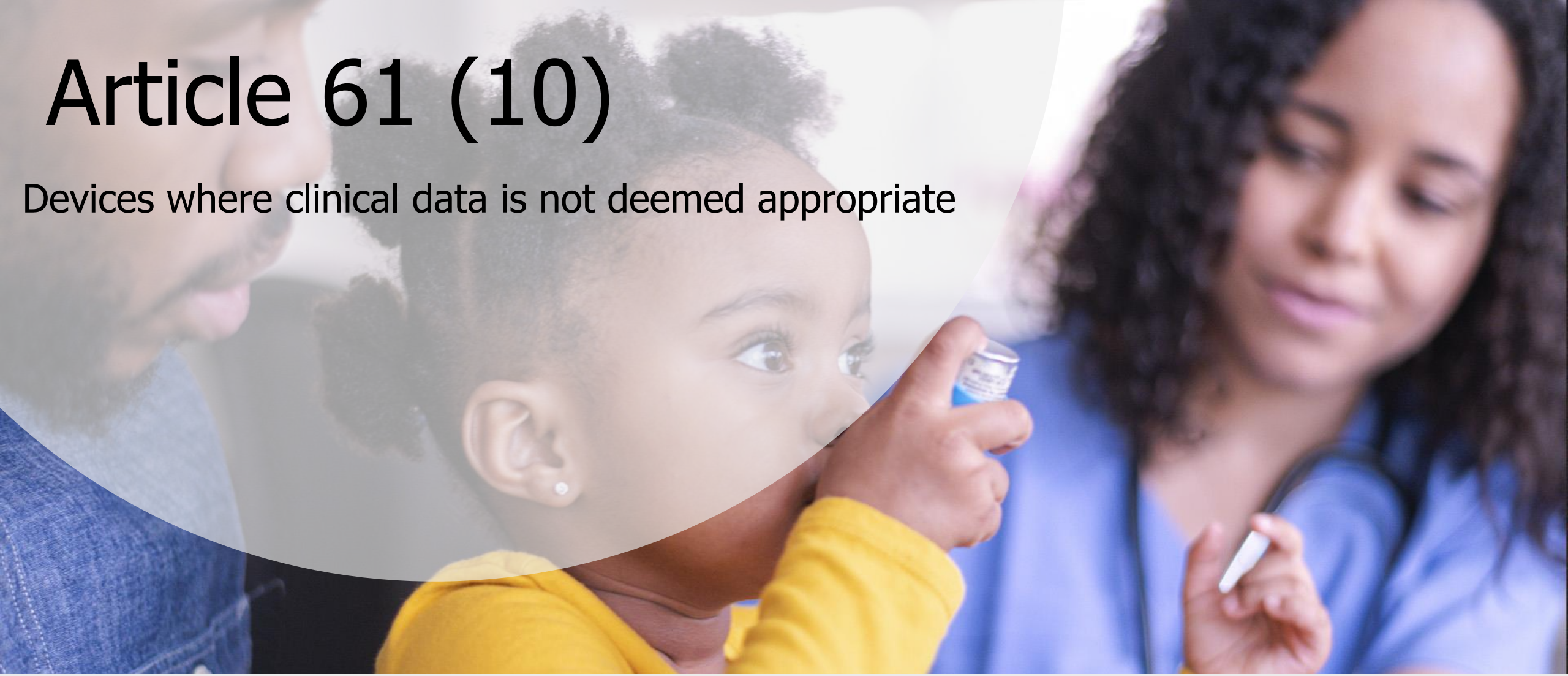
Article 61 (10)

Devices where clinical data is not deemed appropriate



Richard Holborow
Head of Clinical Compliance

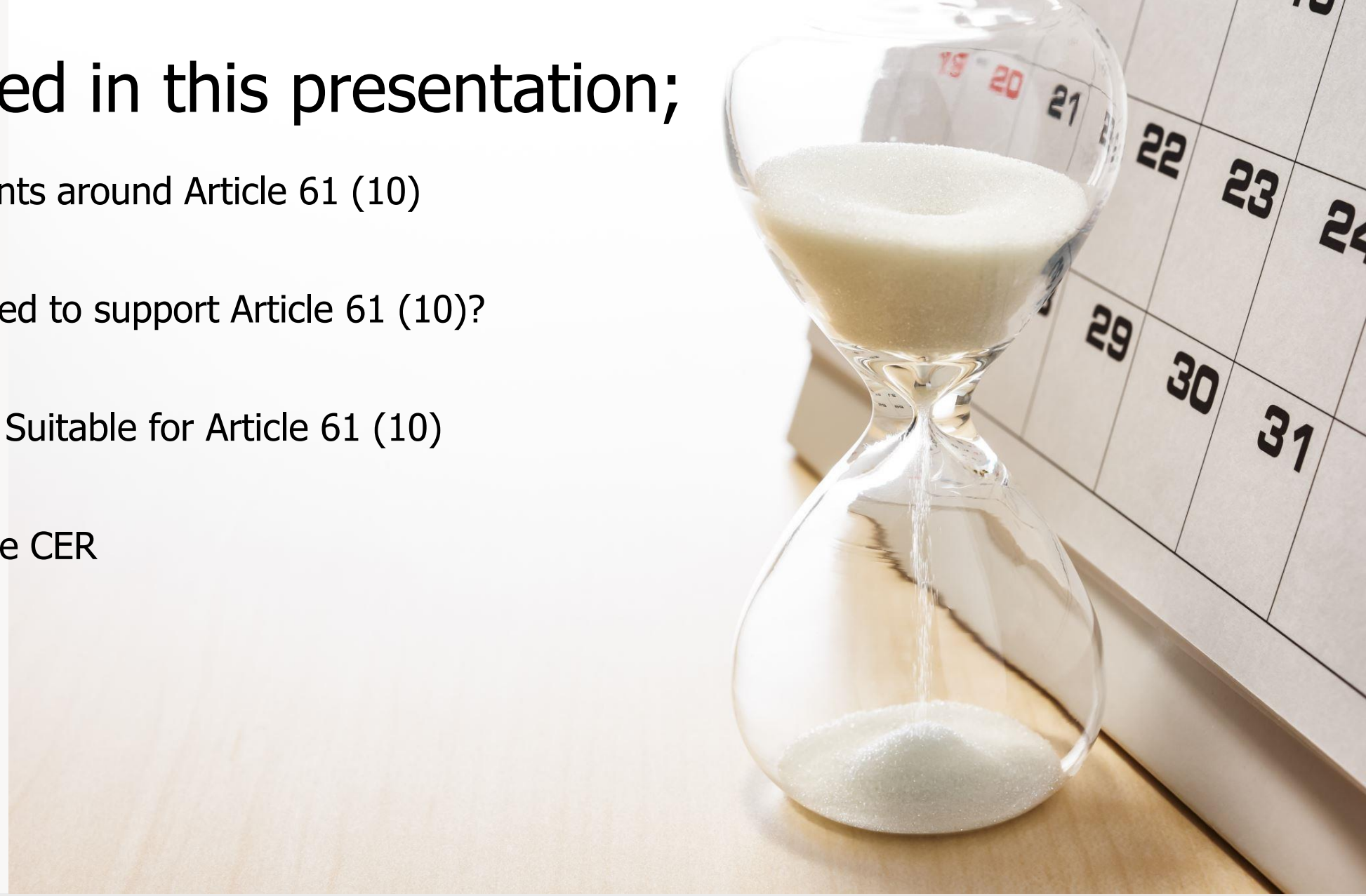
February 2022

By Royal Charter

bsi.

Topics Covered in this presentation;

- The MDR Requirements around Article 61 (10)
- What data can be used to support Article 61 (10)?
- Examples of Devices Suitable for Article 61 (10)
- Considerations for the CER
- Article 7 - Claims



MDR Requirements – Article 61 (10) EU 2017/745

'**Clinical Performance & Claims**'
Article 2 (52)

This cannot Apply to Class III or Implantable Devices

CHAPTER VI

CLINICAL EVALUATION AND CLINICAL INVESTIGATIONS

Article 61

Clinical evaluation

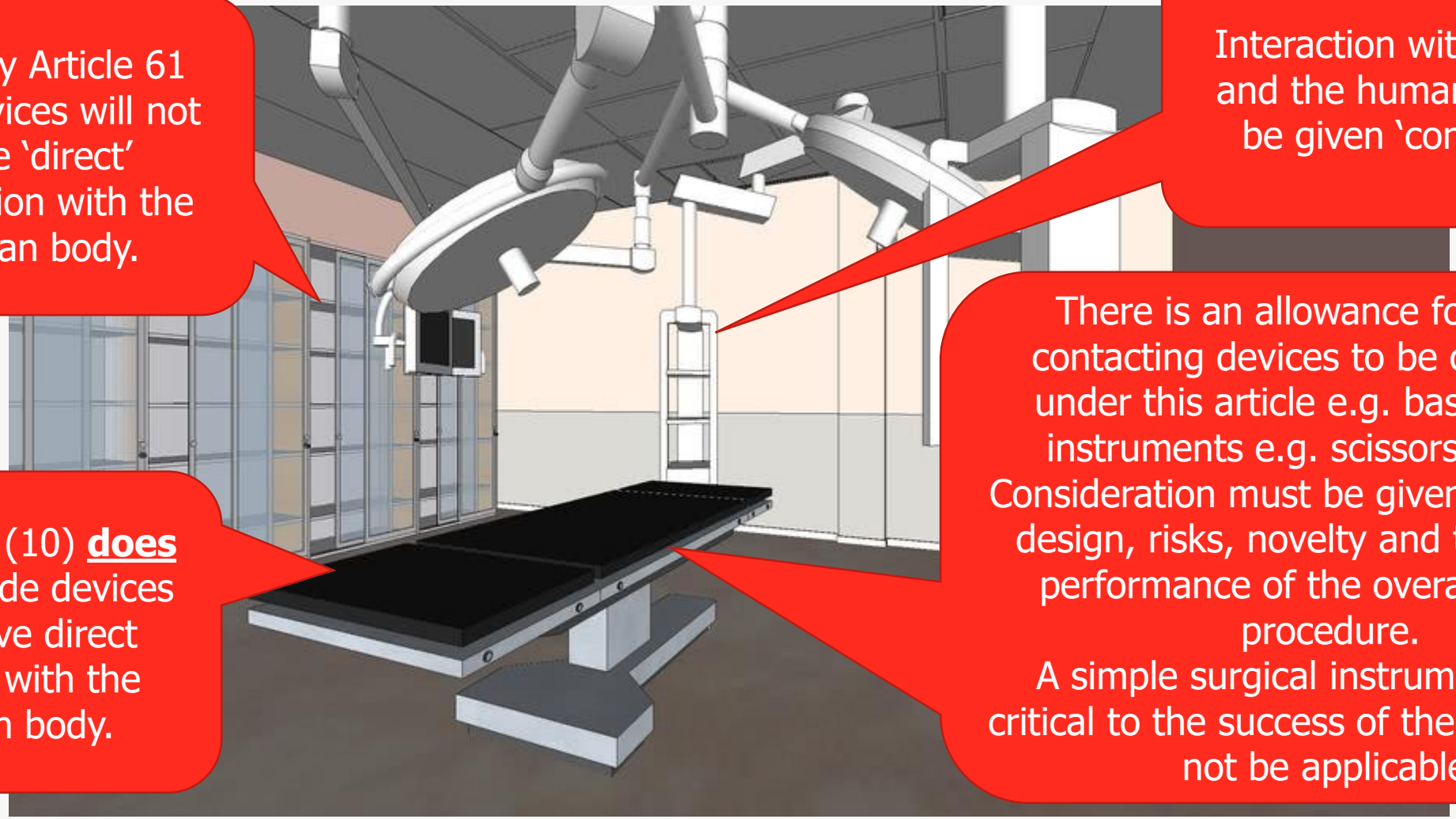
10. Without prejudice to paragraph 4, where the demonstration of conformity with general safety and performance requirements based on clinical data is not deemed appropriate, adequate justification for any such exception shall be given based on the results of the manufacturer's risk management and on consideration of the specifics of the interaction between the device and the human body, the clinical performance intended and the claims of the manufacturer. In such a case, the manufacturer shall duly substantiate in the technical documentation referred to in Annex II why it considers a demonstration of conformity with general safety and performance requirements that is based on the results of non-clinical testing methods alone, including performance evaluation, bench testing and pre-clinical evaluation, to be adequate.

Consideration should be given to the risk(s) of the device and the interaction with the human body.

Manufacturer should justify why it is acceptable to use this route to conformity

Allowance for non-clinical data to be considered (Article 2 (48))

Interaction between the device and the body.



Typically Article 61 (10) devices will not have 'direct' interaction with the human body.

Interaction with the device and the human body must be given 'consideration'

Article 61 (10) **<u>does not</u>** exclude devices that have direct contact with the human body.

There is an allowance for patient contacting devices to be considered under this article e.g. basic surgical instruments e.g. scissors, forceps. Consideration must be given to duration, design, risks, novelty and their role in performance of the overall medical procedure.
A simple surgical instrument that is critical to the success of the implant may not be applicable.

bsi.

Article 2 (52)/(53)

*52) '**clinical performance'** means the ability of a device, resulting from any direct or indirect medical effects which stem from its technical or functional characteristics, including diagnostic characteristics, to achieve its intended purpose as claimed by the manufacturer, thereby leading to a clinical benefit for patients, when used as intended by the manufacturer;*

*(53) '**clinical benefit'** means the positive impact of a device on the health of an individual, expressed in terms of a meaningful, measurable, patient-relevant clinical outcome(s), including outcome(s) related to diagnosis, or a positive impact on patient management or public health;*

If a manufacturer of a medical device is making clinical claims from its clinical performance that leads to a clinical benefit, then clinical data is required and should be evaluated by the manufacturer. (In these circumstances Article 61 (10) no longer applies).

Consideration should be given to 'other claims' made and what evidence is appropriate to support them

Risk of the device and interaction with the human body should still be considered alongside claims made.

Article 2 (48)

*(48) '**clinical data'** means information concerning safety or performance that is generated from the use of a device and is sourced from the following:*

- *— clinical investigation(s) of the device concerned,*
- *— clinical investigation(s) or other studies reported in scientific literature, of a device for which equivalence to the device in question can be demonstrated,*
- *— reports published in peer reviewed scientific literature on other clinical experience of either the device in question or a device for which equivalence to the device in question can be demonstrated,*
- *— clinically relevant information coming from post-market surveillance, in particular the post-market clinical follow-up;*

Just because clinical data is not deemed appropriate, does not mean this data should be excluded.
The clause is allowing for conformity to GSPRs without clinical data.
In line with Annex III of the MDR, Screening of scientific literature should still be conducted to identify risks or any data that the manufacturer is unaware of.
Legacy devices will have PMS data that should be considered as part of the assessment. The definition of clinical data here is focusing on PMCF.

What is suitable for Article 61 (10)?

Article 61 (10) is not a route for devices where there is a lack of clinical data, it is for devices where clinical data is not appropriate.

Devices qualifying under Article 61 (10) do not typically make clinical claims.

Nobody Performs Clinical Investigations on these devices… after all they are Accessories!

Our Literature Search returned 0 Results!

Our device performs as intended as we have only 1% of complaints

Absence of evidence is not evidence of absence.

Data that can be used to Support Article 61 (10)

Examples of Types of Data to support Article 61 (10) Devices Include;

- ***Compliance to non-clinical elements of common specifications considered relevant to device safety and performance*** *– Common specifications may address clinically relevant endpoints through non-clinical evidence such as mechanical testing for strength and endurance, biological safety, usability, etc*
- ***Simulated use / animal / cadaveric testing involving healthcare professionals or other end users -*** *This is not clinical data, but may be considered evidence of confirmation of conformity to relevant GSPRs, particularly in terms of usability, such as for accessories or instruments.*
- ***Pre-clinical and bench testing / compliance to Standards*** *- Pre-clinical and bench testing may address clinically relevant endpoints through non-clinical evidence such as mechanical testing for strength and endurance, biological safety, usability, etc.*
- ***PMS/Vigilance Data*** *(If device has previously been marketed)*

bsi.

Example 1 – A medical refrigerator used for storing tissues

Is Article 61 (10) Appropriate?

A. What is the Risk Class?
B. How does it Interact with the Human Body?
C. What is the clinical performance?
D. What claims are being made?

What data could be Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

Example 1 - A medical refrigerator used for storing tissues

Is Article 61 (10) Appropriate?

- ✓What is the Risk Class? **Class IIa**
- ✓How does it Interact with the Human Body? **No Direct Interaction**
- ✓What is the clinical performance? **to keep a consistent temperature for tissue storage (No direct patient benefit)**
- ✓What claims are being made? **No Clinical Claims made by the Manufacturer**

What data could be Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

Example 2 – Disinfectant Solution for Haemodialysis Machine

Is Article 61 (10) Appropriate?

A. What is the Risk Class?
B. How does it Interact with the Human Body?
C. What is the Clinical Performance?
D. What claims are being made?

What Data is Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

Example 2 – Disinfectant Solution for Haemodialysis Machine

Is Article 61 (10) Appropriate?

- ✓ What is the Risk Class? **Class IIb**
- ✓ How does it Interact with the Human Body? **No Direct Interaction with Human Body**
- ✓ What is the clinical performance? **To disinfect equipment to allow for re-use (indirect benefit)**
- ✓ What claims are being made? **Removes 99% of Pathogens'**

What data could be Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

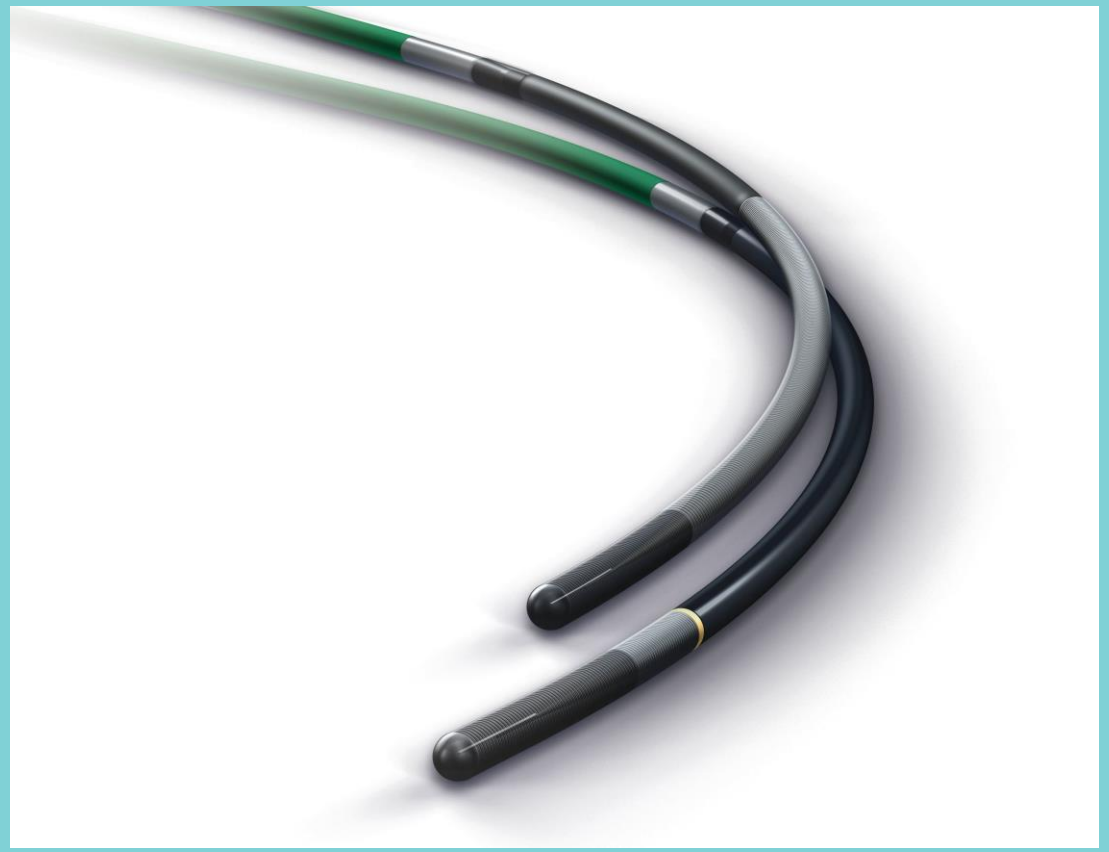
Example 3 - Coronary Guide Wire – *An Accessory to Support implantation of a Coronary Stent (Transient Use)*

Is Article 61 (10) Appropriate?

A. What is the Risk Class?
B. How does it Interact with the Human Body?
C. What is the clinical benefit?
D. What claims are being made?

What Data is Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?



Example 3 - Coronary Guide Wire – *An Accessory to Support implantation of a Coronary Stent (Transient Use)*

Is Article 61 (10) Appropriate?

- What is the Risk Class? **Class III**

What Data is Appropriate?

1. Legacy device – Sufficient data
2. Compliance to clinical elements of Common Specifications?
3. Clinical Investigations?

Example 4 - A Scalpel (Intended Use: for making skin incisions, tissue dissections).

Is Article 61 (10) Appropriate?

A. What is the Risk Class?
B. How does it Interact with the Human Body?
C. What is the clinical benefit?
D. What claims are being made?

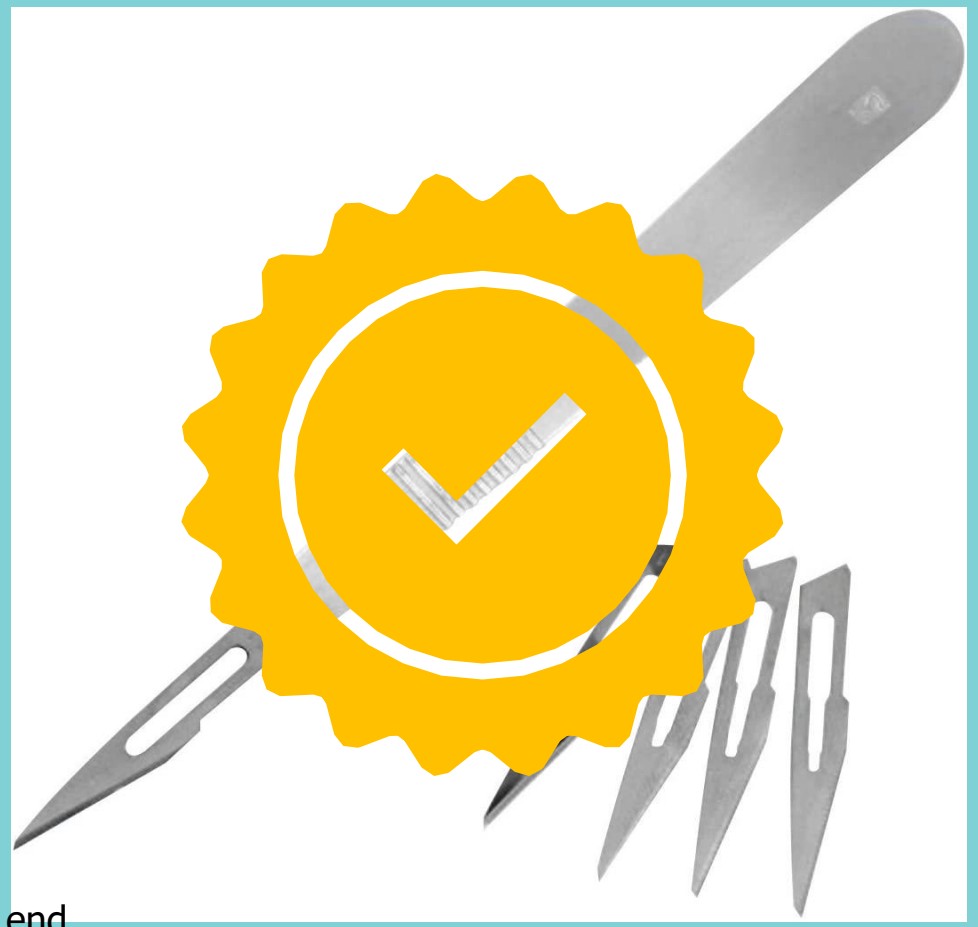
What Data is Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

Example 4 - A Scalpel (Intended Use: for making skin incisions, tissue dissections).

Is Article 61 (10) Appropriate?

- ✓What is the Risk Class? **Class IIa**
- ✓How does it Interact with the Human Body? **Direct contact/ Minimal Use**
- ✓What is the clinical performance? **Dissection for skin tissue to allow for surgery to occur.**
- ✓What claims are being made? **No claims being made**



What Data is Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

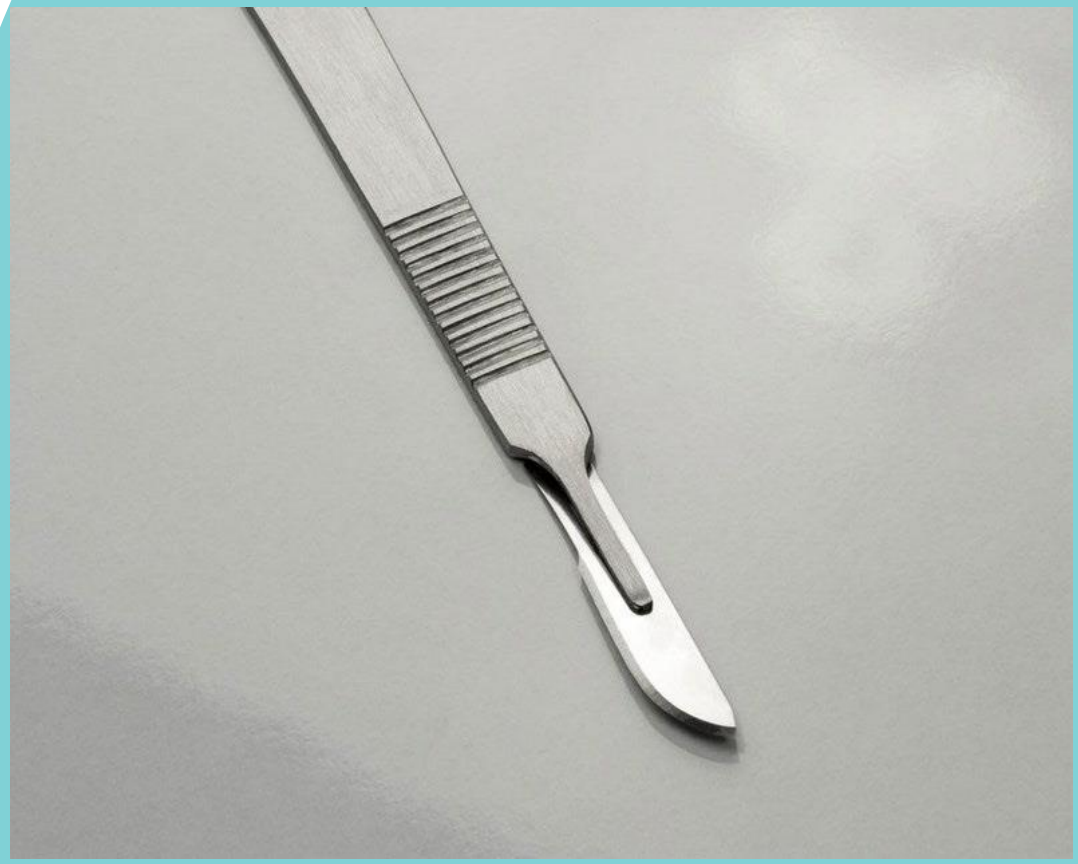
Example 5 - A Scalpel (Intended Use: For Tissue Dissection to Aid Reduction in Surgery Time).

Is Article 61 (10) Appropriate?

A. What is the Risk Class?
B. How does it Interact with the Human Body?
C. What is the clinical benefit?
D. What claims are being made?

What Data is Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?



Example 5 - A Scalpel (Intended Use: For Tissue Dissection to Aid Reduction in Surgery Time).

Is Article 61 (10) Appropriate?

- ✓ What is the Risk Class? **Class IIa**
- ✓ How does it Interact with the Human Body? **Direct contact/Minimal Use**
- ✓ What is the clinical performance? **Dissection for skin tissue to allow for surgery to occur.**
- ▪ What claims are being made? **Reduction in surgery time.**

Clinical data is required to demonstrate reduction in surgery time.

Example 6 – Military Chemical Wash Kit

Is Article 61 (10) Appropriate?

A. What is the Risk Class?
B. How does it Interact with the Human Body?
C. What is the clinical benefit?
D. What claims are being made?

What Data is Appropriate?

1. PMS Data?
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

Indications for Use:

- intended to remove and neutralise Chemical Warfare Agents, T-2 toxin and organophophate based pesticides from skin and is to be used in conjunction with personal protective equipment.

Example 6 – Military Chemical Wash Kit

Is Article 61 (10) Appropriate?

- ✓ What is the Risk Class? **Class IIa**
- ✓ How does it Interact with the Human Body? **Direct Contact with patient**
- ✓ What is the clinical performance? **Direct clinical benefit to patient by removing warfare agents**
- ✓ What claims are being made? **Remove and Neutralize agents to avoid burns to skin.**

What Data is Appropriate?

1. PMS Data? **Case Reports?**
2. Compliance to non-clinical elements of Common Specifications?
3. Simulated Use/Animal Cadaveric Testing incl Healthcare professionals or other end users?
4. Pre-clinical and bench testing/Compliance to Standards?

Indications for Use:

- intended to remove and neutralise Chemical Warfare Agents, T-2 toxin and organophophate based pesticides from skin and is to be used in conjunction with personal protective equipment.

If a device under MDD previously complied Annex X 1.1.d - can we automatically assume article 61 (10)?

Annex X - MDD 93/42/EEC

1.1d Where demonstration of conformity with essential requirements based on clinical data is not deemed appropriate, adequate justification for any such exclusion has to be given based on risk management output and under consideration of the specifics of the device/body interaction, the clinical performances intended and the claims of the manufacturer. Adequacy of demonstration of conformity with the essential requirements by performance evaluation, bench testing and pre-clinical evaluation alone has to be duly substantiated.

Annex X 1.1.(d) is similar in wording to Article 61 (10) however we have to consider the device under the MDR requirements. The clinical evaluation under MDD 'stepped up' when MEDDEV 2.7/1 rev 4 was released in 2016. There may be many historical devices (pre - 2016) that used this route to conformity when in fact clinical data should have been presented.

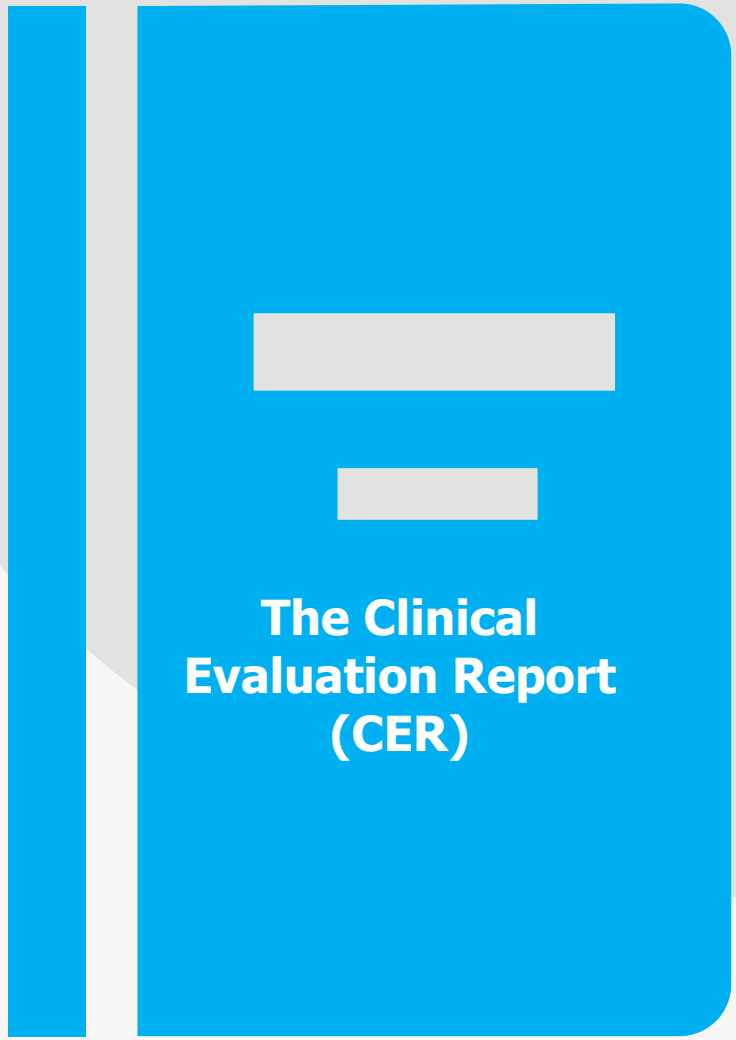
The CER for Article 61 (10) Device

Per Article 61 (12) the manufacturer is still required to document data pertaining to the device's clinical evaluation in a report (i.e. the CER).

The manufacturer should justify in the CER why Article 61 (10) route is acceptable taking into account the criteria previously mentioned.

The manufacturer should still perform literature searches to;

- Identify whether the device is 'State of the Art' - *What other treatment options may now exist?*
- To identify any previously unknow data. – *was the search terminology appropriate?*



Q: Does the notified body still need to assess the Clinical Evaluation Assessment for an Article 61 (10) Device?

- Yes!
- The MDR Text does not exclude these devices from providing a clinical evaluation report nor does it exclude the notified body from performing an assessment.
- MDCG 2020-13 (CEAR Template) has a dedicated section for notified bodies to complete for Article 61 (10).
- It is expected that our Clinical Evaluation Assessment will be limited.

Areas of consideration in the CER. (Based on MDCG 2020-13)

The following areas need to be considered:

- **Clinical Evaluation Updates**
  - CER Update Frequency should still be defined.
  - CER Should still be signed and dated, include CVs and Declaration of Interest
  - CVs should be appropriate to the technology under assessment

- **Clinical Evaluation Plan**
  - State of the Art is still required to be defined
  - Methods of clinical data collection defined.
  - Justification for methods used for data collection

Areas of consideration in the CER. (Based on MDCG 2020-13)

In our Assessment the following areas need to be considered:

- **Reference to Common Specifications, Harmonised Standards**
  - **If common specifications and/or harmonised standards have been identified then these should be listed and any areas of deficiency or concern identified.**

- **Data to support Article 61 (10)**
  - **All data (usually pre-clinical data) identified by the manufacturer should be provided here.**
  - **This may include PMS data**
  - **It is acceptable to point towards test reports for more information on pre-clinical data.**

Areas of consideration in the CER. (Based on MDCG 2020-13)

The following areas need to be considered:

- **Comments on PMS Plan (& PMCF if appropriate)**
  - **Article 61 (10) devices are still required to have a PMS plan.**
  - **If a PMCF plan has been provided this should be assessed for suitability - (If a justification for no PMCF has been provided, this should be documented in the PMS Plan/PMCF Plan.**

Claims & Evidence

MDR Article 7:

Prohibition of claims

- …ascribing functions and properties to the device which the device does not have, including creating false impressions
- …fail to inform about risks
- …suggesting misuse

MDR Article 7- Example

Prohibition of claims ascribing functions and properties to the device which the device does not have.

This is not limited to clinical/medical claims. Non-Medical claims also require evidence.

Always think of the **positive impact** on the **health of the individual** (Clinical Benefit)

Example:
A toothpaste which is a medical device has **non-medical** claim to brighten up tooth color
-> Evidence is required that tooth color is indeed brightened up

Example:
A toothpaste which is a medical device has a **clinical** claim to reduce pain
-> Clinical Evidence is required that pain is indeed reduced

Clinical Claims & The Clinical Evaluation

The clinical evaluation shall be thorough and objective, and take into account both favourable and unfavourable data. Its depth and extent shall be proportionate and appropriate to the nature, classification, intended purpose and risks of the device in question, as well as to the manufacturer's claims in respect of the device.

MDR Annex XIV Part A (2)

- '***clinical claims'*** can be defined as claims made in relation to clinical performance and/or clinical benefit. These areas nee to be considered under the MDR;

- *'**clinical performance'** means the ability of a device, resulting from any direct or indirect medical effects which stem from its technical or functional characteristics, including diagnostic characteristics, to achieve its intended purpose as claimed by the manufacturer, thereby leading to a clinical benefit for patients, when used as intended by the manufacturer;*

- *'**clinical benefit'** means the **positive impact** of a device **on the health of an individual**, expressed in terms of a meaningful, measurable, patient-relevant clinical outcome(s), including outcome(s) related to diagnosis, or a **positive impact on patient management** or public health;*

- Claims established outside of these areas may not be clinical claims and maybe considered 'marketing or non-medical claims' or more simply 'claims'. Clinical claims made by a manufacturer would always need to be supported by 'clinical data'.

- A manufacturer who states their device has ***no clinical claims*** are confirming that they will not make any other conclusions from the clinical data presented for conformity assessment than those presented to support the intended purpose.

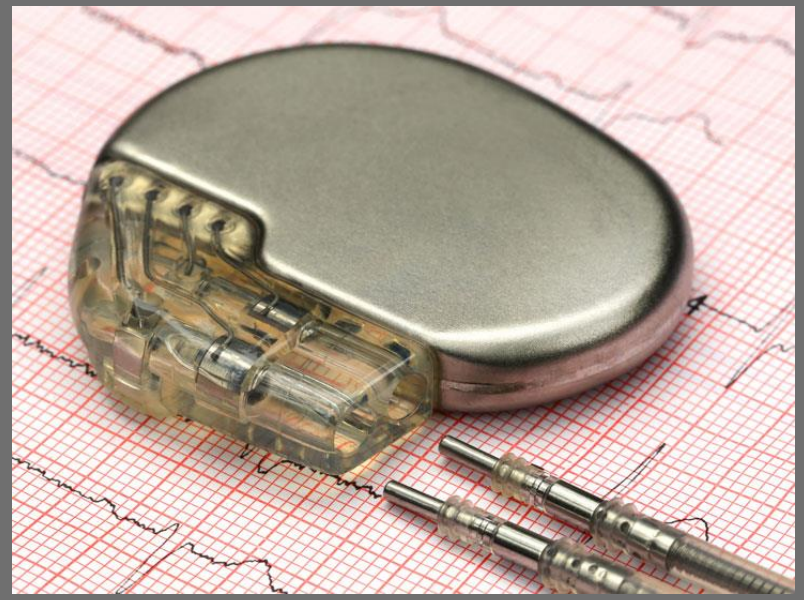
Validating and Verifying Clinical Claims

- The notified body may request a list of all clinical claims made by the manufacturer as part of the conformity assessment.
- Clinical claims will be reviewed to ensure they align with the clinical data presented and in addition will consider their conformity to Article 7 of the MDR;
    - *In the labelling, instructions for use, making available, putting into service and advertising of devices, it shall be prohibited to use text, names, trademarks, pictures and figurative or other signs that may mislead the user or the patient with regard to the device's intended purpose, safety and performance by:*
        - *(a) ascribing functions and properties to the device which the device does not have;*
        - *(b) creating a false impression regarding treatment or diagnosis, functions or properties which the device does not have;*
        - *(c) failing to inform the user or the patient of a likely risk associated with the use of the device in line with its intended purpose;*
        - *(d) suggesting uses for the device other than those stated to form part of the intended purpose for which the conformity assessment was carried out.*

Which of the following claims would you expect to be supported by clinical data?

'This pacemaker uses the latest processor'

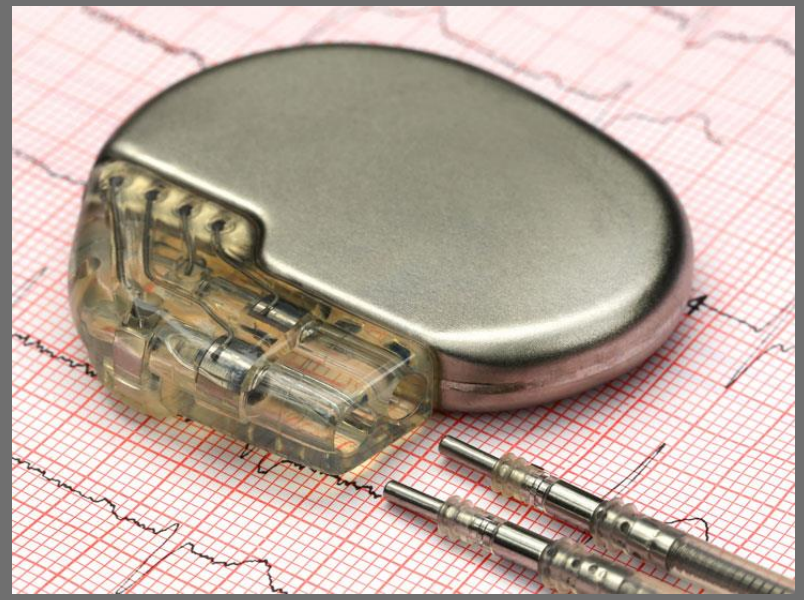
- YES
- NO



Which of the following claims would you expect to be supported by clinical data?

'This pacemaker uses the latest processor'

- YES
- NO

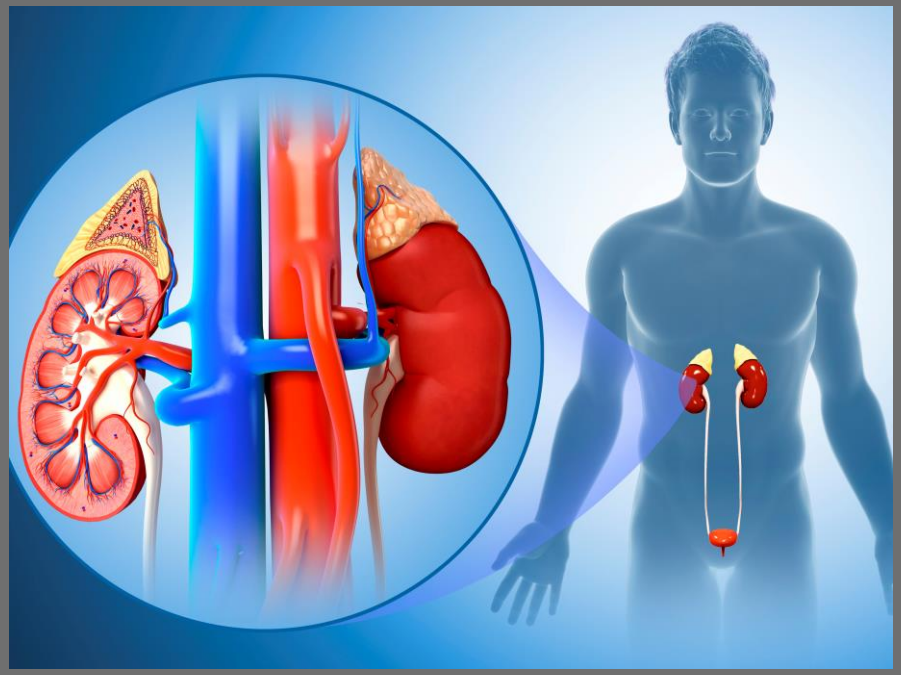


Type of Claim: Non-Medical Claim (Marketing)
Evidence Required: Technical Data

Which of the following claims would you expect to be supported by clinical data?

This device improves renal function by 35%

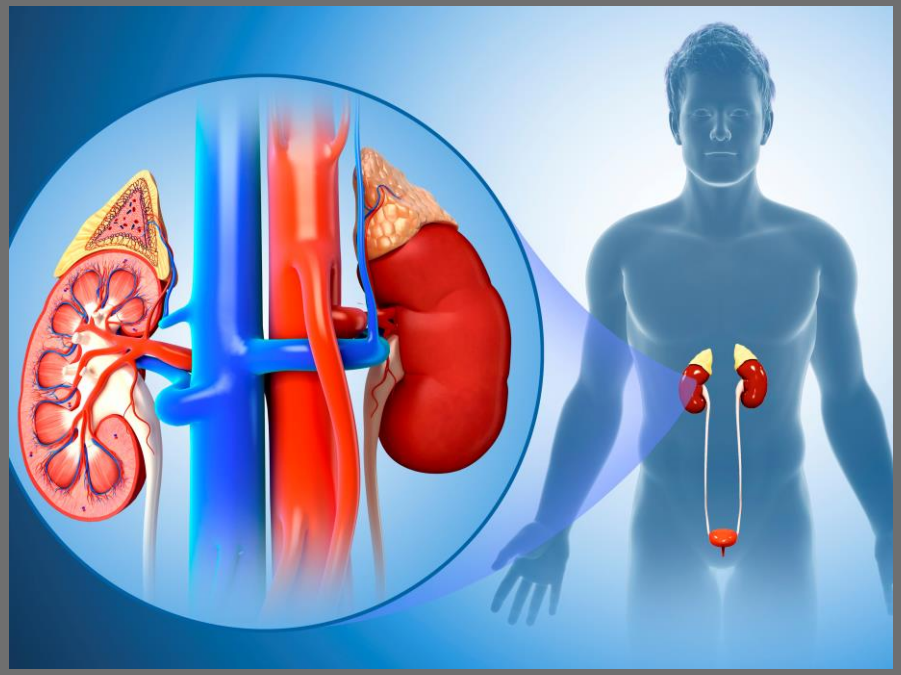
- YES
- NO



Which of the following claims would you expect to be supported by clinical data?

This device improves renal function by 35%

- YES
- NO

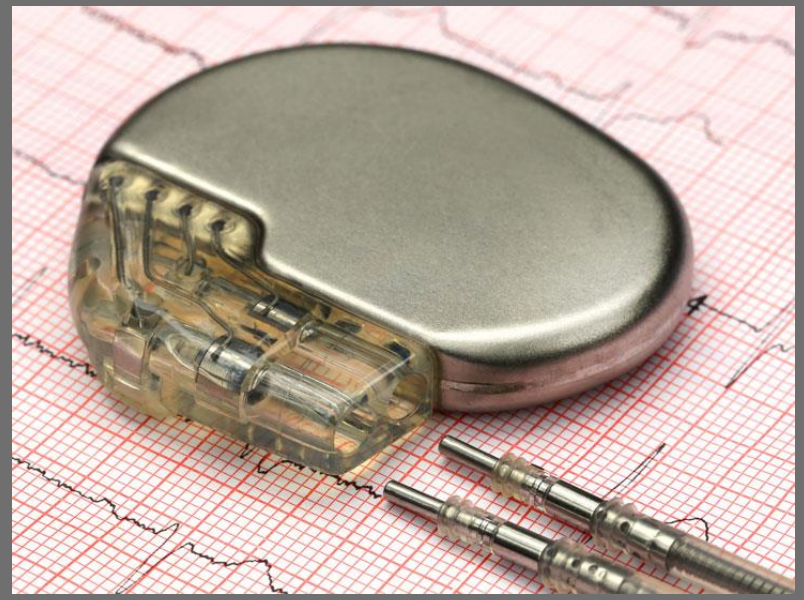


Type of Claim: Medical Claim (Clinical)
Evidence Required: Clinical Data

Which of the following claims would you expect to be supported by clinical data?

This pacemaker reduces hospital Emergency Room (ER) visits.

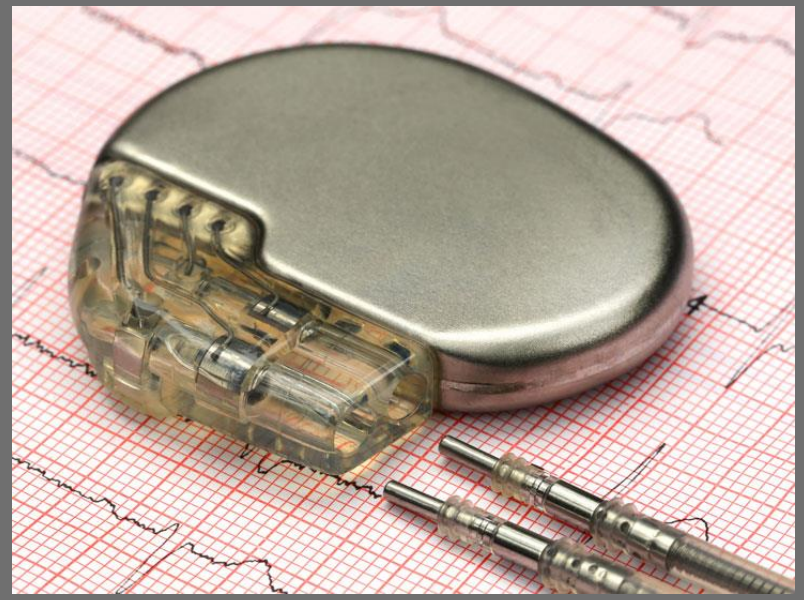
- YES
- NO



Which of the following claims would you expect to be supported by clinical data?

This pacemaker reduces hospital Emergency Room (ER) visits.

- YES
- NO

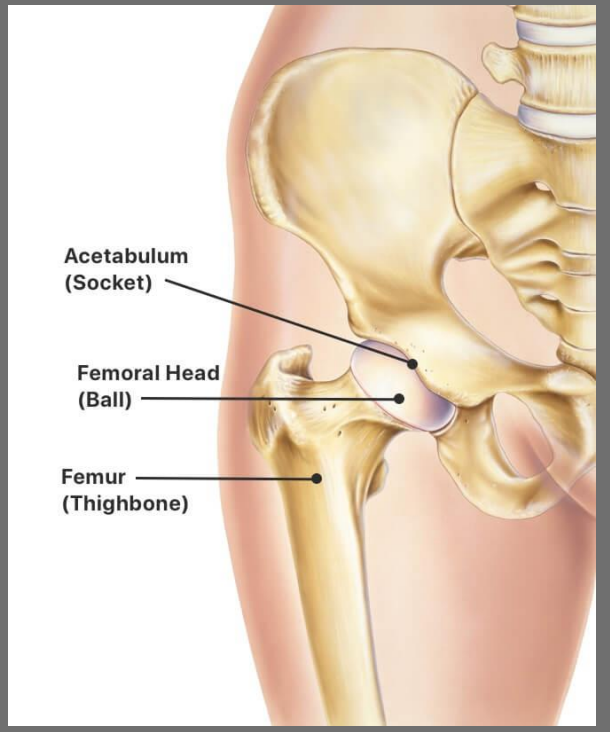


Type of Claim: Medical Claim (Clinical)
Evidence Required: Clinical Data

Which of the following claims would you expect to be supported by clinical data?

This Hip System can be implanted in less than 35 minutes.

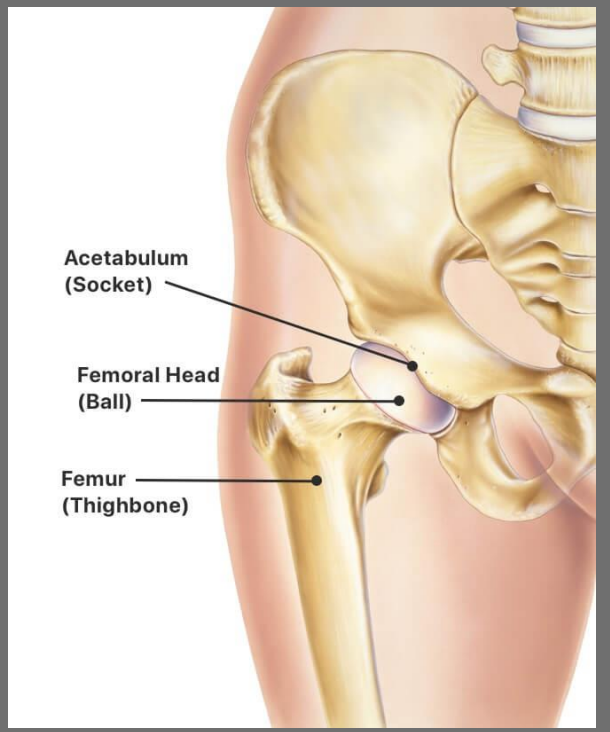
- YES
- NO



Which of the following claims would you expect to be supported by clinical data?

This Hip System can be implanted in less than 35 minutes.

- YES
- NO



Type of Claim: Medical Claim (Clinical)
Evidence Required: Clinical Data

Which of the following claims would you expect to be supported by clinical data?

This suture is the number one choice of 95% of physicians.

- YES
- NO

Which of the following claims would you expect to be supported by clinical data?

This suture is the number one choice of 95% of physicians.

- YES
- NO

Type of Claim: Non-Medical Claim (Marketing)
Evidence Required: User Data

Lifetime Claims

6. PMCF shall be performed pursuant to a documented method laid down in a PMCF plan.

6.1. The PMCF plan shall specify the methods and procedures for proactively collecting and evaluating clinical data with the aim of:

(a) confirming the safety and performance of the device throughout its expected lifetime,

Annex XIV Part B 6.1 (a)

Lifetime should be considered the time period for which the device will perform according to its intended purpose, **until the point of redundancy or replacement**.

The manufacturer should define its 'expected lifetime claim'

The claim of expected lifetime should be considered in relation to 'state of the art'.

Either the clinical data should reflect the claimed lifetime of the CER or the PMCF plan of the device should demonstrate how the manufacturer will collect the lifetime data.

Claimed Lifetime is NOT related to shelf life.

Lifetime Claim – Example

Manufacturer Lifetime Claim: 95% Survivorship at 10 Years.

- Data Currently held on the device: 5 Years
- PMCF Plan – 5 Year PMCF Study & National Registry Data for 10 years

Article 18 – Implant Card

Article 18

Implant card and information to be supplied to the patient with an implanted device

1. The manufacturer of an implantable device shall provide together with the device the following:

(a) information allowing the identification of the device, including the device name, serial number, lot number, the UDI, the device model, as well as the name, address and the website of the manufacturer;

(b) any warnings, precautions or measures to be taken by the patient or a healthcare professional with regard to reciprocal interference with reasonably foreseeable external influences, medical examinations or environmental conditions;

(c) any information about the expected lifetime of the device and any necessary follow-up;

(d) any other information to ensure safe use of the device by the patient, including the information in point (u) of Section 23.4 of Annex I.

Article 18 requires manufacturers of Implantable devices (Excluding the list in Article 52 (4)) to provide implant cards and those implant cards should state the expected lifetime of the device.

Summary

- Article 61 (10) is **limited** to devices for which conformity to the GSPRs with clinical data is not deemed appropriate
- Interaction between the device and the human body, intended clinical performance and claims made by the manufacturer **all** need to be considered.
- A justification is **always** required for applying Article 61 (10).
- A CER is **always** required.
- The manufacturer should consider **Article 7** of the MDR in relation to **all claims**.

BSI Medical Devices – Use Our Resources

https://www.bsigroup.com/en-GB/medical-devices/resources

Brochures, Guides and Documents

MDR guidance

MDD Best Practice Guidelines >
MDR Best Practice Guidelines >
MDR Mapping Guide >
MedDev 2.7.1 Rev 4 changes >
MDR Conformity Routes >
MDR Readiness Review >

Webinars

MDR Conformity Assessment Routes webinar

MDR - What we know

Download the presentation >

Join and follow us on LinkedIn

Share your knowledge, challenges and news with others on LinkedIn.

White Papers and Articles

Person responsible for regulatory compliance (PRRC) - MDR/IVDR Article 15

With the MDR and IVDR, European regulators aim to ensure companies have a regulatory expert – a Person Responsible for Regulatory Compliance (PRRC) – at their disposal, to ensure that the company is meeting certain specific EU requirements.

Software as a medical device - A comparison of the EU's approach with the US's approach

The International Medical Device Regulators Forum (IMDRF) aims to accelerate international medical device regulatory convergence. Through the IMDRF, regulators reached consensus on what software is considered a medical device. Regulators call it 'software as a medical device' (SaMD). This paper provides a comparison of how SaMD is regulated in the US and in the EU.

Machine learning AI in medical devices

How is AI different from traditional medical devices and medical software and what are the implications of those differences? What controls are necessary to ensure AI in healthcare is safe and effective?

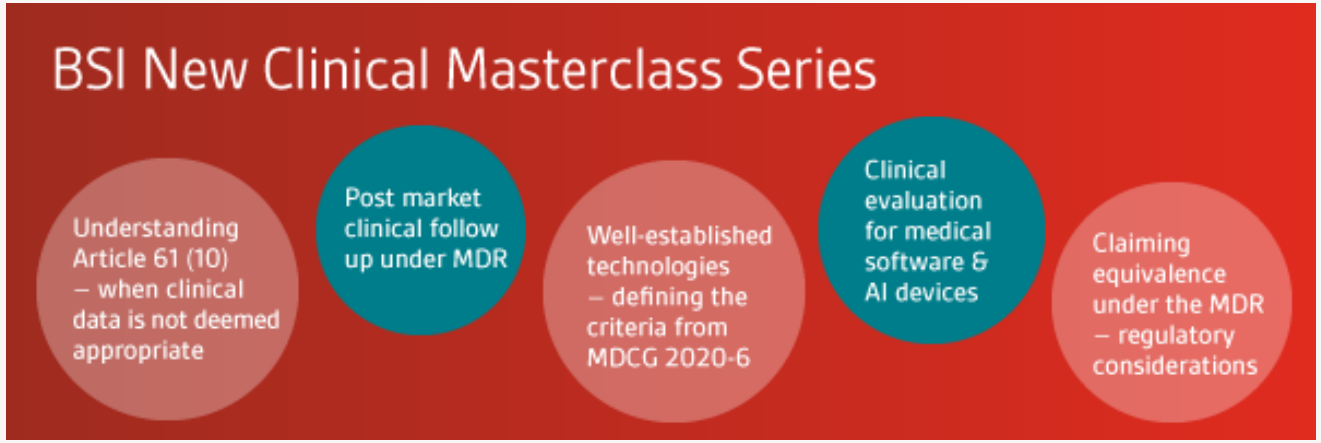
Medical device clinical investigations – What's new under the MDR?

The conduct of a clinical investigation is one of the most time consuming and resource intensive activities that a medical device manufacturer can face. This paper discusses important new requirements for pre-market and post-market clinical investigations under the European MDR.

Training Resources

Medical devices regulation (MDR)	
Transition from MDD to MDR	1 day
Technical Documentation for CE - Marking	1 day
Requirements of MDR for CE - Marking	1 day
Implementing of MDR for CE- Marking	3 days

Further courses for medical devices manifacturers	
Medical Device Single Audit Program (MDSAP)	2 days
ISO 14971 Risk Management	1 day
Creating and Maintaining Technical Files	1 day
Post-market Surveillance and Vigilance	1 day
Clinical Evaluation for Medical Devices	1 day
Process Validation for the Medical Device Industry	1 day
Introduction to Medical Device Software	1 day



We have more webinars available in our Clinical Masterclass series.

The next webinar available is:

16th February 2022 – Claiming Equivalence under the MDR – Regulatory Considerations.

Use the link to sign up to this webinar and any other webinar(s) in the series:

https://www.bsigroup.com/en-GB/medical-devices/resources/webinars/2022/mdr/clinical-masterclass/

Questions?

By Royal Charter