

References to *Good medical practice* updated in March 2013

# Good practice in research and Consent to research

Research involving people directly or indirectly is vital in improving care and reducing uncertainty for patients now and in the future, and improving the health of the population as a whole.

The explanatory guidance *Good practice in research* and *Consent to research* set out the good practice principles that doctors are expected to understand and follow if they are involved in research. They provide more detailed guidance on how the principles in *Good medical practice* and in *Decision making and consent* apply in the context of research.

This document brings together all of the GMC's advice to doctors involved in research. This includes the full text of *Good practice in research* and *Consent to research* and extracts from *Confidentiality on research* and other secondary uses of data, and *0-18 years: guidance for all doctors* on involving children or young people in research.

An online version of the research guidance is available at [www.gmc-uk.org/guidance/research\\_guidance](http://www.gmc-uk.org/guidance/research_guidance). This guidance replaces the guidance booklet, *Research: The role and responsibilities of doctors* (2002), and comes into effect on 4 May 2010.

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# Good practice in research

## About this guidance

In *Good medical practice*,<sup>1</sup> we advise doctors who are involved in research that:

- 7 You must be competent in all aspects of your work, including management, research and teaching.
- 11 You must be familiar with guidelines and developments that affect your work.
- 12 You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.
- 67 You must act with honesty and integrity when designing, organising or carrying out research, and follow national research governance guidelines and our guidance.

This explanatory guidance is intended to provide more detailed advice about how to comply with these principles.

It should be read in conjunction with our other guidance, in particular:

- *Consent to research*, which explains how the principles in *Decision making and consent*<sup>2</sup> apply to research
- *Confidentiality: good practice in handling patient information*,<sup>3</sup> which gives guidance on research and other secondary uses of data, and
- *0–18 years: guidance for all doctors*, which gives additional advice on research involving children or young people.

Together, these guidance documents set out the GMC's advice to doctors involved in research. You must use your judgement in applying the principles in the guidance to the types of research you undertake, and to the situations you face in practice as a doctor, whether or not you hold a licence to practise. You must be prepared to explain and justify your decisions and actions. Only serious or persistent failure to follow our guidance that poses a risk to patient safety or public trust in doctors will put your registration at risk.

## Scope of the guidance

**1** Research in this guidance refers to an attempt to derive generalisable new knowledge. Research aims to find out what is best practice by addressing clearly defined questions with systematic and rigorous methods. It includes studies that aim to generate hypotheses as well as those that aim to test them.

**2** This guidance covers research with people, as well as research involving human tissue and records-based research that does not involve people directly.

**3** It also applies to clinical trials, which cover a broad range of different types of research involving people.<sup>4</sup> For example, they can test medicines or vaccines, treatments, surgical

procedures, devices, or health prevention or care. A clinical trial of investigational medicinal products is a particular type of trial that is governed by legislation. The key elements of the law for conducting a clinical trial of investigational medicinal products in the UK are set out in annex B.

- 4 This guidance does not apply to clinical audit or service evaluation projects, which aim to measure standards of care.<sup>5</sup> Nor does it cover innovative treatments designed to benefit individual patients. These activities are covered by the standards and principles set out in *Decision making and consent* and *Confidentiality: good practice in handling patient information*.

### Principles of good research practice

- 5 To protect participants and maintain public confidence in research, it is important that all research is conducted lawfully, with honesty and integrity, and in accordance with good practice. This guidance sets out principles of good research practice, which you must follow if you are involved in research.

### Law and governance

- 6 The law and governance arrangements that apply to research are complex and vary depending on the type of research, the participants involved, how it is funded and where in the UK it is undertaken. You must comply with the law, governance arrangements and codes of practice that apply to the research you are undertaking. The legal annexes to this guidance give more detail and links to further information about the relevant legal and governance framework for research (see annex A) and the key elements of the legislation that governs clinical trials of investigational medicinal products in the UK (see annex B).

### Good research design and practice

- 7 You must make sure that research is based on a properly developed protocol that has been approved by a research ethics committee.<sup>6</sup> It must be prepared according to good practice guidance given by government and other research and professional bodies.
- 8 You must make sure that the safety, dignity and wellbeing of participants take precedence over the development of treatments and the furthering of knowledge.<sup>7</sup>
- 9 You must make sure that foreseeable risks to participants are kept as low as possible. In addition, you must be satisfied that:
- the anticipated benefits to participants outweigh the foreseeable risks, or
  - the foreseeable risks to participants are minimal if the research only has the potential to benefit others more generally.
- 10 You must make sure that decisions at all stages of research, especially for recruitment, are free from discrimination<sup>8</sup> and respect participants' equality and diversity. You should take all reasonable steps to make sure that people eligible to participate in a project are given equal access to take part and the opportunity to benefit from the research. Where appropriate, you should use patient and public involvement groups at all stages of the project to help make sure that the research is well designed and conducted.
- 11 You should make sure that details of a research project are registered on an eligible, publicly available database that is kept updated, where such a database exists.
- 12 You should be satisfied that appropriate monitoring systems are in place to make sure research is being carried out in accordance with the law and good practice.

- 13 You must keep your knowledge and skills up to date. If you lead a research team, you must make sure that all members of the team have the necessary skills, experience, training and support to carry out their research responsibilities as effectively as possible.
- 14 You should make sure that commercial and other interests do not stop or adversely affect the completion of research. If you are concerned about this you should follow the guidance on raising your concerns in paragraph 19.

### Protecting participants from harm

- 15 You must stop research where the results indicate that participants are at risk of significant harm or, in research involving treatment required by a patient, where no benefit can be expected.
- 16 You must report adverse findings as soon as possible to the affected participants, to those responsible for their medical care, to the research ethics committee, and to the research sponsor<sup>9</sup> or primary funder where relevant. You must make sure that bodies responsible for protecting the public, for example, the Medicines and Healthcare products Regulatory Agency, are informed.<sup>10</sup>
- 17 You should make sure that participants are not encouraged to volunteer more frequently than is advisable or against their best interests. You should make sure that nobody takes part repeatedly in research projects if it might lead to a risk of significant harm to them. You should make sure that any necessary safeguards are in place to protect anybody who may be vulnerable to pressure to take part in research. You must follow our guidance in paragraphs 21-22 of *Consent to research* on involving vulnerable adults in research.
- 18 If a participant is involved in investigations that may contribute to a cumulative long-term risk of harm, for example, radiation from X-rays or radioactive substances, you must consider any previous exposure to the risk and make sure that a record is kept about their participation.<sup>11</sup>
- 19 If you have good reason to believe that participants are at risk of significant harm by taking part in research or by the behaviour of anyone conducting research, you must report your concerns to an appropriate person in your employing or contracting body. If you remain concerned you should inform the research ethics committee and the research sponsor or primary funder. You should follow the guidance in *Raising concerns about patient safety* if you are not sure when or how to raise concerns.
- 20 If you are responsible for acting on concerns raised by colleagues, you must make sure that reporting procedures are in place and that staff are aware of them. If a concern is brought to your attention you must take appropriate action promptly and professionally.<sup>12</sup>

### Honesty and integrity

- 21 You must conduct research honestly. If you are concerned about the quality or integrity of the research, including allegations of fraud or misconduct, you must follow the guidance in paragraph 19 on raising concerns. You must report evidence of financial or scientific fraud, or other breaches of this guidance, to an appropriate person in your employing or contracting body, and where appropriate to the GMC or other statutory regulatory bodies.
- 22 You must be open and honest with participants and members of the research team, including non-medical staff, when sharing information about a research project. You must answer questions honestly and as fully as possible.

- 23** You must make clear, accurate and legible records of research results, as soon as possible after the data are collected. You must keep records for the appropriate period<sup>13</sup> to allow adequate time for review, further research and audit, or to help resolve any concerns about the data or research project.
- 24** You must report research results accurately, objectively, promptly and in a way that can be clearly understood.<sup>14</sup> You must make sure that research reports are properly attributed and do not contain false or misleading data. Whenever possible, you should publish research results, including adverse findings, through peer-reviewed journals.<sup>15</sup>
- 25** You should make research findings available to those who might benefit. You should make reasonable efforts to inform participants of the outcome of the research, or make the information publicly available if it is not practical to inform participants directly.

#### Avoiding conflicts of interest

- 26** You must be open and honest in all financial and commercial matters relating to your research and its funding.
- 27** You must not allow your judgement about a research project to be influenced, or be seen to be influenced, at any stage, by financial, personal, political or other external interests. You must identify any actual or potential conflicts of interest that arise, and declare them as soon as possible to the research ethics committee, other appropriate bodies, and the participants, in line with the policy of your employing or contracting body.

#### Consent to research

- 28** You must get consent from participants before involving them in any research project. You must have other valid authority before involving in research adults who lack capacity, or children or young people who cannot consent for themselves.
- 29** You must make sure that people are informed of, and that you respect, their right to decline to take part in research and to withdraw from the research project at any time, with an assurance that this will not adversely affect their relationship with those providing care, or the care they receive.
- 30** When seeking consent for research, you must follow the guidance in *Consent to research* and, where relevant, *Consent: patients and doctors making decisions together*.

#### Respecting confidentiality

- 31** You must respect participants' right to confidentiality, and make sure that any data collected as part of a research project are stored securely and in accordance with data protection law and other requirements.
- 32** You must follow the guidance in *Confidentiality: good practice in handling patient information*, in particular the guidance in paragraphs 77–86 and 103–114 on using and disclosing patient information for secondary purposes, if you undertake records-based research that does not involve people directly.

## Endnotes

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- 1 General Medical Council (2013).
- 2 *Decision making and consent.*
- 3 *Confidentiality: good practice in handling patient information.*
- 4 The World Health Organization defines a clinical trial as any research study that prospectively assigns human participants or groups of humans to one or more health-related interventions to evaluate the effects on health outcomes. Clinical trials may also be referred to as interventional trials. Interventions include but are not restricted to drugs, cells and other biological products, surgical procedures, radiologic procedures, devices, behavioural treatments, process-of-care changes, preventive care, etc. This definition includes phase I to phase IV trials.
- 5 The National Research Ethics Service provides definitions of research, clinical audit, service evaluation and surveillance.
- 6 Research ethics committees (RECs) have a responsibility to safeguard the rights, safety, dignity and wellbeing of people participating in research. They review applications for research and give opinions about the proposed participant involvement and whether the research is ethical. Guidance on whether research requires ethical review under either the law or the policy of the UK health departments can be found on the National Research Ethics Service website.
- 7 Update to: World Medical Association Declaration of Helsinki, 2013
- 8 Restricting research participants to subgroups of the population that may be defined, for example, by age, gender, ethnicity or sexual orientation, for legitimate methodological reasons does not constitute discrimination.
- 9 A sponsor is the person, individual or group that takes responsibility for the initiation, management and financing (or arranging the financing) of the research. All research undertaken in the NHS must have a sponsor. You should refer to the Medicines for Human Use (Clinical Trials) Regulations 2004 for a full definition of a sponsor and its responsibilities in clinical trials of investigational medicinal products.
- 10 Medicines and Healthcare products Regulatory Agency
- 11 Further advice is provided in the publication Notes for Guidance on the Clinical Administration of Radiopharmaceuticals and Use of Sealed Radioactive Sources (Administration of Radioactive Substances Advisory Committee, 2006).
- 12 Further advice on responding to incidents and complaints is set out in paragraphs 44-45 of Management for doctors.
- 13 Personal Information in Medical Research (pdf) (Medical Research Council, 2000) provides further advice on how long research records should be kept. The NHS Code of Practice: Records Management (Department of Health, 2006); Records Management: NHS Code of Practice (Scotland) (Scottish Government, 2008); Welsh Health Circular (2000) 71: For The Record (National Assembly for Wales); and Good Management, Good Records (Department of Health, Social Services and Public Safety, Northern Ireland, 2005) all include schedules of the minimum periods for which research records should be kept.
- 14 The EQUATOR Network website provides advice on good practice in reporting health research.
- 15 Further information on publication and authorship is provided in section 3.15 of the Code of Practice for Research: Promoting good practice and preventing misconduct (UK Research Integrity Office, 2009).

# Consent to research

## About this guidance

In *Good medical practice*,<sup>1</sup> we advise doctors who are involved in research that:

- 17 You must be satisfied that you have consent or other valid authority before you carry out any examination or investigation, provide treatment or involve patients or volunteers in teaching or research.

Our guidance *Decision making and consent*<sup>2</sup> sets out the principles of good practice in making decisions in partnership with patients. That guidance focuses on decision making in the context of investigations and treatment, but the principles apply more widely, including to decisions on taking part in research. It gives advice on sharing information, discussing side effects, complications and other risks, and making and recording decisions. When relevant, you must follow the principles it sets out when seeking people's consent to take part in research.

This supplementary guidance is intended to explain how good practice principles in making decisions and seeking consent apply to research. It also provides advice on involving in research children or young people, vulnerable people, and people who lack capacity to consent.

Annex B explains the key elements of the legislation for seeking people's consent to take part in clinical trials of investigational medicinal products.<sup>3</sup>

You should read this guidance in conjunction with our other guidance, in particular:

- *Good practice in research*, which sets out the principles on which good practice in research is founded,
- *Confidentiality: good practice in handling patient information*,<sup>4</sup> which gives guidance on research and other secondary uses of data, and
- *0–18 years: guidance for all doctors*, which gives additional advice on research involving children or young people.

Together, these guidance documents set out the GMC's advice to doctors involved in research. You must use your judgement in applying the principles in the guidance to the types of research you undertake, and to the situations you face in practice as a doctor, whether or not you hold a licence to practise. You must be prepared to explain and justify your decisions and actions. Only serious or persistent failure to follow our guidance that poses a risk to patient safety or public trust in doctors will put your registration at risk.

## Seeking consent

### Valid consent

- 1 Seeking consent is fundamental in research involving people. Participants' consent is legally valid and professionally acceptable only if they have the capacity to decide whether to take part in the research, have been properly informed, and have agreed to participate without pressure or coercion.
- 2 When conducting research involving people who cannot consent for themselves, you must follow the guidance that applies, such as the advice on research involving children or young people in paragraphs 14–20 and on adults who lack capacity in paragraphs 23–35.

### Right to withdraw from research

- 3 You must make sure that people are informed of, and that you respect, their right to decline to take part in research and to withdraw from the research project at any time, with an assurance that this will not adversely affect their relationship with those providing care or the care they receive. You should tell people if the treatment options available to them might be affected by a decision to withdraw from a research project.

### Sharing information

- 4 You must give people the information they want or need in order to decide whether to take part in research. How much information you share with them will depend on their individual circumstances. You must not make assumptions about the information a person might want or need, or their knowledge and understanding of the proposed research project.
- 5 In most cases, the information people will need to decide whether to take part in research will be included in the participant information sheet. The National Research Ethics Service gives advice on the design of information sheets and consent forms, and the key points they should cover. You should follow that advice if you are developing information sheets or consent forms.<sup>5</sup>

- 6 You should give people any further information they ask for. This might include a copy of the protocol approved by a research ethics committee (subject to considerations of confidentiality, commercial privilege or the possible undermining of the purpose of the study). You should make sure people have the details of an individual or organisation they can contact to discuss the research project and get further information.

### Giving information in a way that people can understand

- 7 You must make sure that people are given information in a way that they can understand. You should check that people understand the terms that you use and any explanation given about the proposed research method. If necessary, you should support your discussions with simple and accurate written material or visual or other aids.
- 8 You must make sure, whenever practical, that arrangements are made to meet people's language, communication and other support needs. It is important to make sure that people who require additional assistance are not excluded from research and from the benefits that research can offer them and the wider groups to which they belong.

### Responsibility for seeking consent

- 9 If you are responsible for seeking consent, you must understand the research project, including what the project will involve and any anticipated benefits and foreseeable risks.
- 10 If you delegate the responsibility to someone else, you must make sure they have sufficient understanding of the research project, and the appropriate skills and competence to seek consent.

### Recording consent

**11** You should record the key elements of your discussion with people about their decision to take part in research. If practical, you should ask them, or someone with valid authority, to give written consent. It is a legal requirement to get written consent from participants in clinical trials of investigational medicinal products.<sup>6</sup>

### Sharing information with others involved in care

**12** With the participant's consent, you should usually inform their GP and other clinicians responsible for their care about their involvement in a research project, and you should provide the doctors with any other information necessary for the participant's continuing care. You should follow this advice regardless of whether the participant is a patient or a healthy volunteer.

**13** If a participant objects to information being shared in this way, you should explain to them the potential consequences of not sharing information. If the participant continues to object, you must respect their wishes, unless sharing the information is justified in the public interest.<sup>7</sup>

### Areas requiring special consideration

#### Research involving children or young people

**14** When considering involving children or young people in research, you must follow the advice in *0–18 years: guidance for all doctors*.<sup>8</sup> It gives advice on the circumstances in which children or young people can be involved in research, effective communication with children and young people, and assessing capacity to consent. It also explains the different legal requirements across the UK for 16 and 17-year olds who lack capacity to consent.

**15** There are particular considerations in relation to seeking and acting on consent for children or young people to participate in research. As part of seeking approval for the project from a research ethics committee, you must clearly explain the arrangements for getting consent and seek advice if necessary.

**16** Before involving a child or young person in research you must get consent from a parent,<sup>9</sup> but you should get consent from both parents, if possible, particularly if the research involves more than low or minimal risk of harm. If a parent is under 16 years of age, you must get consent from them if they have the capacity to make a decision about whether their child should take part in the research project. If a child or young person is able to consent for themselves, you should still consider involving their parents, depending on the nature of the research.

**17** You should aim to reach a consensus with parents about a child or young person's participation in research. If disagreements arise it is usually possible to resolve them informally, and you should follow the advice in paragraphs 92–93 *Decision making and consent*. If disagreements cannot be resolved informally, you should not involve the child or young person in research, unless the treatment can be accessed only as part of a research project and you assess that it is in their best interests. In these circumstances, if the decision about entering the child or young person in research has significant consequences for the child or young person, you should seek legal advice about whether you should apply to the appropriate court for an independent ruling.

**18** You should be familiar with the guidance on involving children or young people in research published by other relevant organisations,<sup>10</sup> for example, the Medical Research Council, the Royal College of Paediatrics and Child Health, the Royal College of Physicians of London, and the British Medical Association.

Annex B contains specific advice on some of the legal requirements for involving children or young people under 16 in clinical trials of investigational medicinal products.

### Emergency research

**19** Circumstances may arise where involvement in research has the potential to benefit a child or young person who lacks capacity, but an urgent decision about the child's involvement needs to be made before it is possible to get consent from a parent. This may arise because a parent cannot reasonably be contacted, or they do not have capacity to consent because of their own condition or distress. In such cases you can involve a child or young person in research if you have the approval of a research ethics committee for such recruitment. You must seek the consent of a parent as soon as possible to continue involving them in the project.

**20** There are specific legal requirements that relate to involving children or young people under 16 in emergency clinical trials of investigational medicinal products. Annex B contains further guidance on the legal requirements in these circumstances.

### Research involving vulnerable adults

**21** Some adults with capacity may be vulnerable to pressure to take part in research. You should be aware that their health or social circumstances might make them vulnerable to pressure from others. Vulnerable adults may be, for example, living in care homes or other institutions, or have learning difficulties or mental illness. In these circumstances, it is particularly important that you check whether they need any additional support to understand information or to make a decision.<sup>11</sup> You must make sure that they know they have the right to decline to participate in research, and that they are able to decline if they want to. The Royal College of Physicians of London provides further guidance on involving vulnerable groups in research.<sup>12</sup>

**22** You should raise concerns with a senior colleague, or your employing or contracting organisation, if systems are not in place to provide the additional support that vulnerable adults may need to make a decision about taking part in research. If you are not sure when or how to raise concerns, you should follow the guidance in Raising concerns about patient safety.<sup>13</sup>

### Research involving adults without capacity

**23** This section gives guidance about specific issues in research involving adults who lack capacity. It sets out the key elements of the law that governs the involvement of people over 16 who lack capacity to consent. Annex A contains a summary of the law in this area, and annex B explains the key elements of the legislation that governs clinical trials of investigational medicinal products in the UK.

**24** You must assess an adult's capacity to make a particular decision at the time it needs to be made. You must follow the guidance in paragraphs 76, 78, 79 and 84–86 of *Decision making and consent*,<sup>14</sup> which gives advice on maximising a person's ability to make decisions, and on assessing capacity.

### *When adults without capacity might be involved in research*

**25** You must only undertake research involving an adult who lacks capacity if it is related to their incapacity or its treatment. You must not involve in research adults who lack capacity if the same or similar research could be undertaken by involving only people with capacity.

**26** You should only involve in research adults who lack capacity, including clinical trials of investigational medicinal products, if the research is expected to provide a benefit to them that outweighs the risks. Research, not including clinical trials of investigational medicinal products, may also involve adults who lack capacity if the research is not expected to provide a direct benefit to them but is expected

to contribute to the understanding of their incapacity, leading to an indirect benefit to them or others with the same incapacity, and if the risks are minimal. This means that the person should not suffer harm or distress by taking part. In all research involving adults who lack capacity, you must make sure that the foreseeable risks are kept as low as possible.<sup>15</sup>

### ***Seeking to involve adults without capacity in research***

**27** You should consider the views of people close to the adult who lacks capacity to consent before involving that person in a research project. They are often best placed to know the person's wishes about taking part in research. In clinical trials of investigational medicinal products, you must get consent from a legal representative.<sup>16</sup>

**28** Under the *Mental Capacity Act 2005* (in England and Wales) you must consult a consultee<sup>17</sup> about whether the adult who lacks capacity should take part in the research, and what they think that person's wishes would be if they had capacity to decide for themselves. If the consultee considers that they probably would not wish to take part, you must not include them in the research. Under the *Adults with Incapacity (Scotland) Act 2000*, you must get consent from any guardian or welfare attorney who has power to consent to the adult's participation in research or, if there is no such guardian or welfare attorney, from the person's nearest relative.<sup>18</sup>

**29** If you are seeking to involve an adult who has lost capacity to consent, for example, through onset or progress of a condition that has impaired their capacity, such as dementia, you should take all reasonable steps to find out whether they have previously indicated their wishes about participating in future research, including any refusal to participate. You must consider any evidence of the person's previously expressed preferences, such as an advance statement or decision.<sup>19</sup>

### ***Right to withdraw from research***

**30** You must make sure that a participant's right to withdraw from research is respected. You should consider any sign of objection, distress or indication of refusal, whether or not it is spoken, as implied refusal. Under the *Mental Capacity Act 2005* (in England and Wales) you should usually withdraw the participant from the research if the consultee considers that they would wish to be withdrawn. In clinical trials of investigational medicinal products, the legal representative can withdraw the participant from the trial at any time.

### ***Loss of capacity during a research project***

**31** Some people with capacity will consent to take part in research, but then may lose capacity before the end of the project. If you become aware that a participant has lost capacity, you should consider carefully the benefits and harm that could occur from their continued participation in the research, and you must follow the law that applies where you work.<sup>20</sup>

**32** If you are seeking to involve a person in research who you believe may lose capacity during the course of the project, you should consider seeking their views about the circumstances in which they would wish to continue to participate. You should explain to them the steps that would be taken to decide whether they should continue to take part and how their wishes, if known, would be taken into account.

### ***Research into treatment in emergencies***

**33** You may want to undertake urgent research into procedures or treatments used in emergencies when a person is unconscious or otherwise unable to make a decision. In an emergency situation it is not always possible to get consent to involve a person in research using the standard consent procedures.

**34** The *Mental Capacity Act 2005* permits urgent research in emergencies to start when it is not practical to consult someone about involving a person who lacks capacity in research. In this

situation you must either get agreement from a doctor not involved in the research, or follow a procedure approved by a research ethics committee. Similarly, you can start a clinical trial of investigational medicinal products when it needs to be undertaken urgently if you cannot get the consent of a legal representative, as long as a research ethics committee has given approval for such action. The *Adults with Incapacity (Scotland) Act 2000* provides for emergency clinical trials of investigational medicinal products but not for other types of emergency research. If this situation arises you should seek legal advice on how to proceed.

- 35** You must follow the law on continuing to involve in emergency research an adult who lacks capacity. You must get consent from the adult as soon as possible if they recover capacity.

### Research involving human tissue

- 36** You must keep up to date with, and comply with, the laws and codes of practice that apply to the use in research of human organs, tissue and cells. The Human Tissue Authority (HTA) publishes a number of codes of practice,<sup>21</sup> including those on consent and research, which advise on the issues you should consider when seeking consent for the purpose of research.
- 37** In England, Wales and Northern Ireland, the *Human Tissue Act 2004* requires consent<sup>22</sup> to be obtained before the storage and use of a living person's organs, tissue or cells for the purpose of research in connection with disorders in, or the functioning of, the human body. In a number of specific circumstances, there are exceptions to the consent requirements; for example, a living person's organs, tissue or cells may be stored and used without consent if the researcher is unable to identify the person it has come from, and if it is used for a specific research project that has been approved by a research ethics committee. The *Human Tissue Act 2004* also requires consent to be obtained for the removal,

storage and use of a deceased person's organs, tissue and cells for the purpose of research in connection with disorders in, or the functioning of, the human body. Regulations<sup>23</sup> made under the *Human Tissue Act 2004* permit the use and storage of organs, tissue or cells from adults who lack capacity for research under certain circumstances.

- 38** The *Human Tissue (Scotland) Act 2006* requires authorisation to be obtained before the storage and use of a deceased person's organs, tissue or cells for the purposes of research.<sup>24</sup> The Act does not cover the storage and use of tissue from living people for the purposes of research.
- 39** The *Medicines for Human Use (Clinical Trials) Regulations 2004* apply to the use of tissue in clinical trials of investigational medicinal products.

### Endnotes

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- 1 Good medical practice (2013).
- 2 *Decision making and consent*
- 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 *Confidentiality: good practice in handling patient information.*

5 Information & consent forms. Guidance for researchers and reviewers (pdf) (National Research Ethics Service, 2011).

6 In clinical trials of investigational medicinal products, consent is only valid if it is recorded in writing. If the person is unable to give written consent, for example, if they have a disability which means that they cannot write, they can give consent orally in the presence of at least one witness and this must be recorded in writing.

7 Paragraphs 26–33 of *Confidentiality: good practice in handling patient information* provide further advice on sharing information with others involved in care.

8 *0–18 years: guidance for all doctors.*

9 References to parent or parents in this guidance mean those with parental responsibility for the child. See appendix 2 of *0-18 years: guidance for all doctors* for an explanation of this term. You should also consider the views of others who are close to the child or young person but who do not have parental responsibility.

10 *Medical research involving children* (pdf) (Medical Research Council, 2004), *Guidelines for the ethical conduct of medical research involving children* (Royal College of Paediatrics and Child Health: Ethics Advisory Committee, 2000), *Guidelines on the practice of ethics committees in medical research with human participants* (Royal College of Physicians, 2007).

11 Paragraphs 11, 13b, 21, 27–29 of *Decision making and consent* provide guidance on sharing information.

12 *Guidelines on the practice of ethics committees in medical research with human participants* (Royal College of Physicians, 2007).

13 *Raising concerns about patient safety.*

14 *Decision making and consent.*

15 For the legal requirements to involve an adult without capacity in research see the *Mental Capacity Act 2005* (section 31) and the *Mental Capacity Act 2005 Code of Practice* (chapter 11, paragraphs 11.9-11.19); *Adults with Incapacity (Scotland) Act 2000* (section 51); *Medicines for Human Use (Clinical Trials) Regulations 2004* (schedule 1, part 5).

16 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 regulations for a full description.

- 17 *Guidance on nominating a consultee for research involving adults who lack capacity to consent* (Department of Health, 2008).
- 18 *The Adults with Incapacity (Scotland) Act 2000 Part 5 Code of Practice: A short guidance to the Act* provides information about guardian and welfare attorneys.
- 19 *Mental Capacity Act Code of Practice* (chapter 11, paragraph 11.30); *Adults with Incapacity (Scotland) Act 2000 Part 5 Code of Practice* (the general principles section); *Medicines for Human Use (Clinical Trials) Regulations 2004* (schedule 1, part 1, section 1(5)).
- 20 There are specific regulations under the *Mental Capacity Act 2005* for participants who gave consent before 31 March 2008 to take part in research that began before October 2007 but subsequently lost capacity to consent to continue to take part in the project.
- Mental Capacity Act 2005 (Loss of Capacity during Research Project) (England) Regulations 2007.*
- Mental Capacity Act 2005 (Loss of Capacity during Research Project) (Wales) Regulations 2007.*
- There are no specific legal provisions under the *Adults with Incapacity (Scotland) Act 2000* relating to the loss of capacity during research in Scotland.
- In clinical trials of investigational medicinal products, consent from an adult to participate in a trial remains valid after loss of capacity providing the trial is not significantly altered (*Medical Research Council ethics guide: medical research involving adults who cannot consent, 2007*).
- 21 *Human Tissue Authority - Codes of Practice*
- 22 *The Human Tissue Authority's Code of Practice 9 – Research* advises that you can rely on generic consent but you must make sure consent is valid. If the intention is to store the tissue for an as yet unknown research purpose or as part of a tissue bank for research then this should be explained, setting out the types of research that may be involved, any wider implications and the circumstances under which the tissue will be disposed of.
- 23 *Human Tissue Act 2004 (Persons who Lack Capacity to Consent and Transplants) Regulations 2006.*
- 24 *Summary of legal requirements for research with human tissue in Scotland* (pdf) (Medical Research Council, 2007)