

Circumcision Consent

in England and Wales



With a note regarding Scotland
and Northern Ireland

Circumcision Consent in England and Wales

This booklet is based on the specific laws of England and Wales. Whilst the general principles herein have been applied in all free and democratic countries, the age of consent varies considerably from territory to territory. This must be borne in mind whilst reading the leaflet outside of England and Wales.

The Circumcision Helpdesk provides this information in good faith, based on its understanding of the law in England and Wales at the time of writing. No responsibility can, however, be accepted for total accuracy or completeness. For an authoritative interpretation of the legal position one must consult a qualified legal professional.

Assault and Consent

Under the general principles of common law, any touching of one person by another is a common assault or trespass upon the person unless the person being touched has consented to it. However, this simplistic view has to be tempered by reason and hence many simple touches are deemed to have consent – these include such touching as the accidental contact with another in a crowded train and the essential care of a child by its parents. In other cases the consent is implied because both parties voluntarily participate, as when shaking hands, exchanging a kiss between relatives or lovers, or the tackles, etc of a contact sport like rugby or football.

All medical examinations involve the doctor touching the patient; and surgery involves not only touching but also cutting. In the absence of consent these are at least trespasses and could be serious assaults. The law specifically recognises the right (indeed duty) of a doctor to attempt to save life in an emergency, even when actual consent cannot be obtained, but this does not extend to non-emergency situations and so a doctor must obtain consent before normal examination and surgery. Verbal consent is acceptable but cannot easily be proven and so written consent is always sought for any invasive examination or treatment. Written consent should always be sought when the person giving consent is under 18 or is not the patient (eg a parent).

For consent to be valid it must be 'informed consent', that is, the person consenting must know to what they are consenting with its risks and benefits. Furthermore, consent can only be given by the patient themselves, or their legal guardian, in accordance with the principle of 'competence'. Clearly a baby or young child cannot give their own consent to medical treatment as they are incapable of understanding the procedure, its benefits and risks. A parent or guardian must therefore give consent on their behalf when treatment is necessary or desirable.

Parental Responsibility

In a free and democratic society the family is the basic unit for the procreation, education, health and general nurturing of children. Parents have an inalienable right and duty to make all reasonable decisions on how their children should be brought up. This includes choice of education and religious/moral upbringing as well as what precautions or treatment is desirable to safeguard or improve the current and future health of the child. Amongst the decisions in this latter category are whether or not to immunise against any or all common preventable diseases and whether or not to circumcise a boy.

Clearly there will be some point at which the child becomes competent to give their own consent. Until the late 1960s this didn't occur until legal adulthood was achieved (initially at age

21 and later reduced to 18), after which age parents no longer had any authority, nor any right to know anything about their children's healthcare.

Modifying Legislation etc

More recent legislation and case law have made significant changes to this.

The Family Law Reform Act of 1969 (Part 1, Section 8, No. 1) provides that:

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, shall 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.

The effect of this is to allow a 16 or 17 year old to consent to their own treatment without asking their parents, but the parents would still have the right to insist on any treatment that they considered necessary or desirable and to know what treatment had been given.

Subsequently a test case was raised in court by a Mrs Gillick regarding the provision of birth control medication and advice to young girls. The judgement in this case provided a new framework that applies to all medical examination, treatment and advice to young people (including purely cosmetic surgery). The key factor is now what is known as 'Gillick Competence' under which:

A Child, who is under the age of 16 years old, can consent to medical treatment without parental authority but only if that child has 'Sufficient maturity and understanding to do so'.

They may only consent to treatment if the nature, purpose and hazards of that treatment are all understood.

Health professionals also need to be satisfied that Young People understand any advice given; and the moral, social and emotional implications of that advice.

Furthermore, if a child is 'Gillick Competent', Health Professionals can only disclose information to the parent(s) with the child's consent, regardless of Parental Responsibility.

The effect of this is, in appropriate cases, to reduce the age at which a young person can seek their own treatment and also to remove the right of parents to know all about their children's medical treatment.

The doctor must be confident that the child has the appropriate understanding and maturity. They must also be satisfied that they can provide sufficient information about the procedure, its risks and benefits in terms that the child will understand. If they are not certain of their own and the child's competence in these matters then they can and must refuse the treatment unless and until parental consent is obtained.

As a (possibly unintended) result of the application of 'Gillick Competence', it is also now entirely possible for a 'Competent' minor to refuse treatment that he needs or which a parent wishes him to have, provided he is fully aware of the consequences of not having that treatment (although this situation does not seem to have yet been tested in court).

This effectively means that parents cannot have a boy over about the age of 12 circumcised unless the boy himself consents, even if he suffers from phimosis, balanitis or other problems.

The exceptions to the child's right to refuse are unlikely to apply to circumcision; they are: "If a young person refuses treatment, and by doing so this may lead to their death or a severe permanent injury, their decision can be overruled by the Court of Protection." [This is the legal body that oversees the operation of the Mental Capacity Act (2005).]

"The parents of a young person who has refused treatment may consent for them, but it is usually thought best to go through the courts in such situations."

Additional Points

No doctor is required to give any treatment against his clinical judgement. Neither is he required to perform any treatment which is not essential for the immediate health of the patient. He may therefore refuse to provide a purely elective circumcision, irrespective of whether valid consent has been, or would be, given.

Under the Children's Act 1989, where parental responsibility is shared by both parents, one parent alone may not normally consent to a circumcision on purely religious grounds – both parents need to consent.

There are at least three current definitions in respect of the age of a 'Child':

- * UN Convention on the Rights of the Child – Every human being below 18 years.
- * Family Law Reform Act (1969) – Individual under 16 years.
- * Children Act (1989) – Under 18 years of age.

Only the Courts can authoritatively say which definition applies in any given case!

The NHS Choices web site (<http://www.nhs.uk/Conditions/Consent-to-treatment/Pages/Children-under-16.aspx>) confirms that:

"People aged 16 or over are entitled to consent to their own treatment, and this can only be overruled in exceptional circumstances.

Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own medical treatment, unless there is significant evidence to suggest otherwise."

Scotland and Northern Ireland

Scotland and Northern Ireland have their own specific legislation which closely follows that for England and Wales but may have some significant differences. For a definitive statement of the law you must consult a legal professional qualified in the law of the country concerned.



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