# Patient Information and Consent

<table>
<thead>
<tr>
<th>Version</th>
<th>Effective date</th>
<th>Reason for change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Version 1.3</td>
<td>22 August 2010</td>
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</tr>
<tr>
<td>Version 1.2</td>
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<td>Addition of information relating to the Mental Capacity Act and obtaining consent from persons whose first language is not English</td>
</tr>
<tr>
<td>Version 1.0</td>
<td>March 2006</td>
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</tbody>
</table>

**Effective:** 31 October 2012

**Version:** 1.4
Patient Information and Consent

1. Purpose
This Standard Operating Procedure (SOP) concentrates mainly on the procedure for obtaining informed consent from adults with capacity to participate in a trial. This involves informing the participant by means of a verbal explanation and written patient information.

This SOP also outlines the procedure for the recruitment of participants who may be unable to give consent (including adults who lack capacity, minors, and those in emergency situations).

There is extensive guidance on patient information sheets and consent forms available from the National Research Ethics Service (NRES) website: http://www.nres.nhs.uk/applications/guidance/consent-guidance-and-forms/ in a document entitled ‘Information Sheets and Consent Form Guidance’.

2. Background
The EU Clinical Trials Directive (2001/20/EC) Article 2 defines informed consent in the following way:
‘informed consent’: decision, which must be written, dated and signed, to take part in a clinical trial, taken freely after being duly informed of its nature, significance, implications and risks and appropriately documented, by any person capable of giving consent or, where the person is not capable of giving consent, by his or her legal representative; if the person concerned is unable to write, oral consent in the presence of at least one witness may be given in exceptional cases, as provided for in national legislation.

It is morally and professionally unacceptable to perform any research related procedure on someone without first obtaining their informed consent. However, there are occasions where exceptions arise.

Special conditions apply when research involves those in emergency situations, those who have mental incapacity and/or minors.

For Clinical Trials of Investigational Medicinal Products (CTIMPs), The Medicines for Human Use (Clinical Trials) Regulations 2004 must be followed. The Mental Capacity Act (MCA) 2005 will be applied if the research involves non-drug interventions, procedures, devices or investigations. Within the Act, sections 30 – 34 relate to research. Both the Clinical Trials Regulations and the Mental Capacity Act have the same status in law.

In clinical trials where the randomisation is at the group rather than the individual level, known as cluster randomised trials, individual consent is usually not possible, and standard practice is not to seek individual consent but to seek consent from a ‘cluster guardian’. However, Medical Research Council (MRC) guidelines on cluster randomised trials state that ‘it is important to seek individual consent where possible.’
The protocol for cluster-randomised trials will need to state explicitly whether individual consent is possible, and at what stage it would be possible to obtain that consent. It will include whether, and how, it might be possible to opt out of the intervention(s). Individual consent is still required for data collection when personal information is collected or when there is direct contact with individual participants for assessing outcome measures. It may be necessary to discuss this process and take advice on a trial by trial basis with an external expert or senior colleague.

It is important to remember that consent is a process of information exchange, not just the signing of a piece of paper. This process involves the giving of information, the discussion and clarification of the information and taking the participant’s verbal and written consent. Potential recruits to a clinical trial must be given sufficient information and time to allow them to decide whether or not they want to take part.

In some circumstances, for example questionnaire studies, where individuals are identified as participants from a GP’s list, consent may be ‘implied’ rather than explicit. Therefore, if a person responds to an unsolicited questionnaire, the fact that they have completed and returned the questionnaire implies their consent.

The process for obtaining informed consent must be approved by the relevant research ethics committee.

For more information refer to section 4.8 of the International Conference on Harmonisation (ICH) Good Clinical Practice (GCP) guidelines or section 5.4 of the MRC GCP guidelines, depending on the type of trial.

You are advised to refer to the University of Warwick Ethics and Research Governance policy available on the Research Support Services website

http://www2.warwick.ac.uk/services/rss/researchgovernance_ethics/

3. Procedure

3.1 Who?
The ICH GCP guidelines state that ‘The Investigator, or a person designated by the Investigator should fully inform the participant’ (ICH GCP 4.8.5) and the written informed consent form should be signed and dated by the ‘person who conducted the informed consent discussion’.

When staff other than the investigator are to accept responsibility for the informed consent process and/or being the sole signatory on the Informed Consent Form it is important the following criteria are met (from National Cancer Research Network advice):

1. The nurse/designee is suitably qualified and prepared to take on this additional responsibility AND feels confident to take informed consent (in line with the Nurses and Midwives Council (NMC) Code of Professional Conduct or other professional organisational guidelines).

2. He or she has a comprehensive understanding of the trial, potential pharmacological interactions/treatment toxicities and the associated disease
area. The nurse/designee should be qualified by experience and/or should have received appropriate training for this trial. All training must be documented.

3. There is a written agreement between the Chief Investigator and the named nurse/designee who will take informed consent for this specific trial. The delegation of responsibility should be documented.

4. The process has been approved by the relevant NHS Trust R&D Office (as local policy) and Trial Sponsor.

5. That written documentation from the Chief Executive (or Senior Manager according to local policy), confirming the Trust’s (or equivalent) indemnity arrangements cover the nurse/designee’s extended role within the informed consent process. If the University is acting as Sponsor, indemnity cover must be in place prior to any recruitment. Refer to SOP 10; Insurance, and contact RSS to obtain the relevant permissions.

6. An effective line of communication is maintained back to the Chief Investigator/person who is ultimately responsible for the patient’s care.

The final responsibility for ensuring that participants of a trial have fully understood what they are being asked to do lies with the Chief Investigator.

3.2 When?

For adults with capacity in non-emergency situations, informed consent must be obtained:

(a) After checks to determine eligibility have been performed
(b) Before randomisation and any trial-related procedures are performed (any procedure that would not have been performed during normal management of the participant. This could include some eligibility checks), and
(c) Before baseline assessment is performed.

However, the consent process should not cease once the consent form has been signed. The practice of giving information about the trial to participants should be an on-going process performed by all members of the research team. This is particularly significant with the introduction of protocol amendments and the availability of important new information that may be relevant to the participant’s willingness to continue taking part in the trial. In these circumstances it may require the trial participant to re-consent on the amended consent form in order to continue involvement in the trial.

The timing of the signing of the consent form relative to the initiation of trial procedures, and the process used to obtain consent, is subject to audit by governing bodies (e.g. Medicines and Healthcare products Regulatory Agency (MHRA)).

In emergency situations where an Investigational Medicinal Product (IMP) needs to be administered urgently to an unconscious patient, time may not allow for gaining the written consent of a legal representative. The Medicines for Human Use (Clinical Trials) (Amendment No2) Regulations 2006 allows incapacitated adults to be entered into a trial prior to consent being obtained (with certain provisions).
3.3 How?
Potential trial participants, i.e. those who fulfil the inclusion/exclusion criteria of the trial, will be identified and will be approached by either the investigator or designee as defined in ‘Section 3.1 Who?’

The process for obtaining consent from adults with capacity is outlined below, followed by the key differences in the process for incapacitated adults, those in emergency situations and minors.

In the case of adults with capacity the following procedure should be followed:

Determine who is responsible for obtaining informed consent

Seek informed consent:
- after eligibility checks have been performed
- before randomisation
- before any trial-related procedures

Provide written information about the trial in an appropriate format and allow sufficient time for the participant to read and understand it (usually at least 24 hours)

Provide answers to any questions which arise to ensure the participant has fully understood all the information they have been given.

Participant and person taking consent sign and date consent form

3.3.1 Informing the participant (adults with capacity)
Information should be provided to potential trial participants in both an oral and written form. This SOP describes both elements. This advice is taken from NRES and there is extensive guidance on their website.

- In obtaining and documenting informed consent, the Investigator should comply with the applicable regulatory requirement(s), and should adhere to GCP and to the ethical principles that have their origin in the Declaration of Helsinki.
- Prior to the start of any trial, written approval from the Research Ethics Committee (REC) will have been obtained for the use of the patient
information sheet (see Appendix 1), the written consent form (see Appendix 2) and any other written information to be provided to participants.

- Information may be presented to potential participants using many formats and different media, including video, posters, recorded consultations, CD Rom etc. All information presented to participants is subject to ethics approval (as above).

- The information sheet and consent form should be revised when necessary i.e. when new information becomes available that may be relevant to the participant’s consent. Any revisions should be approved by the REC before use. The participant should be informed of new information in a timely manner. The communication of this information should be documented in the participant’s medical records and trial records, as appropriate.

- Neither the Investigator nor any member of the clinical research team should coerce or unduly influence a participant to participate or to continue to participate in a trial.

- Any information imparted to the participant (written or verbal) should not contain any language that causes the participant to waive (or appear to waive) any legal rights, or that releases (or appears to release) the investigator, institution or sponsor from liability for negligence.

- The language used in the oral and written information about the trial including the written consent form, should be as clear and concise as is practicable, and should be described in layman’s terms so as to be understandable by the participant. The use of diagrams may assist in this process. A comprehensive list of information that should be included in any explanation to a potential participant can be found on the NRES website.

  http://www.nres.nhs.uk/applications/guidance/consent-guidance-and-forms/

- The information sheet and consent form should be identifiable by date and/or version number and be printed on headed paper associated with the particular Institution responsible for the trial.

- The participant should be provided with ample time and opportunity to read the consent form. Ideally the potential participant should have a minimum period of twenty-four hours to review the trial information in order for the individual to discuss the trial with family, friends or others.

3.3.2 Taking informed consent (adults with capacity)

- When the person taking informed consent is satisfied that the participant has been fully informed and understands what trial participation entails, the consent form should be signed (see Appendix 2 for an example of the consent form to be used) and personally dated by the participant and by the authorised person who conducted the informed consent discussion.

- Three copies of the signed and dated consent form should be made. The original form should be filed in relevant section of the Trial Site File. One copy should be given to the participant and the other copy should be filed in the participant’s medical records. Participants should receive copies of all relevant, updated and new information, regarding the trial throughout their participation.
The participant’s General Practitioner should be informed in writing about their participation in the trial and receive appropriate information regarding the trial. This requires the patient’s consent.

If an adult with capacity gives informed consent to participate in a trial governed by the Medicines for Human Use (Clinical Trials) Regulations, but subsequently becomes unable to give informed consent by virtue of physical or mental incapacity, the consent previously given when capable remains legally valid. For other types of research (i.e. non-drug trials), the provisions of the Mental Capacity Act will come into force and the procedure outlined in section 3.3.4.2 must be followed.

If an adult with capacity refuses informed consent, and subsequently becomes unable to give informed consent, the refusal is legally binding. S/he cannot be entered into the trial by seeking consent from a legal representative.

In all cases, the consent process must be approved by the Research Ethics Committee (REC).

3.3.3 Obtaining consent from those whose first language is not English
ICH GCP guidelines require that ‘the information that is given to the subject or their representative shall be in language understandable to the subject or their representative’. Therefore, when recruiting participants whose first language is not English, information sheets and consent forms may need to be translated into a language the subject does understand.

Accurate translation is required. An explanation of the translation process should be provided to the REC. Some RECs may wish to see the translated and back-translated versions of the information sheet and consent form.

During the consent process a translator may be required to sit in on the meeting with the investigator to ensure the potential participant has a full understanding of all the issues, risks and benefits of the trial prior to consenting.

3.3.4 Adults who lack capacity
There are two sets of legislation regarding the involvement of incapacitated adults in research. The Medicines for Human Use (Clinical Trials) Regulations 2004 apply to all CTIMPs. For all other types of research, the Mental Capacity Act 2005 is in force and gives a framework for obtaining consent for research where participants lack capacity and cannot consent for themselves. (N.B. Research in Scotland has a different set of regulations contained in the Adults with Incapacity (Scotland) Act 2000).

3.3.4.1 Incapacitated adults in CTIMPs
Incapacitated adults are defined in The Medicines for Human Use (Clinical Trials) Regulations 2004 as “an adult unable by virtue of physical or mental incapacity to give informed consent”.

Where it is not possible to obtain consent from the participant themselves, a hierarchy is prescribed in the regulations to determine what type of legal representative should
be approached, given all the relevant information and asked to give informed consent on behalf of an incapacitated adult prior to their inclusion in a trial.

1. Personal legal representative – a person not connected with the trial who is suitable to act as the legal representative by virtue of their relationship with the adult and is available and willing to do so

2. Professional legal representative – a person not connected with the trial who is either the doctor primarily responsible for the adult’s medical treatment, or is a person nominated by the relevant health care provider

The personal or professional legal representative must be given an Information Sheet which should have the same content as the Participant Information Sheet (PIS). This may be done by rewording the PIS to reflect the fact that they are consenting on behalf of their relative, e.g. amend “you will” to “your relative will” or by adding an explanatory cover note to the front of the patient PIS.

As with capacitous adults, time must be allowed for consideration and for the representative to ask any questions which arise before the informed consent process can be completed. The representative and the person taking consent must each then sign and date the informed consent form.

If a participant who has been enrolled into a trial whilst incapacitated then regains their capacity, the consent process for adults with capacity as described in sections 3.3.1 and 3.3.2 must be followed, i.e. the investigator must fully explain the details of the trial and give the participant the opportunity to make their own decision as to whether to continue in the trial or withdraw. This decision should be documented by the participant signing an informed consent form or a withdrawal form.

### 3.3.4.2 Incapacitated adults in all other research

For the purposes of the Mental Capacity Act, a person lacks capacity in relation to a matter if at the time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in, the functioning of the mind or brain; whether the impairment / disturbance is permanent or temporary.

It is a key principle of the Act that all steps and decisions taken for someone who lacks capacity must be taken in the person’s best interests.

As with the Clinical Trials Regulations, a hierarchy is defined as to who should be approached regarding the inclusion of an incapacitated person unable to consent for themselves into a trial:

1. A relative or friend should be consulted first if possible.
2. The researcher nominates and consults with an independent person (who is unconnected with the research and is willing to be consulted).
3. If it is not possible to consult with an independent person, the researcher may ‘take action’ (i.e. enter the incapacitated person into the trial) with the permission of a ‘registered medical practitioner who is not involved in the organisation or conduct of the research project’.
4. If none of the options above are available and the trial intervention is urgently required, the researcher may enter the incapacitated person
into the trial in ‘accordance with a procedure approved by the Research Ethics Committee’.

Whoever the person involved in the consultation process is, they must consider, so far as is reasonably ascertainable -

(a) the person’s past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

(b) the beliefs and values that would be likely to influence his decision if he had capacity, and

(c) the other factors that he would be likely to consider if he were able to do so.

In non-emergency situations, and as appropriate, the nominated person will be given all the relevant information regarding the trial (amended to reflect the fact that they are not themselves taking part in the trial). The person will then be asked to sign a declaration stating that in their view the person who lacks capacity would have wanted to take part in the trial.

3.3.5 Emergency situations
The Medicines for Human Use (Clinical Trials) Regulations, (Amendment No.2) made additional provisions relating to trials involving incapacitated adults in emergency situations. Where an IMP needs to be administered urgently to a patient who is unconscious, time may not allow for the written consent of a legal representative to be obtained first.

The amendment allows incapacitated adults to be included in a clinical trial provided the following conditions are met:

- Treatment is required urgently
- The nature of the trial also requires urgent action
- It is not reasonably practicable to gain informed consent prior to starting trial procedures
- An ethics committee has given prior approval to the procedure under which the action is taken.

3.3.6 Minors
Research should only include children where the relevant knowledge cannot be obtained by research in adults.

Research with children must normally only be carried out with the consent of a person who has parental authority and/or the child depending on the competence of the child.

Where the Clinical Trial Regulations apply (i.e. in CTIMPs), a minor is defined as someone under the age of 16. If a minor is enrolled in research the Regulations specify that consent must be obtained from someone with parental authority or a legal representative.
In other research the law states that anyone aged 16 and over is assumed to have capacity to consent. Under the age of 16 years a child who has been assessed as competent to consent may do so and that consent is valid. It is good practice to also seek the agreement of a parent of a competent minor who has consented to take part in research (unless the minor specifically asks that the parent is not informed).

When parental consent has been given for a child or young person to participate in a trial, agreement of the child should still be sought and respect their refusal if they do not wish to do so.

When considering enrolling minors in a trial, guidance on obtaining consent from minors produced by the MRC should be read - ‘Ethics Guide to Medical Research Involving Children’
http://www.mrc.ac.uk/Utilities/Documentrecord/index.htm?d=MRC002430

Further guidance specific to obtaining consent from minors in CTIMPs is available via the NRES website (see points 13-15)

**List of abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>CTIMPs</td>
<td>Clinical Trials of Investigational Medicinal Products</td>
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<td>CTU</td>
<td>Clinical Trials Unit</td>
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<td>GCP</td>
<td>Good Clinical Practice</td>
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<td>ICH</td>
<td>International Conference on Harmonisation</td>
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<td>IMP</td>
<td>Investigational Medicinal Product</td>
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<td>MCA</td>
<td>Mental Capacity Act</td>
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<tr>
<td>MHRA</td>
<td>Medicines and Healthcare products Regulatory Agency</td>
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<td>MRC</td>
<td>Medical Research Council</td>
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<td>NRES</td>
<td>National Research Ethics Service</td>
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<td>PIS</td>
<td>Participant Information Sheet</td>
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<td>REC</td>
<td>Research Ethics Committee</td>
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<td>SOP</td>
<td>Standard Operating Procedure</td>
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Appendix 1:
Information to be provided to potential trial participants (written and/or verbal)

According to the National Research Ethics Service (NRES) guidance, the Patient Information Sheet should address the questions outlined below. This should be regarded as the basic minimum information to include in a patient information sheet, which can be supplemented if required. Information should clearly reflect the protocol and the language used should be suitable for a lay person. In the case of minors, information may be given in pictorial form. All technical words must be explained. The tone of the patient information sheet should be invitational and not coercive. Fuller details including suggested statements of how this might be phrased are to be found on the NRES website: http://www.nres.nhs.uk/applications/guidance/consent-guidance-and-forms/ in the document entitled ‘Information sheets and consent forms guidance’.

There is a concern that information sheets are becoming increasingly lengthy and complex. Where appropriate, the information sheet could be divided into two parts:

**Part 1** should allow the participant to decide whether the trial is of interest to them and whether they wish to discuss it further. Suggested headings include:

1. Trial title
2. Invitation paragraph
3. What is the purpose of the trial?
4. Why have I been chosen?
5. Do I have to take part?
6. What will happen to me if I take part?
7. What do I have to do?
   - This should include any expenses and payments
8. What is the drug, device or procedure that is being tested?
9. What are the alternatives for diagnosis or treatment?
10. What are the side effects of any treatment received when taking part?
   - This should include any increased exposure to radiation, and possible harm to an unborn child
11. What are the possible disadvantages and risks of taking part?
12. What are the possible benefits of taking part?
13. What happens when the research trial stops?
14. What if there is a problem?
15. Will my taking part in this trial be kept confidential?

**Part 2** should contain additional information on:

16. Contact details for further information
17. What if relevant new information becomes available?
18. What will happen if I don’t want to carry on with the study?
19. What will happen to any samples I give?
20. Will any genetic tests be done?
21. What will happen to the results of the study?
22. Who is organising and funding the research?
23. Who has reviewed the study?
Both sections must be read and understood before the potential participant decides if they want to be included in the trial.

BUT if appropriate, it is entirely acceptable to produce a single section information sheet. If it is a lengthy document, a trial summary or ‘key facts’ section at the beginning may help.

The Patient Information Sheet should state that the patient will be given a copy of the information sheet and a signed copy of the consent form to keep.

Copies of the patient information sheet and consent form must be submitted as part of the application for ethics approval. The ethics committee will also want to know what strategies will be used to seek out and disseminate new information that becomes available during the course of research, which might affect the participants’ decision to continue to take part.

**Other relevant information**

NRES recommends the use of headed paper of the hospital/institution where the research is being carried out. All information sheets and consent forms must look professional, and have appropriate logos and contact details, such as the University and the trial; in some cases these details might also include those of the hospital or local clinical contact.

Consumers for Ethics in Research (CERES) publish a leaflet entitled ‘Medical Research and You’. This leaflet gives more information about medical research and looks at some questions potential recruits may want to ask. Copies may be obtained from CERES, PO Box 1365, London N16 0BW or: info@ceres.org.uk
Appendix 2

(Form to be on headed paper)

Centre Number:
Patient Identification Number for this trial:

CONSENT FORM

Title of Project:

Name of Researcher:  

Please initial box

1. I confirm that I have read and understand the information sheet Version........, Dated................. for the above trial. I have had the opportunity to consider the information, ask questions and have had these questions answered satisfactorily.

2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason, without my medical care or legal rights being affected.

3. I understand that relevant sections of any of my medical notes and data collected during the study may be looked at by responsible individuals from [institution name], from regulatory authorities, or from the NHS Trust, where it is relevant to my taking part in this research. I give permission for these individuals to have access to my records.

4. I agree to my GP being informed of my participation

5. I agree to take part in the above trial.

Name of Patient __________________________ Signature __________________________ Date __________

Name of person taking consent (if different from researcher) __________________________ Signature __________________________ Date __________

Name of Researcher __________________________ Signature __________________________ Date __________

NB: Three copies should be made (1) for patient, (2) for researcher. Original document retained in hospital notes.