



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Research*

### **32 Consulting carers etc.**

- (1) This section applies if a person (“R”)—
  - (a) is conducting an approved research project, and
  - (b) wishes to carry out research, as part of the project, on or in relation to a person (“P”) who lacks capacity to consent to taking part in the project.
- (2) R must take reasonable steps to identify a person who—
  - (a) otherwise than in a professional capacity or for remuneration, is engaged in caring for P or is interested in P's welfare, and
  - (b) is prepared to be consulted by R under this section.
- (3) If R is unable to identify such a person he must, in accordance with guidance issued by the appropriate authority, nominate a person who—
  - (a) is prepared to be consulted by R under this section, but
  - (b) has no connection with the project.
- (4) R must provide the person identified under subsection (2), or nominated under subsection (3), with information about the project and ask him—
  - (a) for advice as to whether P should take part in the project, and
  - (b) what, in his opinion, P's wishes and feelings about taking part in the project would be likely to be if P had capacity in relation to the matter.
- (5) If, at any time, the person consulted advises R that in his opinion P's wishes and feelings would be likely to lead him to decline to take part in the project (or to wish to withdraw from it) if he had capacity in relation to the matter, R must ensure—

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*Status: Point in time view as at 01/07/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 32. (See end of Document for details)*

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- (a) if P is not already taking part in the project, that he does not take part in it;
  - (b) if P is taking part in the project, that he is withdrawn from it.
- (6) But subsection (5)(b) does not require treatment that P has been receiving as part of the project to be discontinued if R has reasonable grounds for believing that there would be a significant risk to P's health if it were discontinued.
- (7) The fact that a person is the donee of a lasting power of attorney given by P, or is P's deputy, does not prevent him from being the person consulted under this section.
- (8) Subsection (9) applies if treatment is being, or is about to be, provided for P as a matter of urgency and R considers that, having regard to the nature of the research and of the particular circumstances of the case—
- (a) it is also necessary to take action for the purposes of the research as a matter of urgency, but
  - (b) it is not reasonably practicable to consult under the previous provisions of this section.
- (9) R may take the action if—
- (a) he has the agreement of a registered medical practitioner who is not involved in the organisation or conduct of the research project, or
  - (b) where it is not reasonably practicable in the time available to obtain that agreement, he acts in accordance with a procedure approved by the appropriate body at the time when the research project was approved under section 31.
- (10) But R may not continue to act in reliance on subsection (9) if he has reasonable grounds for believing that it is no longer necessary to take the action as a matter of urgency.

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**Commencement Information**

**II** S. 32 wholly in force at 1.10.2008; s. 32 not in force at Royal Assent see s. 68(1)-(3); s. 32 in force for certain purposes at 1.7.2007 and 1.10.2007 and in force at 1.10.2008 in so far as not already in force by S.I. 2006/2814, arts. 2, 3, 4 (as amended by S.I. 2006/3473, art. 2); S.I. 2007/856, arts. 2, 3, 4

**Status:**

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**Changes to legislation:**

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