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Gillick competence

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In general, in English Law a minor is a person less than 18 years old. However the Family Law Reform Act 1969 states:

"The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, should be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian".

It is probably the case that for a person between 16 and 18 years old consent may be obtained either from the parent or from the person themselves.

Adults, defined as people over the age of 18, are usually regarded as competent to decide their own treatment. The Family Law Reform Act 1969 also gives the right to consent to treatment to anyone aged 16 to 18.

Note though that consent to medical treatment can be given by a child under the age of 16 if s/he is 'Gillick competent'

- children under the age of 16 can consent to medical treatment if they have sufficient maturity and judgement to enable them fully to understand what is proposed. This was clarified in England and Wales by the House of Lords in the case of *Gillick vs West Norfolk and Wisbech AHA & DHSS* in 1985

In making his judgement the Law Lord, Lord Fraser, offered a set of criteria which must apply when medical practitioners are offering contraceptive services to under 16's without parental knowledge or permission. The so-called Fraser Guidelines (some people refer to assessing whether the young person is Gillick competent) state that all the following requirements should be fulfilled:

- the young person will understand the professional's advice
- the young person cannot be persuaded to inform their parents
- the young person is likely to begin, or to continue having, sexual intercourse with or without contraceptive treatment
- unless the young person receives contraceptive treatment, their physical or mental health, or both, are likely to suffer
- the young person's best interests require them to receive contraceptive advice or treatment with or without parental consent

Notes:

- although these criteria specifically refer to contraception, the principles are deemed to apply to other treatments, including abortion
- the Fraser guidelines referred specifically to doctors but it is considered to apply to other health professionals, including nurses. It may also be interpreted as covering youth workers and health promotion workers who may be giving contraceptive advice and condoms to young people under 16, but this has not been tested in court

Last reviewed 01/2018

Links:

- [consent](#)
- [guide to consulting with a sexually active child](#)

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