

Who can give consent for vaccination of a young person aged under 16 years?

Legal Guardianship

National Consent for COVID-19 Vaccination Working Group

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The following note on Legal Guardianship has been prepared by members of the National Consent for COVID-19 Vaccination Working Group and as part of the rollout of the vaccination programme to young people 12 to 15 years old and 16 to 17 years old. This has been prepared to assist healthcare workers and people seeking information on vaccination of young people under 18 years of age and to understand who can be involved in the process of consent for vaccination of young people. The consent process for 12-15 year olds and 16-17 year olds is different and links to further information are provided at the end of this note.

Young people aged under 16 years

Legal Guardians can consent, young people aged under 16 years cannot consent for themselves

Current Legal Provisions on Guardianship

Under current Irish law, the following guardianship rules apply:

- Where a child's mother and father are married both are the legal guardians.
- Following a separation or divorce, both parents remain the child's legal guardian even if the child is not living with them and they have not been awarded custody of the child.
- Where a child has been jointly adopted, the adoptive parents are the child's legal guardians.
- Where a same sex couple are married, the child's biological parent is a legal guardian. The partner/spouse may apply to become a legal guardian.
- Where the child's parents are not married:
 - the child's mother is an automatic legal guardian
 - the child's father is an automatic legal guardian if:
 - from 18 January 2016, he has lived with the child's mother for 12 consecutive months including at least 3 months with the mother and child following the child's birth.

- the mother and father of the child may make a statutory declaration to the effect that they agree to the appointment of the father as legal guardian.
- the father may apply to court to be appointed legal guardian.
- Any adult may apply to court for legal guardianship:
 - if he or she is married to or in a civil partnership with, or has been cohabiting for at least 3 years, with the child's parent and has shared parental responsibility for the child's day-to-day care for at least 2 years.
 - if he or she has provided for the child's day-to-day care for a continuous period of more than 12 months and the child has no parent or guardian who is able or willing to act as guardian.
- A guardian may nominate another person to act as temporary guardian in the event of the guardian's incapacity. This is subject to court approval.
- A guardian may appoint a person to act as the child's guardian in the event of the guardian's death.
- For **Children/young people in voluntary care** - the usual legal rules of parental consent apply.
- For **Children/young people under a care order**:
 - Young person over 16 years admitted to the care of Tusla, (i.e. an order of the court), the normal rules apply.
 - For a child/young person under 16 years admitted to the care of Tusla under a care order, the normal rules **do not** apply (best practice to involve the parents in the decision-making process where possible) when:
 - Under an interim or emergency care order, an application may be made to the District Court in regard to consent to treatment/intervention, including that a social care professional involved with the child's care is permitted to give consent to treatment/intervention.
 - Under a full care order (permanent or temporary), Tusla is authorised by the court to consent to any necessary medical or psychiatric treatment, assessment or examination. Different procedures apply to admission and treatment under the Mental Health Act 2001.

Further information on consent to vaccination for young people 12 to 15 years is available here:

<https://lms.hseland.ie/> (search for COVID-19 Vaccination Programme)

Young people aged 16-17 years

Further information on consent to vaccination for young people 16 to 17 years is available here:

<https://www.hse.ie/eng/health/immunisation/hcpinfo/covid19vaccineinfo4hps/guidance-on-consent-for-vaccination-16-17-years.pdf>.

Disagreement between parents about Covid vaccination

Although the consent of one person with parental responsibility is sufficient to authorise vaccination for a child aged 12-15 years, if the vaccinator has been specifically notified by either parent/legal guardian that one parent/legal guardian objects to vaccination, the vaccination should not be carried out, even though the other parent/legal guardian consents. In such situations, the parents/legal guardians should be advised to discuss matters among themselves to seek to resolve their dispute. Parents/legal guardians should be encouraged to discuss the matter with their child's General Practitioner to address any concerns regarding the vaccine. The parents/legal guardians should also be encouraged to discuss vaccination with their child, whose own views are also important. Ultimately, the matter may need to be resolved by the parents through the courts.

Every reasonable effort should be made to avoid vaccination of a child where one parent/legal guardian has indicated that s/he objects to vaccination. The onus as per the HSE National Consent Policy is on the objecting parent/legal guardian to make this objection known to the service in question. A parent/guardian may make an objection known by contacting a local vaccination centre or the child's General Practitioner. When this happens, they should be asked for the child's PPSN which will enable the objection to be registered on the information system. Because of the way in which the vaccination roll-out is delivered for the 12-15 year old cohort, it is not possible, to provide an absolute guarantee that notification of an objection will ensure that the child is not vaccinated.