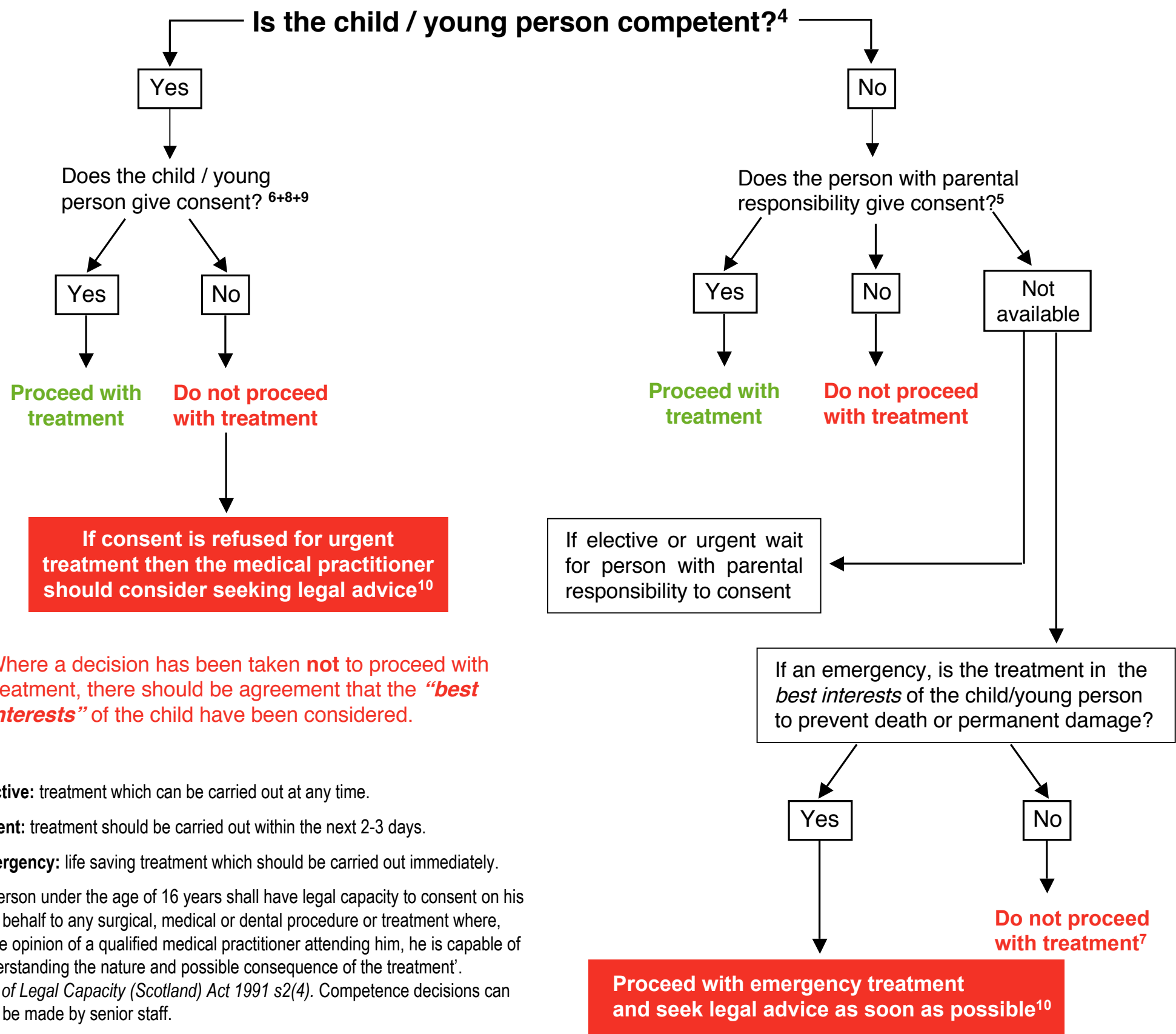


Consent to Treatment (elective¹, urgent², emergency³) for children and young people under 16 years



Legal aspects of consent for children and young people **under 16 years of age**.
Additional considerations apply in consent to treatment for mental health disorders.

This Flow Chart does not cover every scenario a health professional may be faced with and clinical judgement must be used with the best interests of the child / young person at the heart of that judgement



1 **Elective:** treatment which can be carried out at any time.

2 **Urgent:** treatment should be carried out within the next 2-3 days.

3 **Emergency:** life saving treatment which should be carried out immediately.

4 ‘A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequence of the treatment’.
Age of Legal Capacity (Scotland) Act 1991 s2(4). Competence decisions can only be made by senior staff.

5 Individuals who may have parental responsibility are summarised in the NHSGGC *Consent Policy on Healthcare, Assessment and Treatment* and are defined in the attached document, “*New Law on Children and Medical Consent*”, based on *The Children (Scotland) Act, 1995*.

6 When the child is giving consent, it is appropriate to discuss the details with the parents or the person with parental responsibility, providing confidentiality is not breached.

7 When a child or parent refuses to consent to treatment, the necessity for treatment should be discussed with them in the presence of a witness (health professional) who should countersign the record of discussion. This must be stored in case notes.

8 Refer to NHSGGC *Consent Policy on Healthcare, Assessment and Treatment*. Refusal scenarios should be fully recorded in the case notes and every effort made to reach a consensus agreement between child or young person, parent and multidisciplinary team. Even if treatment is lawful, it would not be good practice to proceed without discussion.

9 Under Scottish Law a parent cannot override a decision to give or refuse consent to treatment made by a competent child or young person. If a competent child or young person refuses treatment, it is unclear how a court would rule as this scenario has never been tested in the Higher Scottish Courts *i.e.* the Court of Session but it is likely a young person’s wishes would be respected.

10 The BMA advises where consent is refused “that emergency life saving treatment should be given and an application made to a court as a matter of urgency.”¹