

# Child Law for Social Work

Jane Williams



# **CHILD LAW FOR SOCIAL WORK**



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JANE WILLIAMS



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# CONTENTS

Alphabetical List of Cases	vii
Alphabetical List of International Instruments	xi
Alphabetical List of Statutes	xiii
Acknowledgements	xvii
Introduction: How to Use this Book	1
<b>PART ONE CONTEXT AND THEMES</b>	<b>3</b>
1 Law, Social Work and Children	5
2 Sources of Law for Child Care Social Work	31
3 Accountability for Child Care Practice in England and Wales	58
4 Inter-agency Working and Information Sharing	89
<b>PART TWO SOCIAL WORK PRACTICE WITH CHILDREN</b>	<b>113</b>
Introduction: Key Concepts in Case-work Interventions	115
5 Engaging with Children and Their Families to Safeguard Children and Promote Their Welfare	122
6 Compulsory Measures to Safeguard Children and Promote Their Welfare	146
7 Preparing a Case for Court	167
8 Looked After Children	193
9 Social Work with Children in the Youth Justice System	221
End Note	254
References	259
Index	265



## ALPHABETICAL LIST OF CASES

<i>A v United Kingdom</i> [1998] FLR 118; [1998] EHRLR 82	45
<i>A County Council v K, D and L</i> [2005] 1 FLR 851	184
<i>A Local Authority v S and W and T by his Guardian</i> [2004] EWHC 1270 (Fam)	180
<i>Ali v Lord Grey School</i> [2006] UKHL 14	47
<i>Botta v Italy</i> [1998] ECHR 12; [1998] 26 EHRR 241	21, 46, 125, 127, 138
<i>Bouamar v Belgium</i> [1989] 11 EHRR 1	45
<i>CD v Isle of Anglesey County Council</i> [2004] EWHC 1635 (Admin)	76, 144
<i>CF v Secretary of State for the Home Department</i> [2004] 2 FLR 517	34, 76, 86
<i>Clingham v Royal Borough of Kensington and Chelsea; R (McCann) v Manchester Crown Court</i> [2002] 4 All ER 593	234
<i>Council for the Civil Service Unions v Minister for the Civil Service</i> [1985] AC 374	75
<i>D and K, Re (Care Plan: Twin Track Planning)</i> [1999] 2 FLR 872	216
<i>DG v Ireland</i> [2002] ECHR, App. 4974/98	45
<i>Eriksson v Sweden</i> [1989] 12 EHRR 183	152, 201, 203, 217
<i>Gillick v West Norfolk and Wisbech Area Health Authority and the DHSS</i> [1986] 1 AC 112; [1985] 3 All ER 402	28, 175, 239
<i>GW and PW v Oldham Metropolitan Borough Council</i> [2005] EWCA Civ 1247	184, 186, 189
<i>Hendriks v Netherlands</i> [1983] 5 EHRR 223	46
<i>Humberside County Council v B</i> [1993] 1 FLR 257	178
<i>JD (FC) v East Berkshire Community Health Trust and others</i> [2005] 2 FLR 284	74, 75, 148, 183
<i>Johansen v Norway</i> [1996] 23 EHRR 33	46, 152
<i>KA v Finland</i> [2003] 1 FLR 696	203
<i>K and T v Finland</i> [2001] 2 FLR 707	149, 203
<i>Kent County Council v G</i> [2005] UKHL 68	169
<i>Lancashire County Council v B</i> [2000] 1 FLR 583	179



<i>Lukanov v Bulgaria</i> [1997] ECHR 18	45, 250
<i>Mabon v Mabon</i> [2005] EWCA Civ. 634	33
<i>McMichael v United Kingdom</i> [1995] 20EHRR205	46
<i>Nielsen v Denmark</i> [1989] 11 EHRR 175	46
<i>Niemitz v Germany</i> [1992] 16 EHRR 97	46
<i>Olsson v Sweden</i> [1988] 11 EHRR 259	46, 152, 204, 218
<i>P, C and S v United Kingdom</i> [2002] 2 FLR 631	152, 164, 170
<i>Pini and Bertani v Romania</i> [2004] ECHR Apps. 78028/01 and 78030/01	198
<i>R v Bexley London Borough Council, ex parte B</i> (Care Hours Provision) [2000] CCLR 15	137
<i>R v. Cannings</i> [2004] EWCA Crim. 1	186, 188
<i>R v Central Criminal Court ex parte W, B and</i> <i>C</i> [2001] Cr App R2	251
<i>R v Hampshire County Council ex parte</i> <i>H</i> [1999] 2 FLR 359	76, 164–5
<i>R v Harrow London Borough Council ex parte</i> <i>D</i> [1990]	165
<i>R v Islington London Borough Council, ex parte Rixon</i> [1996] ICCLR 119; <i>The Times</i> , April 17	52
<i>R v Norfolk County Council ex parte M</i> [1989] 2 All ER 359	76, 164
<i>R v North and East Devon Health Authority ex parte</i> <i>Coughlan</i> [2001] QB 213; [2000] 3 All ER 850	142–3
<i>R v Royal Borough of Kingston upon Thames ex p. T</i> [1994] 1 FLR 798	80
<i>R v Somerset County Council, ex parte Fewings</i> [1995] 3 All ER 20	60
<i>R v Tameside MBC ex p J</i> [2000] 1 FLR 942	
<i>R v W</i> [2001] 1 Cr App R (S) 143	191
<i>R (AB and SB) v Nottingham City Council</i> [2001] EWHC Admin 235	131
<i>R (Begum) v Headteacher and Governors of Denbigh</i> <i>High School</i> [2006] UKHL 15	47
<i>R (G) v Barnet London Borough Council; R (W) v</i> <i>Lambeth London Borough Council; R (A) v Lambeth</i> <i>London Borough Council</i> [2003] UKHL 57, [2004] 1 All ER 97	19, 137, 138–41, 142
<i>R (Howard League for Penal Reform) v Secretary of</i> <i>State for the Home Department and Department of</i> <i>Health</i> [2002] 1 FLR 484	19, 55, 223, 226, 250
<i>R (J) v Enfield London Borough Council and Secretary</i> <i>of State for Health, ex parte</i> [2002] EWHC 432	29, 75, 138, 142
<i>R (L) v Secretary of State for Health</i> [2001] 1 FLR 406	201

<i>R (M) (A Child) v Sheffield Magistrates Court</i> [2004] EWHC 1830	27, 134, 205, 242
<i>R (S) v London Borough of Wandsworth, London Borough of Hammersmith and Fulham, London Borough of Lambeth</i> [2002] 1 FLR 469	131
<i>R (S) v Waltham Forest Youth Court and Others</i> [2004] 1830; [2004] F.C.R. 281; [2004] Fam Law 790	46, 249
<i>R (T) v St Alban's Crown Court</i> [2002] EWHC 1129 Admin	234
<i>R (W) v London Borough of Lambeth</i> [2002] EWCA Civ 613	39, 138
<i>Re AB (Care Proceedings: Disclosure of Medical Evidence to Police)</i> [2003] 1 FLR 579	190
<i>Re B (Adoption Order)</i> [2001] EWCA Civ 347	209
<i>Re D and K (Care Plan: Twin Track Planning)</i> [1999] 2 FLR 872	165, 216
<i>Re F (A Minor) (Care Order: Withdrawal of Application)</i> [1993] 2 FLR 9	177
<i>Re G (Care: Challenge to Local Authority's Decisions)</i> [2003] 2 FLR 42	104, 152, 202
<i>Re G (Children) (Care Order: Evidence)</i> [2001] EWCA Civ 968	179
<i>Re G (Protocol for Judicial Case Management in Public Law Children Act Cases: Application to become a Party in Family Proceedings)</i> [2004] EWHC 116 (Fam)	169, 170, 173
<i>Re H and R (Child Sexual Abuse: Standard of Proof)</i> [1996] 4 All ER 905	156, 179, 181
<i>Re K (Secure Accommodation: Right to Liberty)</i> [2001] 1 FLR 562	18, 45, 199, 203
<i>Re L (Care: Assessment: Fair Trial)</i> [2002] EWHC 1379 (Fam); [2002] 2 FLR 730	152
<i>Re L (Care Proceedings: Human Rights Claims)</i> [2003] 2 FLR 160; [2004] 1 FCR 289	77, 201
<i>Re L (Children)</i> [2006] EWCA Civ 1282	185
<i>Re LU (A Child) and Re LB (A Child)</i> [2004] EWCA (Civ) 567	182, 186, 188
<i>Re M (A Minor) (Care Order: Threshold Conditions)</i> [1994] 3 WLR 558	179
<i>Re M (Care: Challenging Local Authority Decisions)</i> [2001] 2 FLR 1300	152
<i>Re M (Care Proceedings: Disclosure: Human Rights)</i> [2001] 2 FLR 1316	190
<i>Re M (A Child) (Secure Accommodation)</i> [2001] EWCA Civ 458; [2001] 1 FCR 692; [2001] 2 FLR 169	203

<i>Re M (Interim Care Order: Removal)</i> [2005] EWCA Civ 1594; [2006] 1 FLR 1043	152
<i>Re M &amp; R (Child Abuse: Evidence)</i> [1996] 2 FLR 195	183
<i>Re N (Leave to Withdraw Care Proceedings)</i> [2000] 1 FLR 134	177
<i>Re P-B</i> [2006] EWCA Civ 1016	216–17
<i>Re R (Care: Disclosure: Nature of Proceedings)</i> [2002] 1 FLR 755	175, 185, 186, 187
<i>Re S (A Child) (Adoption Order or Special Guardianship Order)</i> [2007] 1 FCR 271; <i>Re M-J (A Child) (Adoption Order or Special Guardianship Order)</i> [2007] 1 FCR 329; <i>Re AJ (A Child)</i> [2007] 1 FCR 308	210
<i>Re S, Re W</i> [2002] 2 WLR 720; [2002] 1 FLR 815; [2002] 2 All ER 192	10, 11, 80, 150, 202, 212
<i>Re T (Accommodation by Local Authority)</i> [1995] 1 FLR 159	80
<i>Re X, Emergency Protection Orders</i> [2006] EWHC 510 (Fam)	157, 159, 163
<i>S.C. v UK</i> [2004] 40 EHRR 10	46, 226, 248
<i>Stanley, Marshall and Kelly v Commissioner of Police for the Metropolis and Chief Executive of Brent Council</i> [2004] EWHC 2229	234, 235
<i>Surugiuv v Romania</i> [2004]	243
<i>Sutherland v United Kingdom</i> [1997] App. 25186/94	47
<i>TP and KM v United Kingdom</i> [2001] 34 EHRR 42	152
<i>Tyrer v UK</i> [1978] 2 EHRR 1	250
<i>V and T v United Kingdom</i> [1999] 30 EHRR 121	46, 55, 225, 226, 227, 247
<i>W v Oldham Borough Council</i> [2006] 1 FLR 543	
<i>W v United Kingdom</i> [1988] 10 EHRR 29	46, 152, 163, 217
<i>X Council v B (Emergency Protection Orders)</i> [2004] EWHC 2015 (Fam); [2005] FLR	159, 164
<i>X (Minors) v Bedfordshire</i> [1995] 2 AC 633; [1995] 3 All ER 353	73, 74
<i>Yousef v Netherlands</i> [2003] IFLR 210	46
<i>Z v United Kingdom</i> [2001] 2 FCR 246; [2001] 2 FLR 612	16, 45, 73, 149, 152

## **ALPHABETICAL LIST OF INTERNATIONAL INSTRUMENTS**

- Charter of Fundamental Rights of the European Union 48, 53
- European Convention on Contact Concerning Children 2003 49
- European Convention on Human Rights 1950 1, 6, 14, 15–17, 24, 39, 42–8, 50, 57, 73, 75, 91, 123–6, 127, 141, 147–50, 160, 168, 180, 186, 195, 209, 212, 214, 225, 226, 229, 247, 249, 253, 254, 255, 257; Overview: 45–7; Article 2: 70, 148, 198, 227; Article 3: 16, 70, 125, 149, 198, 199, 228, 229, 249, 250; Article 5: 17, 149, 199, 202–3, 228, 237, 249; Article 6: 125, 148, 166, 170, 175, 198, 203, 226, 227, 229, 237, 247–8, 249, 250; Article 8: 22, 34, 38, 39, 44, 46–7, 69, 70, 72, 76, 80, 101, 103, 104, 108, 125, 127, 138, 139, 148, 149, 151–5, 161, 163, 165, 166, 170, 175, 198, 199, 201, 102, 203, 218, 226, 228, 229, 231, 234, 237, 243, 244, 250; Article 10: 243, 244; Article 11: 228, 231, 243, 244; Article 14: 23, 38, 124, 148, 197, 227; Article 17: 244
- European Convention on the Adoption of Children 1967 49
- European Convention on the Exercise of Children's Rights 1996 47–8, 56
- European Convention on the Legal Status of Children Born out of Wedlock 1975 49
- European Convention on the Recognition and Enforcement of Decisions Concerning the Custody of Children 1980 49, 56
- European Social Charter 1961 49
- European Union Council Regulation (EC) No. 2201/2003 ('Brussels II') 49, 53, 56
- Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption 1993 49, 56
- Hague Convention on the Civil Aspects of International Child Abduction 1980 48
- League of Nations 'Geneva' Declaration on the Rights of the Child 1924 41, 42
- UN Convention on the Rights of the Child 1989 1, 6, 14–15, 17–19, 26, 28, 29, 32, 36, 38, 54–7, 64, 67–9, 71, 72, 80, 82, 83, 87, 108, 110, 121, 123–6, 145, 147–51, 195, 196, 199, 224, 254, 255, 257; Overview: 41–4; Article 2: 8, 38, 124, 148, 124, 148, 197, 227; Article 3: 8, 124, 126, 148, 198, 227, 235, 245, 247; Article 4: 69, 109, 120, 145, 245, 257; Article 5: 126; Article 6: 125, 148, 198, 227, 235, 245; Article 9: 8, 149,

- 198, 227, 250; Article 10: 149, 198; Article 12: 8, 24, 33, 48, 125, 148, 175, 197, 227; Article 15: 228, 243; Article 16: 227, 243, 250; Article 18: 8, 70, 126, 218, 245; Article 19: 148, 150, 151, 152, 198, 228; Article 20: 8, 149, 198, 199; Article 21: 198, 200; Article 22: 199, 200; Article 23: 8, 125; Articles 24–9: 8; Article 24: 124, 126; Article 25: 199; Article 26: 125; Article 27: 69, 125, 126; Article 28: 125, 126; Article 29: 125, 126; Article 30: 8; Article 31: 125; Articles 31–6: 149; Article 37: 149, 199, 228, 250; Article 39: 150; Article 40: 226, 227, 235, 246, 250; Article 42: 257
- UN Declaration of Human Rights 1948 41
- UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children with special reference to foster placement and adoption nationally and internationally 1986 200
- UN Declaration on the Rights of the Child 1959 41, 42
- UN Guidelines for the Prevention of Juvenile Delinquency 1990 (the ‘Riyadh Guidelines’) 226
- UN Guidelines for Action on Children in the Criminal Justice System 1997 (the Vienna Guidelines) 42, 228
- UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 42, 228
- UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the ‘Beijing Rules’) 42, 226, 245, 246, 247, 250

## ALPHABETICAL LIST OF STATUTES

### ACTS OF PARLIAMENT

- Adoption Act 1976 36, 51, 56, 197
- Adoption and Children Act 2002 36, 39, 56, 80, 87, 98, 117, 119, 156, 165, 180, 196, 198, 200, 202, 204, 206, 207, 208, 209, 212, 214, 215, 216, 217, 218
- Adoption (Inter Country Aspects) Act 1999 56
- Anti-social Behaviour Act 2003 232, 233, 234, 240
- Care Standards Act 2000 13, 36, 51, 81, 82, 109, 204
- Carers and Disabled Children Act 2000 115, 125
- Child Abduction and Custody Act 1985 53, 56
- Childcare Act 2006 36, 70
- Children Act 1948 35, 36
- Children Act 1989 22, 25, 26, 27, 32, 35, 36, 37, 51, 57, 70, 71, 72, 85, 87, 92, 93, 97, 98, 108, 115, 116, 117, 121, 124, 128, 132, 133, 141, 142, 143, 146, 148, 149, 152, 153, 168, 170, 183, 185, 202, 204, 213, 214, 228, 234, 239, 242, 253; s. 1: 90, 147, 165, 168, 170, 179, 206, 213; s. 2: 117; s. 3: 116; s. 10: 207; s. 4: 117; s. 8: 117, 206, 207, 209, 211, 217; s. 14A–14G: 208, 209, 218; s. 17: 39, 60, 74, 76, 92, 94, 125, 126, 128, 129, 130, 133–42, 144, 145, 227, 241, 243; s. 17A: 137; s. 20: 76, 139–40, 142, 144, 157, 194, 206; s. 21: 194; s. 22: 27, 197, 198, 199, 204, 205, 206, 242, 256; s. 23: 144, 205; s. 23A–E: 218; s. 24A–D: 218; s. 25: 18, 199, 202; s. 26: 76, 80, 125, 164, 196, 199, 209, 255; s. 26A: 80, 196, 199; s. 27: 93, 133; s. 33: 202, 207, 209; s. 31: 117, 118, 152, 154, 156, 167, 173–5, 178–82, 189, 191, 193, 232, 234; s. 34: 149, 198, 205, 215, 217, 218; s. 36: 155; s. 37: 174; s. 38: 155, 157, 174, 193; s. 38A: 157; s. 39: 211; s. 41: 148, 174; s. 43: 118, 154, 157, 161; s. 44: 118, 154, 157, 161, 193; s. 44A: 157; s. 46: 117, 118, 151, 154, 159; s. 47: 93, 133, 151, 153, 156, 157, 162, 164, 227, 233; s. 48: 93; s. 50: 118, 154; s. 67: 205; s. 83: 194; s. 86: 103; s. 91: 209; s. 92: 86; s. 98: 190, 191; Sched. 2: 129, 130, 134, 137, 211, 242
- Children Act 2004 22, 25, 26, 36, 45, 51, 56, 57, 61, 63, 64, 65, 67, 69, 71, 77, 82, 84, 86, 90, 95, 106, 108, 109, 110, 120, 121, 123, 124, 128, 129, 133, 143, 145, 149, 151, 152, 189, 193; s. 2: 83; s. 3: 96; s. 10: 96;

s. 11: 96; s. 13: 63, 95; s. 16: 96; s. 17: 52, 64; s. 18: 64; s. 20: 78; s. 21: 78;  
 s. 24: 52; s. 25: 96; s. 26: 64; s. 27: 64; s. 28: 96; s. 31: 63, 95; s. 65: 64  
 Children (Leaving Care) Act 2000 36, 67, 199, 200, 218  
 Children and Young Persons Act 1933 222, 227, 248, 251  
 Children and Young Persons Act 1969 222  
 Children's Commissioner for Wales Act 2001 51, 58  
 Chronically Sick and Disabled Persons Act 1970 115, 125, 134  
 Constitutional Reform Act 2005 86  
 Courts Act 2003 85  
 Crime and Disorder Act 1998 27, 65, 67, 71, 95, 102, 153, 222, 229, 230,  
 231, 232, 233, 235, 238, 240, 242  
 Criminal Justice Act 2003 232, 238, 240  
 Criminal Justice and Police Act 2001 233  
 Data Protection Act 1998 41, 99  
 Disability Discrimination Act 1995 21, 40  
 Disability Discrimination Act 2006 40  
 Domestic Violence and Victims of Crime Act 2004 72, 102  
 Education Act 1996 115, 125, 134  
 Equal Pay Act 1970 40  
 Equality Act 2006 39, 40, 124, 148, 197, 227  
 European Communities Act 1972 50, 53, 56  
 European Communities (Amendment) Act 1993 53, 56  
 Family Law Act 1996 72, 158  
 Family Law Reform Act 1987 56  
 Freedom of Information Act 2000 41  
 Government of Wales Act 1998 2, 51, 59  
 Government of Wales Act 2006 26, 40, 51, 59  
 Health and Social Care Act 2001 102  
 Health and Social Care (Community Health and Standards) Act 2003 77,  
 79, 102, 110  
 Homelessness Act 2002 94, 140  
 Housing Act 1996 94, 140  
 Human Rights Act 1998 14, 16, 19, 23, 32, 34, 44, 51, 53–5, 73, 98, 99,  
 213, 256; s. 3: 17, 54, 76, 170, 202; s. 4: 54; s. 6: 17, 32, 40, 76, 101, 121,  
 139, 170, 201, 209, 255, 258; s. 7: 55, 76, 101; s. 8: 55; s. 10: 54; s. 19: 54  
 Learning and Skills Act 2000 61, 67, 125, 196  
 Local Authority Social Services Act 1970 52, 61, 123, 130  
 Local Government Act 1999  
 Local Government Act 2000 26, 38, 39, 65, 66, 138  
 National Health Service and Health Professions Act 2002 65, 66  
 Nationality, Immigration and Asylum Act 2002 39  
 NHS (Wales) Act 2006 65, 66, 125  
 Offences Against the Person Act 1861 245, 247

Police and Criminal Evidence Act 1984 223–3, 246  
 Police Reform Act 2002 232  
 Powers of Criminal Courts 2000 (Sentencing) Act 222, 227, 236, 237, 238, 239  
 Prosecution of Offences Act 1985 246  
 Protection of Children Act 1999 149  
 Protection from Harassment Act 1997 231  
 Public Audit (Wales) Act 2004 79  
 Race Relations Act 1976 40  
 Race Relations (Amendment) Act 2000 40  
 Sex Discrimination Act 1975 40  
 Special Educational Needs and Disability Act 2001 40  
 Welsh Language Act 1993 61  
 Youth Justice and Criminal Evidence Act 1999 236, 248, 249, 251, 252

## SECONDARY LEGISLATION

Adoption Agencies Regulations 2005 S.I. 2005/389 215, 216  
 Adoption Agencies (Wales) Regulations 2005 S.I. 2005/1313 (W. 95) 215, 216  
 Adoption Support Services Regulations 2005 S.I. 2005/691 218  
 Adoption Support Services (Local Authorities) (Wales) Regulations 2005 S.I. 2005/1512 (W. 116) 218  
 Arrangements for Placement of Children (General) Regulations 1991 S.I. 1991/890 204, 205, 211, 217  
 Children Act 1989 Representations Procedure (England) Regulations 2006 S.I. 2006/1738  
 Children (Allocation of Proceedings) Order 1991 S.I. 1991/1677 86  
 Children's Homes Regulations 2001 S.I. 2001/3967 13  
 Children's Homes Regulations (Wales) 2002 S.I. 2002/327 W. 40 13  
 Children's Commissioner for Wales Regulations 2001 S.I. 2001/2787 W.237 56, 82  
 Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 S.I. 2003/762 137  
 Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004 S.I. 2004/1748 (W. 185) 137  
 Family Proceedings Rules 1991 S.I. 1991/1247 33, 173, 177  
 Family Proceedings Court (Children Act 1989) Rules 1991 S.I. 1991/1395 (L. 17) 173, 177  
 Family Proceedings (Amendment No. 4) Rules 2005 S.I. 1976 L. 18 190  
 Health, Social Care and Well-being Strategies (Wales) Regulations 2003, S.I. 2003/154 (W. 24) 66



Placement of Children (Wales) Regulations 2007 S.I. 2007/310 (W. 27)  
204, 205, 211, 217  
Race Relations (Amendment) Regulations 2003 S.I. 2003/1626 40  
Review of Children's Cases Regulations 1991 S.I. 1991/895, amended by S.I.  
2004/1449 (W. 149) and S.I. 2004/1419 204, 211, 212  
Special Guardianship Regulations 2005 S.I. 2005/1109 218  
Special Guardianship (Wales) Regulations 2005 S.I. 2005/1513 (W. 117) 218

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## **INTRODUCTION: HOW TO USE THIS BOOK**

The mission of this book is to promote the practical implementation of rights-based social work policy and practice. It seeks to encourage a rights-based focus on the way in which the legal framework is understood and employed and to explain why this approach is wholly consistent with – indeed, required by – social work values and legal imperatives.

Part One of the book discusses contextual matters and themes of general application in social work with children. This includes the relationship between social work values and law, and the role and significance of the Human Rights Act 1998 (HRA 1998), the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). It also includes structural and organisational issues, mechanisms for accountability, inter-agency working and confidentiality. Part Two employs the preceding discussion to inform and explain how law, interpreted through a rights-based focus, must inform social work practice in particular areas of intervention.

Since Part Two builds on Part One in this way, the reader will gain greater benefit if the book is read in the sequence in which it is presented, that is, Part One first. If time prevents this, however, the reader will find ample cross-referencing to relevant Part One discussion when dealing with the case-work issues in Part Two.

A brief Introduction to Part Two explains the key legal concept of parental responsibility and the terms ‘voluntary engagement’ and ‘compulsory measures’ which are used in Part Two to distinguish social work involvement which depends on the consent of the child and/or persons with parental responsibility from that which does not. It is explained that these terms are more accurate to describe what is being done in law, as well as in practice, than the now outmoded distinction between ‘support for children and families’ and ‘child protection’. The Introduction to Part Two concludes by spelling out how a rights-based focus can be integrated into the social work process by adopting a particular approach to decision-making in individual cases.

The End Note to the book returns to its overarching mission. Drawing on an argument presented at greater length elsewhere (Williams, 2007), it asserts the critical significance of the approach taken by social workers in the daily exercise of their functions in relation to children and families. It points out that the decisions and actions taken in daily social work practice affect far more people than even the totality of court decisions, administrative appeals,

complaints processes and other mechanisms for accountability. Whilst acknowledging the constraints imposed by resource, organisational and policy issues, it concludes with an exhortation to practitioners actively to engage, through local, sub-national activity, in the supra-national reporting and monitoring process of the UNCRC. It suggests this as a means of looking beyond current barriers to implementation, contributing their professional experience to the pool of evidence on which further necessary policy changes may be made, whether at local, national or even international levels of governance.

The law is stated as at September 2007, and is the law applying in England and Wales. Wherever relevant, attention is drawn to differences in law and policy between Wales and England, the majority of central government responsibilities relevant to social work having transferred to the Welsh Assembly under the Government of Wales Act 1998. At the time of writing, a new phase in Welsh devolution, pursuant to the Government of Wales Act 2006, is set to facilitate further differentiation in the legal and policy framework for social work with children and families. Practitioners on either side of the border will ignore this at their peril!

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# **Part One**

## **Context and Themes**

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# 1

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## Law, Social Work and Children

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- **Introduction: legal values and social work values in child care practice**
  - Common values of law and social work*
  - Values for child care social work practice*
  - Where the tensions arise: interpretation of values and principles, and functional differences*
- **The functions of law and the functions of social work**
  - A definition of social work*
  - A definition of law?*
  - Duty and discretion: the role of the law and the role of the child and family social worker*
  - Exercise of discretion: legal principles and requirements*
  - The welfare principle*
  - Standard-setting*
  - Human rights*
  - Law's functions and social work's values*
- **Law and the principles of human rights**
  - Where does human rights law come from?*
  - The ECHR*
  - The UNCRC*
  - Impact on social work*
- **Law and the principles of social justice**
  - What is social justice?*
  - Social justice and human rights*
  - Using human rights law to promote social justice*
- **Law, professional integrity and accountability**
  - How does law support these values?*
  - The rule of law*
  - The meaning of 'accountability'*
  - Openness and impartiality*
- **Lawyers and social workers**
  - Inter-disciplinary working: from good practice to good law?*
  - Child and family social workers: law enforcers or human rights campaigners?*
- **Law, social work and the child**
  - Theorising children and childhood*
  - The child and family social worker's dilemma*
- **Conclusion**



## **Introduction: legal values and social work values in child care practice**

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The purposes of this chapter are to describe the respective functions of law and social work with children, to identify common values underlying the two disciplines and to introduce some concepts and themes that run throughout the book. Some of these concepts and themes are illustrated by examples drawn from case-law and legislation that will be explained in more detail in later chapters.

Law both enables and constrains the practice of social work with children and families. Law provides:

- authority: law confers on social workers authority to take action which would otherwise, in many situations, constitute an unlawful interference in private and family life; and
- principles: law imports principles, rooted in legal values, which are applied in interpreting rules and in assessing the legality of social work decisions.

### Common values of law and social work

There is substantial commonality between the underlying values of the disciplines of law and social work. In particular, law provides a set of rules of obvious relevance to the social work value of human dignity and worth, by providing a code of internationally recognised human rights. Less obviously, the same set of rules may help promote the rather more uncertain value of social justice. Legal values such as the rule of law, equality under the law, accountability and fairness/due process can also be seen as supportive of the social work values of integrity and competence. Box 1.1 illustrates this.

### Values for child care social work practice

The National Occupational Standards for Child Care at Post Qualifying Level (NOSCCPQ) contain a statement of ‘child care values for social work practice’ which makes explicit links with some of the legal values and legal rules shown in Box 1.1. The child care values are stated to be ‘drawn from the UN Convention on the Rights of the Child and human rights legislation’ (Sector Skills Council, 2005: 8). Box 1.2 notes the relevant UNCRC articles in relation to the list of values in the NOSCCPQ.

As the NOSCCPQ state, ‘values are integral to rather than separate from good practice’ (Sector Skills Council, 2005: 8). This link between social work standards and legal values and rules makes effective and proactive promotion of the rights of children and families, understood in terms of the UNCRC and ECHR, a measure of professional competence as well as a legal obligation. At the level of values and principles, this suggests a close affinity between the two disciplines.

## Box 1.1 VALUES AND RULES

*Social work value  
(from the British  
Association of Social  
Workers Code of Ethics)*

	<i>Legal values</i>	<i>Legal rules</i>
Human dignity and worth	Protection of individual liberty	The common law (trespass, false imprisonment, etc.)
	Respect for fundamental human rights	Human Rights Act 1998 European Convention on Human Rights, United Nations Convention on the Rights of the Child
	Equality	Anti-discrimination, equality and human rights legislation
Social justice	Respect for fundamental human rights	Interpretation of international human rights and children's rights obligations, imposing a positive duty on the State to provide for and protect the exercise of rights by all persons
Integrity and competence	Rule of law	Social work interventions require lawful authority, especially where they involve compulsion. Authority is provided by legislation, for example the Children Act 1989
	Equality under the law	Social workers must comply with the law and have no special immunity from legal action
	Accountability	Social work actions may be challenged in the courts or may be the subject of complaints under statutory procedures

*(Continued)*

*Social work value  
(from the British  
Association of Social  
Workers Code of Ethics)*

*Legal values*

*Legal rules*

Fairness/  
due process

Social workers must act fairly  
and transparently: those  
whose rights and interests  
are at stake have a right to  
participate effectively in  
decision-making processes

### **Box 1.2 VALUES FOR CHILD CARE SOCIAL WORK PRACTICE: NATIONAL OCCUPATIONAL STANDARDS FOR CHILD CARE AT POST QUALIFYING LEVEL**

- children's and young people's best interests shall be of primary consideration in all actions affecting them (Article 3 UNCRC);
- children and young people are enabled to develop and achieve their full potential (Articles 6, 24–29 UNCRC);
- children and young people have the right to express their views and have them taken into account in all matters affecting them (Article 12 UNCRC);
- children and young people should remain, wherever possible, within their family and community networks (Articles 9, 18 UNCRC);
- children and young people are to be protected from and empowered to address all forms of discrimination (Article 2 UNCRC);
- children and young people are to be protected from and empowered to address all forms of abuse (Article 19 UNCRC);
- children and young people have the right to be given proper care by those looking after them (Articles 18, 20 UNCRC);
- children and young people with disabilities must be helped to be as independent as possible and to be able to play a full and active part in everyday life (Article 23 UNCRC);
- children and young people should have their identity affirmed through the promotion of their religious, cultural, racial and linguistic background (Articles 8, 20, 30 UNCRC);
- children and young people in Wales have the right to receive services in the Welsh language (Article 30 UNCRC);
- children and young people have the right to services which are free from prejudice (Article 2 UNCRC).

Where the tensions arise: interpretation of values and principles,  
and functional differences

In practice, despite this commonality of underlying values, there can be tension between lawyers and social workers. This flows in part from functional, structural and organisational differences. It also flows from traditional and counter-traditional views of children and childhood, which play differently into different areas of law and practice: for example, when dealing with child protection or youth justice. Lawyers and social workers alike are influenced by their own personal experiences and perspectives as well as the professional culture in which they work. Mutual, enhanced understanding of the roles, functions, views and traditions of practitioners in the different disciplines is important if inter-disciplinary working, which is a statutory requirement under the Children Act 1989 and Children Act 2004 as well as a professional objective, is to deliver the hoped-for benefits.

## **The functions of law and the functions of social work**

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### *A definition of social work*

Despite the common ground between social work values and legal values, the two disciplines clearly have different functions and the focus of professional practice in each is, necessarily, different. The definition of social work agreed by the International Federation of Social Workers and adopted by the British Association of Social Workers (BASW) says that it is:

a profession which promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work. (BASW, 2003)

It is clear from this that social work is concerned with outcomes: with effecting change in people's lives, improving their well-being, enabling them to 'interact with their environments' more successfully. This may mean being able to improve their family relationships, the material condition of their lives, their physical and emotional health and so on.

### *A definition of law?*

There is no generally accepted definition of 'law'. The question 'What is law?' has been addressed by many legal philosophers, sometimes by avoiding the question or transforming it into a description of legal rules and activities that can be contrasted with other forms of obligations and activities. However, law is often seen as being concerned pre-eminently with authority and process

rather than outcomes. In the field of public law, where the interaction between law and social work with children and families is for the most part situated, law confers authority for social work action (by means of statutory powers and duties) and provides supervision over the process of its exercise (by means of mechanisms such as statutory complaints procedures, statutory appeals or judicial review). The law is generally constructed and applied in a way which confers discretion on those empowered to act (social workers or, formally, local authorities carrying out social services functions), reserving to the legal system the role of ensuring, in the event of challenge, that this discretion is properly interpreted and applied.

#### Duty and discretion: the role of the law and the role of the child and family social worker

The general principle is that the courts should not trespass into the area of discretion which Parliament has conferred on local authority social work teams. This is in part because of the constitutional concept of the separation of powers which holds that the legislative, executive and judicial functions of the State must each be confined to their proper role. Thus, once Parliament (the 'legislative' function) has created a system whereby discretion is conferred on local authorities (the 'executive' function), the courts (the 'judicial' function) should not interfere in a way that undermines the legislative intention or substitutes the court's own judgment for that of the local authority. The quotation from Lord Nicholls in ***Re S, Re W* [2002]** in Box 1.3 neatly demonstrates this principle. The case concerned the court's role in keeping under review the implementation of care plans. The judgment contributed to legislative changes, dealt with in Chapter 8. Here, the case is used simply to demonstrate the careful demarcation of functions between the courts and local authorities, in this case under the Children Act 1989.

#### Exercise of discretion: legal principles and requirements

This neat division between authority, process and outcomes is, however, over-simplistic as a description of the way in which law impacts on social work. In the same speech in ***Re S, Re W***, Lord Nicholls went on to point out that the Children Act 1989 confers certain key outcome-oriented decisions on the court rather than on the local authority, notably the decision whether a care order should be made. Furthermore, law enshrines principles and sets standards which must be adhered to in the course of social work interventions in the lives of children and their families. Such principles and standards help to resolve the tensions inherent in social work practice with children, in the sense that the application of the relevant principle or adherence to the relevant standard will provide direction and enable a decision to be made.