Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Section 135 is up to date with all changes known to be in force on or before 26 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

2016 CHAPTER 18

PART 8

RESEARCH

Approved research projects

Requirement to consult nominated person, carer etc

135.—(1) This section applies if a person ("R")—

(a) is conducting a research project approved under section 134; and

(b) wishes to carry out research, as part of the project, on or in relation to a person ("P") who is 16 or over and 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, 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 R must, in accordance with guidance issued by the Department, appoint a person who—

(a) is prepared to be consulted by R under this section; and

(b) has no connection with the project.

(4) R must provide the person identified under subsection (2), or appointed under subsection (3), with information about the project and ask that person—

(a) for advice as to whether P should take part in the project; and

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(b) what, in that person's 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 that person's opinion P's wishes and feelings would be likely to lead P to decline to take part in the project (or to wish to withdraw from it) if P had capacity in relation to the matter, R must ensure—

(a) if P is not already taking part in the project, that P does not take part in it;

(b) if P is taking part in the project, that P is withdrawn from it.

(6) Subsection (5)(b) does not require treatment that P has been receiving as part of the project to be discontinued if the treatment can lawfully be carried out despite P having withdrawn from the project.

(7) In subsection (2)(a) "in a professional capacity" means under a contract of employment, under any other contract with any person, or as a volunteer for any organisation.

(8) The fact that a person within subsection (2)(a) is—

(a) an attorney under a lasting power of attorney, or an enduring power of attorney, granted by P,

(b) P's deputy, or

(c) P's nominated person,

does not prevent that person from being the person consulted under this section.

(9) This section is subject to section 136 (urgent treatment).

Commencement Information

I1 S. 135 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by 2022 c. 18 (N.I.) Sch. 3 para. 77(b)