



MCN FOR CHILD PROTECTION



NORTH OF SCOTLAND  
PLANNING GROUP

# Consent for Joint Paediatric/Forensic Medical Examinations of Children and Young People

Developed August 2018

Sarah Tait  
Regional Manager for SEAT Managed Clinical Network for Child Protection

Review August 2020

## **Consent for Joint/Forensic Medical Examinations of Children and Young People.**

As part of a child protection investigation a discussion with a Paediatrician and Forensic Medical Examiner (FME) regarding a Joint Paediatric/Forensic Medical Examination (JPFE) of a child or young person may be required.

In all such cases there will be a requirement to seek and obtain consent, either from the child or young person (subject to age, understanding and capacity), the parent and/or carer, or any other person (s) who has parental responsibility and rights as specified by The Children (Scotland) Act 1995.

### **Consent Issues**

It is acknowledged and agreed that in all child protection investigations, where a JPFE of a child or young person may be a desirable action, the question of who can competently give consent should be discussed and agreed with both the paediatrician and the FME, prior to any such JPFE taking place.

Nevertheless, the focus must always remain on the care, health, wellbeing and protection of the child or young person and it remains paramount that their holistic health needs are met.

### **Informed and Explicit Consent**

The particular type of consent applicable for a JPFE is:

- 1. Informed Consent** – the individual must understand what is being asked of them and must give their consent/permission freely for a JPFE to take place; and
- 2. Explicit Consent** – the individual positively gives their consent/permission for a JPFE to take place.

**Both 1 & 2 are required before a JPFE can go ahead**

**Implied Consent** simply means that the individual has not explicitly said they don't agree to a JPFE to take place, so it is inferred that they do agree

**Implied Consent is not sufficient** for a JPFE to take place.

### **Consent Form**

Consent should be written and documented on the National Child Protection Proforma consent form by the Paediatrician who is seeking consent.

## **Seeking Consent from Child/Young person**

It is also acknowledged and agreed that in many cases, the child or young person will have the capacity to consent and agree to participate in JPFE and the Age of Legal Capacity (Scotland) Act 1991 allows that a child under the age of 16 can consent to any medical procedure or practice if in the opinion of the attending qualified medical practitioner they are capable of understanding the possible consequences of the proposed examination or procedure. Children who are judged of sufficient capacity to consent can withhold their consent to any part of the medical examination (for example, the taking of blood or a video recording). Clear notes should be taken of which parts of the process have been consented to and by whom.

The consent must be **INFORMED and EXPLICIT**, to the satisfaction of the Paediatrician and Forensic Medical Examiner (FME) involved in the case.

Where a child or young person with capacity refuses to provide consent and agree to participate in JPFE, then such an examination cannot and will not take place.

If a child or young person does not have the capacity to consent and agree to participate in a JPFE, consent should be sought from the parent/carer.

It should be noted that this does not allow the parent/carer an automatic right of access to the child's medical information and does not allow them a legal right to be present during any JPFE, again without the prior knowledge and/or consent of their child.

## **Seeking Consent from Parent/Carer**

It is agreed that in the majority of cases, the parent/carer with parental responsibilities and rights (A person holding parental responsibilities and rights in terms of Sections 1 (1) and 2(1) and 5 of The Children (Scotland) Act 1995) will have the capacity to consent and agree to their child participating in JPFE. In these cases consent, should be sought from the parents themselves.

Where the parent/carer with parental responsibility cannot be present at the medical, consent cannot be verbally passed on by a third person. In this situation consent may be obtained from the parent/carer by the paediatrician and forensic physician over a telephone. When consent is agreed/disagreed, full documentation of date, time and persons present to obtain consent must be documented in the notes.

## **Compromised Consent**

On occasion a situation may arise where the parent/carer does not have the ability to consent for JPFE.

- Where parental responsibilities are unclear, or unknown, or contested
- Where the person holding parental responsibilities and rights is the potential suspect or accused and Police do not want this person involved in the JPFE

Where a medical examination is thought necessary for the purposes of obtaining evidence in criminal proceedings but the parents/carers refuse their consent, the Procurator Fiscal may consider obtaining a warrant for this purpose. However, where a child who has legal capacity to consent declines to do so, the Procurator Fiscal will not seek out a warrant.

If the Local Authority believes that a medical examination is required to find out whether concerns about a child's safety or welfare are justified, and parents refuse consent, the local authority may apply to a Sheriff for a Child Assessment Order or a Child Protection Order with a condition of medical examination. A child subject to a Child Protection or Assessment Order may still withhold their consent to examination or assessment if they are deemed to have legal capacity.

In Scotland, decisions about the care of patients aged 16 years and over who lack capacity is governed by the Adults with Incapacity (Scotland) Act 2000. This sets out the principles whereby health care staff may provide care and assessment which is in the patient's best interests.

### **NOTE**

At the JPFE any child or young person with/without capacity may refuse to be examined despite explanations by the doctors as to the purpose and benefits of it. If this happens the examination cannot go ahead.

### **References**

Adapted from Joint Protocol for the Joint Paediatric/Forensic Medical Examinations of Children and Young People across Tayside (2012)

National Guidance for Child Protection in Scotland (2014)

The Adults with Incapacity (Scotland) Act 2000