YOUNG PERSON’S COMPETENCY ASSESSMENT FORM

COMPLETE FOR ALL PATIENTS UNDER 16 YEARS OF AGE WHEN REQUIRED TO DEMONSTRATE COMPETENCE TO CONSENT TO INVESTIGATION AND/OR TREATMENT

GENERAL PRINCIPLES

- Obtaining valid consent is just as important when treating children as it is with adults.
- A competent child can consent to medical treatment on his/her own behalf.
- A refusal of treatment, however, may be overridden by a person with Parental Responsibility, if treatment is considered to be in the best interests of the child.
- If the child is deemed not competent to consent to treatment, consent will need to be obtained from a person with Parental Responsibility, unless it is an emergency.
- There is detailed guidance on the child safeguarding intranet page about who has, or may not have, Parental Responsibility.
- In an emergency, treatment can be provided without consent to save the life of, or prevent serious deterioration in the health of, a child or young person.

AGE AND CAPACITY

The law distinguishes between children aged 16 and 17 years old (young persons), and children under 16, in respect of the capacity to consent.

- **Children aged 16 and 17** are presumed in law to have the same capacity as an adult to consent to treatment. They do not therefore require parental consent for medical treatment or interventions, unless there is reason to believe that they lack capacity.

- **Children under 16** can only consent to medical treatment if they are assessed as having the maturity and intelligence to fully understand the nature of the treatment, the options, the risks involved and the benefits. A child who has such understanding is considered to be Gillick competent.

- Children under 16 who are not Gillick competent and very young children cannot give or withhold consent to medical treatment. A person with Parental Responsibility will need to consent on their behalf.

The checklist below is designed to assist staff in assessing the competency of **children under 16** to consent to medical treatment. A copy of the completed checklist should be included in the child’s medical records.

ASSESSING COMPETENCE TO CONSENT

- “…whether or not a child is capable of giving the necessary consent will depend on the child’s maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent.” (Gillick v West Norfolk & Wisbech AHA, 1986)
The clinician/nurse/health advisor who is going to be providing the treatment should be the person who assesses the capacity of the child and takes consent if the child is deemed to be competent.

The clinician/nurse/health advisor must decide whether the child is able to understand the nature, purpose and possible consequences of investigations or treatments proposed, as well as the consequences of not having treatment. All relevant information must be provided and discussed before deciding whether or not a child has the capacity to consent.

The child must be able to understand, retain, use and weigh this information, and communicate his/her decision to others.

A child may have the capacity to consent to straightforward, relatively risk-free treatment but may not necessarily have the capacity to consent to complex treatment carrying high risks or serious consequences.

The capacity to consent can also be affected by the child’s physical and emotional development and by changes in their health and treatment.

If a child is deemed not competent to consent to medical treatment, consent will need to be obtained from a person with Parental Responsibility for the child.

REFUSAL OF TREATMENT

Children under 16 who are Gillick competent may refuse treatment but their refusal can be overridden by a person with Parental Responsibility who can consent to the treatment if it is deemed to be in the child's best interests.

If a Gillick competent child refuses treatment and the person with Parental Responsibility also withholds consent, a Court Order may be necessary prior to proceeding with treatment which is believed to be in the best interests of the child.

CONFIDENTIALITY

If the child is Gillick competent, it follows that he/she also has a right to confidentiality.

Staff should always encourage children to involve their parents/carers in decisions about their care and treatment. Government guidance advocates that persons with Parental Responsibility should be involved in decisions about the child’s care, unless there is a very good reason for not doing so.

If however, a competent child under the age of 16 is insistent that his/her family should not be involved; their right to confidentiality must be respected, unless such an approach would put them at serious risk of harm.

If a decision is made to disclose information to a Gillick competent child’s parents/carers against his/her wishes, the child should be informed before the information is disclosed to the parents/carers.

Any decision to disclose must be in the child’s best interests. The clinician must document the decision and the reasons for it in the medical record, and be prepared to justify it.

Sexual activity with child aged under 13 years of age is statutory rape, irrespective of apparent consent and there is a legal obligation to inform Social Services, who should
in turn contact the police. Staff should seek advice promptly from the consultant, senior nurse or Named professional for child safeguarding.

DOCUMENTATION

It is vital to document carefully in the notes all the factors contributing to an assessment of competence. This should include what information was provided to the child and the parents/carers and how the decision was reached.

ORGAN DONATION

In the case of a child, who was competent to reach a decision before he/she died and consented to organ donation taking place after their death, the position is legally no different from that of an adult. The child’s consent is sufficient to make the removal, storage or use of their organs for transplantation lawful.

COMPETENCY CHECKLIST:

1. Understands nature of treatment offered i.e. WHAT IT INVOLVES [YES/NO]
2. Understands purpose of treatment offered i.e. WHAT IT IS FOR [YES/NO]
3. Understands possible risks of taking treatment i.e. SIDE EFFECTS [YES/NO]
4. Understands consequences of not taking treatment [YES/NO]
5. Patient understands the clinician’s advice [YES/NO]
6. Patient encouraged to inform parent/guardian of consultation [YES/NO]
7. Patient’s physical/mental health would suffer if s/he does not receive advice/treatment [YES/NO]
8. It is in the patient’s best interests for the clinician to give advice/treatment without Parental consent [YES/NO/NA]
9. Patient assessed as competent based on understanding, retaining, reflecting and deciding on the treatment information provided [YES/NO]

Doctor /Nurse/Health Advisor

Signature: ________________________________

Please PRINT: ________________________________

Date: ___________________________
Consent to Examination & Treatment for Children and Young People

YOUNG PERSON (age 16 or 17yrs)

- Consent to examination/treatment obtained from adolescent
  - YES
  - NO

- Consider issues of confidentiality & involvement of parent/carer in decision making process
  - Attempt to gain parents consent (Legal rights of child to remain paramount)
    - NO
    - YES

CHILD (age up to 16 years)

- Is the child assessed as 'Gillick' competent by medical staff?
  - YES
  - NO

- Decision to be made by parent/carer. Keep child/young person informed of all actions
- Consider parallel consent of young person and parent/carer as good practice
- Proceed with examination or treatment

PARENT/CARER
Identified as holding 'Parental Responsibility'

- Consent to examination/treatment obtained from parent
  - YES
  - NO

- Discuss objections with child and family
- Discuss with young person/child all actions taken
- Is situation an emergency?
  - YES
  - Life threatening
    - Doctors to consider treatment without consent using clinical judgement
    - Essential, but not life threatening
      - Obtain a court order to enable treatment to proceed
      - Fully explain all actions taken to child & family
      - Review as clinically indicated
  - NO

- Fully explain all actions taken to child & family
- Review as clinically indicated
- Do not proceed with examination or treatment