of their right to withdraw themselves, or the person they represent or have parental responsibility for, from the trial at any time. It is a requirement that the person, or if relevant the person with parental responsibility or a legal representative, must be given a contact point where they can get further information about the trial.

The regulations prohibit offering any incentive, except compensation for injury or loss, to:

- a child or young person under 16
- the person with parental responsibility for them
- a legal representative for a child or young person under 16 or for an adult who lacks capacity.¹¹

In emergency situations, the regulations permit treatment to be given as part of a trial to a child or young person or to an adult who lacks capacity before getting consent only when:

- the trial needs to be undertaken urgently
- it is not reasonably practical to get consent, and
- an appropriate research ethics committee has given approval for such recruitment.

In these circumstances, it is a legal requirement to get consent from the person with parental responsibility or the legal representative (or the adult if they recover capacity) as soon as possible.¹² If consent is withheld, the person must be withdrawn from the trial.

People participating in a trial can withdraw from the trial at any time. The person with parental responsibility or a legal representative can withdraw a child or young person or adult who lacks capacity from the trial at any time.

11 A legal representative under the *Medicines and Human Use (Clinical Trials) Regulations 2004* means a person who is suitable to act as a legal representative for a minor (under 16) or an adult who lacks capacity for the purpose of the trial and is available and willing to do so. They must not be involved in the conduct of the trial. For trials involving adults who lack capacity in Scotland, a legal representative means any guardian or welfare attorney who has power to consent, or the adult's nearest relative. In all cases, if there is no such person, a doctor not connected with the conduct of the trial but who is responsible for the medical treatment of the minor or adult, or a person nominated by the relevant healthcare provider, can be approached. You should refer to the clinical trials regulations for a full description.

12 *Medicines for Human Use (Clinical Trials) and Blood Safety and Quality (Amendment) Regulations 2008*. See www.opsi.gov.uk/si/si2008/uksi_20080941_en_1
Medicines for Human Use (Clinical Trials) (Amendment No.2) Regulations 2006. See www.opsi.gov.uk/si/si2006/20062984.htm

Participant safety

If urgent safety measures are introduced to protect participants against harm to their health or safety during a clinical trial of investigational medicinal products, the regulations require that the sponsor must immediately notify, in writing, the MHRA and the research ethics committee of the measures taken and why they were needed.

There are specific requirements to record, notify, assess, report, analyse and manage adverse events in trials.¹³ In particular, it is a requirement for the research investigator to immediately report to the sponsor any serious adverse event that occurs to a participant, unless the protocol sets out that the event does not need to be reported immediately. The sponsor is required to make sure that all relevant information about a suspected unexpected serious adverse reaction that occurs during a clinical trial of investigational medicinal products is reported within a specified period to the MHRA and the relevant research ethics committee.

13 The National Research Ethics Service and the Medicines and Healthcare products Regulatory Agency provide guidance on safety reports for clinical trials of investigational medicinal products.