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CHILDREN AND YOUNG PEOPLE - WHERE COURT AUTHORISATION IS REQUIRED FOR A DEPRIVATION OF LIBERTY

A. Definitions

1. A 'young person' is a child aged 16-17.
2. A 'child' is a child under the age of 16.
3. Scope of parental responsibility:-

When determining the scope of parental responsibility specific factors to consider are the age and maturity of the child/young person, extent and ability of child/young person to make decisions for themselves; young person's condition and physical disabilities.

4. Deprivation of Liberty;

The essential characteristics of a deprivation of liberty (DOLs) are as follows:-

- a. The 'objective component' of confinement in a particular restricted place for a not negligible length of time;
- b. The 'subjective component' of lack of valid consent; and
- c. The attribution of responsibility to the state.

The 'acid' test of characteristic (a) is whether a person is under the complete supervision and control of those caring for him/her and not free to leave the place where she/he lives.

5. Meaning of Gillick competency – child has sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision.

6. Meaning of capacity – a young person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain (Mental Capacity Act 2005, Section 2(1)).(MCA test)

What is not relevant is the child's or young person's compliance with the placement and reasons and purposes behind the placement, as is the relative normality of placement.

B. Where Court authorisation to a DOLs situation is not required:-

1. Young person accommodated under Section 20/full Care Order under Section 31 Children Act 1989 has capacity within MCA test to consent to their care and support restrictions to meet their disability or complex health needs.
2. Young person lacks capacity under MCA test but is accommodated under S20 CA and the parent of that child consents within the scope of parental responsibility and with full knowledge of the arrangement for children under the age of 16 years..
3. A Gillick Competent child accommodated under S20 CA or care order sec 31. consents (parents' consent not required but appropriate to record their views)

C. Where Court authorisation is required:-

1. The Local Authority has parental responsibility on a child/young person via S38/S31 CA unless B1 or B3 applies.
2. Young person is S20, lacks capacity under MCA test and the parent with parental responsibility refuses to give consent.
3. Young person is S20, has a fluctuating capacity under MCA test and refuses to consent even if parents consent, and could be under the age of 16 years.
4. Non Gillick Competent child in S20 aged 16/17 years old. .
5. Young Person is s20, they do not have capacity to consent to care and support aged 16/17 years of age and parents seek Deputyship Order, DoL is required. NB Note the need for a capacity assessment of parents with PR when being asked to consent.

This guidance is intended as a guide to good practice but is not a substitute for legal advice upon the facts of any specific case. No liability is accepted for any adverse consequences arising from reliance on it.