

Legal Capacity & Consent for Children and Young Adults

The legal framework surrounding capacity and consent for children and young adults under 18 is governed by various pieces of legislation and principles that address their ability to make decisions, particularly in medical and social care contexts.

Key Legislation

- **Family Law Reform Act 1969**
- **Children Act 1989**
- **Mental Capacity Act 2005 (though primarily for those over 16)**
- **Human Rights Act 1998**
- **Children and Families Act 2014**

Principles

- **Best Interests:** The child's welfare and best interests are the paramount consideration in all decisions made by courts or professionals.
- **Evolving Capacity:** Recognises that as children grow older, their ability to make decisions increases.
- **Child-Centered Approach:** Decisions should consider the child's views and feelings in accordance with their age and understanding.

Gillick Competency

What is Gillick Competency: Gillick competency stems from a 1985 legal case (Gillick v West Norfolk and Wisbech Area Health Authority), where the UK House of Lords determined that a child under 16 could consent to their own medical treatment without the need for parental permission or knowledge, provided they have sufficient maturity and understanding to fully comprehend the proposed treatment. This principle has since been extended beyond healthcare to other areas where capacity and consent are relevant.

Criteria for Gillick Competency

- **Maturity and Understanding:** The child must have enough intelligence, competence, and understanding to fully appreciate the implications of the treatment or decision.
- **Decision-Specific:** Competency is not an all-or-nothing status; a child might be competent to make some decisions but not others.
- **Balancing Autonomy and Protection:** The principle strikes a balance between respecting the autonomy of young people and ensuring they are protected from harm.

Refusal of Treatment

- **Under 16:** If a Gillick-competent child refuses treatment, healthcare providers may seek a court order to override the refusal if it is in the child's best interests.
- **Aged 16-17:** A young person's refusal of treatment is more complex. While they can consent to treatment, their refusal can be overridden by a parent or the court if it's in their best interests, particularly in life-threatening situations.



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Fraser Guidelines

The Fraser guidelines were developed alongside Gillick competency specifically for providing contraceptive advice to under-16s without parental consent, but the guidelines are also used in broader contexts. The key considerations are:

- The young person understands the professional's advice.
- The young person cannot be persuaded to inform their parents or allow the professional to inform them.
- The young person is likely to begin or continue having sexual intercourse with or without contraceptive treatment.
- Without contraceptive treatment, the young person's physical or mental health is likely to suffer.
- The young person's best interests require the professional to give contraceptive advice, treatment, or both without parental consent.

Mental Capacity Act 2005 (for those 16 and over)

While the Mental Capacity Act 2005 primarily applies to those aged 16 and over, it is relevant for young adults nearing this age and can intersect with Gillick competency in assessing decision-making capacity. The Act's principles include:

- **Presumption of Capacity:** Every adult (and young person over 16) is assumed to have capacity unless proven otherwise.
- **Right to Make Unwise Decisions:** Individuals have the right to make decisions that others might consider unwise.
- **Best Interests:** Any decision made on behalf of someone lacking capacity must be in their best interests.
- **Least Restrictive Option:** Any intervention should be the least restrictive of the person's rights and freedom of action.

Parental Responsibility and Consent

- **Under 16:** Generally, parents or guardians have the legal right to consent to treatment for their children. However, Gillick competency allows for exceptions where the child can consent on their own behalf.
- **Aged 16-17:** The Family Law Reform Act 1969 gives 16 and 17 year olds the legal capacity to consent to medical treatment as if they were adults. However, parents retain the ability to consent on their behalf in some situations, although this is a complex area of law.

Confidentiality

Children and young people have a right to confidentiality, even from their parents, if they are deemed competent. This principle is particularly significant in areas such as sexual health, mental health, and substance misuse services. However, confidentiality may be breached if the young person is at risk of serious harm.

