

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

Research

Section 32: Consulting carers etc

102. Before any decision is taken to involve a particular person in approved research, the researcher must take reasonable steps to identify a person close to the person (this could include an attorney or deputy but not someone acting in a professional capacity or for payment, such as a paid carer) who is prepared to be consulted about the person's involvement in the research (*subsection (2)*). If there is no such person, then the researcher must nominate a person independent of the research in accordance with guidance issued by the appropriate authority (see paragraph 99).
103. *Subsection (4)* requires the researcher to give the consultee information about the research and to ask him or her for advice as to whether the person should take part in the research and what, in his opinion, the consultee's wishes and feelings would be about taking part in the research. If at any time the person consulted advises the researcher that in his opinion the person's wishes and feelings would be likely to lead him to decline to take part in the project then the researcher must ensure that the person does not take part in the project, or if it is already underway must ensure that the person is withdrawn from it. But the person may still receive treatment he was receiving during the research if withdrawal would create a significant risk to his health (*subsection (6)*).
104. *Subsections (8)* and *(9)* allow for action to be taken in relation to the research where treatment is to be provided to the person urgently and there is insufficient opportunity to consult. The researcher may proceed if he has the agreement of a doctor who is not connected to the project or in accordance with a procedure agreed by the appropriate body at the time of approval. However *subsection (10)* makes it clear that the researcher may only rely on *subsection (9)* while there is an urgent need to treat. Examples of this type of research may involve action by a paramedic or doctor to make measurements in the first few minutes following a serious head injury or stroke. These arrangements are similar to those provided for in the Clinical Trials Regulations.