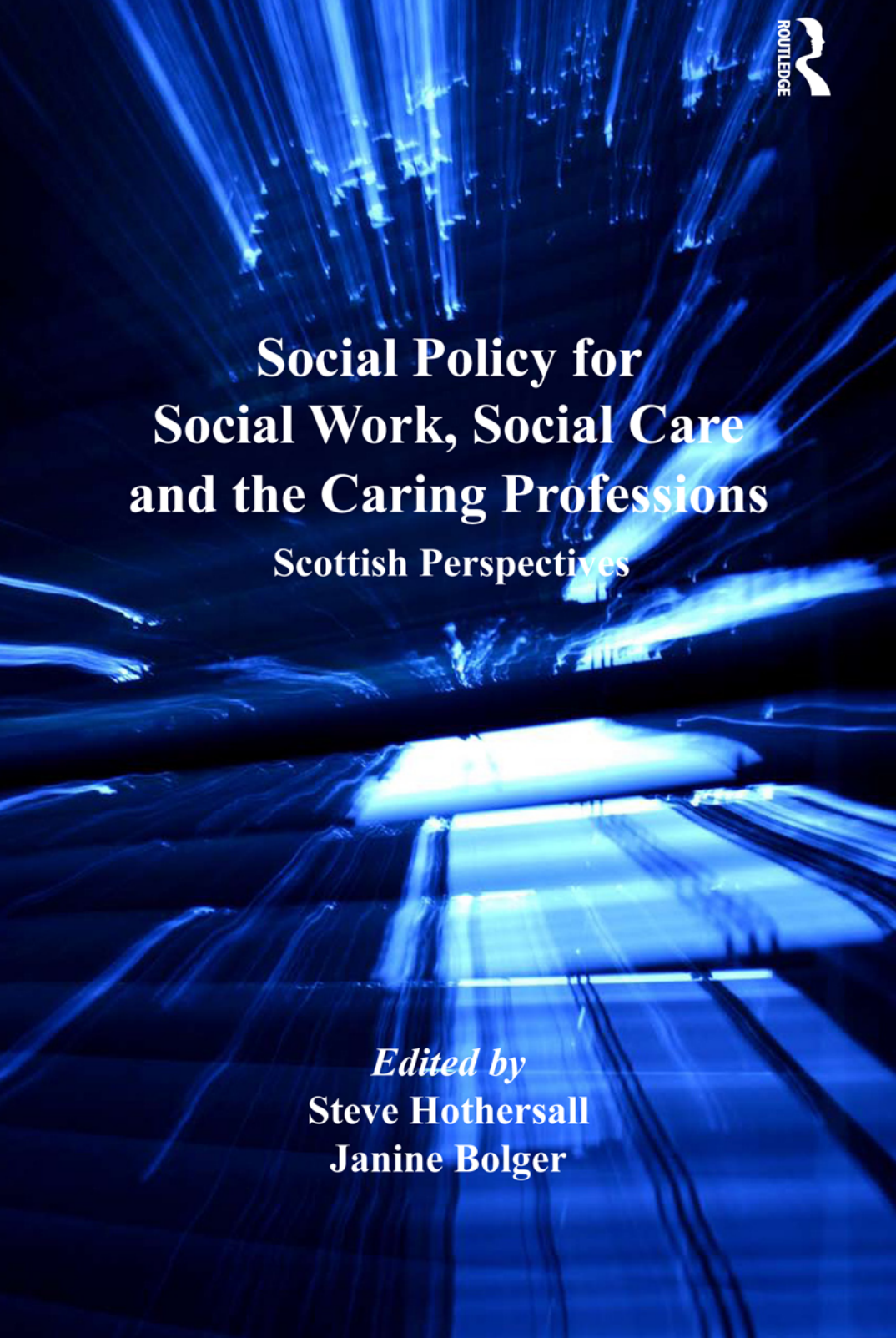

ROUTLEDGE

# Social Policy for Social Work, Social Care and the Caring Professions

## Scottish Perspectives

*Edited by*

Steve Hothersall

Janine Bolger

# SOCIAL POLICY FOR SOCIAL WORK, SOCIAL CARE AND THE CARING PROFESSIONS

*Dedicated to all our students, wherever they may be*

# Social Policy for Social Work, Social Care and the Caring Professions

## Scottish Perspectives

*Edited by*

STEVE HOTHERSALL AND JANINE BOLGER

*Robert Gordon University, Scotland*

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# Contents

*List of figures* *vii*
*List of tables* *ix*
*List of contributors* *xi*
*Foreword* *xv*

Introduction 1

**Part I Context** **5**

1 What *is* social policy? 7
*Steve J. Hothersall*

2 A history of social policy 31
*Steve J. Hothersall*

3 Ideology: How ideas influence policy and welfare 51
*Steve J. Hothersall*

4 People, policy and practice 71
*Steve J. Hothersall*

**Part II Themes and issues** **89**

5 Poverty and social exclusion 91
*Janine Bolger and Pedro Morago*

6 Risk, support and protection 109
*Mike Maas-Lowit*

7 Changing patterns of care 125
*Steve J. Hothersall, Clare Swan and Iain D. Turnbull*

8 Welfare rights 151
*Janine Bolger*

9 Social policy perspectives on empowerment 175
*Rob Mackay*

**Part III** **Policy for practice** **203**

10 Health and health inequalities 205
*Pedro Morago*

11 Mental health 227
*Jackie Loxton, Mike Maas-Lowit and Rob Mackay*

12 Older people 247
*Rory Lynch*

13 Disability: A question of perception 271
*Jeremy Millar*

14 Children and their families 293
*Steve J. Hothersall and Patrick Walker*

15 Education and training in Scotland 317
*Janine Bolger*

16 Substance use and social policy in Scotland: The struggle to make sense of things 337
*George Allan*

17 Social policy in the criminal justice system 367
*Anne Shirran*

18 Asylum and immigration 393
*Clare Swan*

19 Housing and homelessness 419
*Pedro Morago*

20 Conclusions: Onwards and upwards? 435
*Steve J. Hothersall and Janine Bolger*

*Index* *439*

# List of figures


| | | |
|---|---|---|
| 1.1 | The court structure in Scotland | 16 |
| 1.2 | An ecological representation of the relationship between society, law, policy and professional practice (after Bronfenbrenner 1979) | 22 |
| 1.3 | The hierarchical relationship between law and policy | 25 |
| 2.1 | A facsimile of part of the Act of 1601 | 34 |
| 3.1 | A linear representation of ideological positions | 54 |
| 3.2 | A generalised typology of differing ideologies | 56 |
| 3.3 | Welfare spending 1950–2011 | 64 |
| 4.1 | Maslow's Hierarchy of Human Needs | 76 |
| 9.1 | Discourses relating to empowerment | 196 |
| 16.1 | The elements which shape attitudes and trends in society | 340 |
| 17.1 | Scottish criminal justice agencies | 368 |
| 18.1 | The process for seeking asylum in the UK | 405 |
| 18.2 | Applications for asylum in the UK | 410 |
| 18.3 | Asylum settlement figures 1999–2008 | 411 |

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# List of tables


| | | |
|---|---|---|
| 1.1 | The devolved powers of the Scottish Parliament | 17 |
| 1.2 | The reserved powers of the Westminster Parliament | 17 |
| 7.1 | Relevant community care legislation | 130 |
| 8.1 | Possible benefit entitlements | 154 |
| 11.1 | Scottish mental health related policy from 2000 onwards | 230 |
| 12.1 | Social policy and legislation in Scotland relevant to older people | 256 |
| 16.1 | Key legislation applying to Scotland | 356 |
| 17.1 | Sentencing perspectives, legislation and associated policy | 371 |
| 17.2 | Notification for registration periods: Sex Offenders Act 1997 | 380 |

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# Foreword

Social policy is critical to the underpinning of social work practice and policy but may seem remote and inaccessible for burgeoning social work practitioners, our students. Social policy is further complicated by its different development in the four countries of the United Kingdom and by the range of policy areas it addresses for different service user groups, children, adults and older people, with a range of policy agendas in relation to poverty, rights, risk, empowerment and patterns of care provision.

This volume, *Social Policy for Social Work, Social Care and the Caring Professions: Scottish Perspectives*, draws on the expertise of staff at the Robert Gordon University, Aberdeen in policy and practice with a range of groups of service users, carers and involuntary service users. Its aim is to engage students and developing practitioners in understanding and potentially challenging the way in which social policy influences social work practice. We believe that this volume will provide an invaluable text for current students and developing practitioners to do just this in the complex and ever-changing world of social work policy and practice.

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# Introduction

This book largely focuses on the description, explanation and analysis of social policy in Scotland since devolution in 1999 and reflects the slowly emerging distinctive policy agenda. Integral to the discourse presented throughout this book is consideration of new forms of governance and the emergence of more diverse forms of social policy (Mooney and Scott 2005). The examination of the historical development of a range of themes and issues is intended to assist in contextualising Scotland's progress to date (Stewart 2004), whilst locating this within a broader European and global perspective particularly in relation to the emergence of ideological shifts concerning the nature of the relationship between the state and its citizens and the nature of welfare itself. Throughout the book reference is made to the changing demographics in Scotland and how this has altered the face of current social issues and has thus influenced policy development. The aim is to continue the attempt to integrate the idea of social policy both as a discrete academic discipline and as an interdisciplinary field of endeavour that can provide practical support in understanding how social policy influences social work and social care *practice*. In doing so the hope is that it proves to be a useful aid for undergraduates, postgraduates and to other associated professionals.

The breadth and diversity of social policy is often both confusing and overwhelming to students. Part I of the book looks at what social policy is, how and why it is made and highlights the relationship between social policy and the law. The notion of *need* is discussed at some length and distinguished from concepts of preferences and wants emphasising the fundamental relationship between *people* and *policy*. The political ideology supporting policy development and decisions is examined, as is the relationship between people and the policies in place.

Part II refers itself to specific themes and issues rather than the more usual 'social problems' (which is frequently employed to provide an objective overview of such shared experiences) and considers a range of experiences evident in the public domain that exert considerable influence within society and therefore require to be addressed by reference to policy, however effective that may be seen to be. Beginning with the impact of social exclusion and poverty, we consider their complex and multidimensional forms and discuss the range of policies currently extant that aim to combat such disadvantage. Chapter 6 on risk examines the state's increasing preoccupation with the concept of risk and harm and the need to protect the most vulnerable in society whilst considering the possibility of both

beneficial and detrimental outcomes being possibilities of risk taking. Changing patterns of care provision are highlighted in Chapter 7 and recent arguments and developments over unpaid care are discussed in order to explore patterns and developments around the provision of care that have significant effects on the role of the state. The current agenda for welfare support and the systems that fund and deliver it are highlighted in Chapter 8 whilst Chapter 9 considers the theme of empowerment and considers it conceptually as well as within the broad political context, looking at its impact on UK and Scottish social policies over the past 20 years.

Part III provides a comprehensive overview of policy for practice, beginning with a focus on the phenomenon of socio-economic inequalities and the manner in which they can negatively affect service users. Chapter 11 considers and disentangles the two distinct concepts of mental illness and mental health. The chapter on older people looks at the concept of being old in contemporary society, how it is socially constructed according to society's beliefs with regard to the ability and role of 'non-contributing' individuals and the issue of changing demographics.

Chapter 13 explores changing attitudes to people with a range of impairments influenced by a range of factors including poverty, political ideology, scientific advance and the growth in disability rights and the effect on legislation and policy development. Current perceptions also drive the discourse on policy impacting on work with children and families in a direct and indirect manner, which is the subject of Chapter 14.

Chapter 15 on education and training summarises key developments in policy with an emphasis on partnership between central and local government before highlighting disadvantage within educational provision in relation to social class, gender, disability and ethnicity. Chapter 16 on substances looks at how social contexts shape notions of acceptable and unacceptable drug use and questions state and societal responses to this.

Chapter 17 on criminal justice examines the nature of programmes implemented to maximise the protection of the public whilst providing credible alternatives to custody in an attempt to reduce the prison population and satisfy society's need to observe that offending behaviour is being tackled, whilst Chapter 18 looks at the somewhat contentious issue of asylum and migration and necessarily takes a broad UK perspective on this given the control still exerted by the UK government over this area of law and policy.

Housing and homelessness is the focus for Chapter 19, which introduces discussion around how the structure of tenure has evolved in the UK over the last decades. The discussion then focuses on the phenomenon of homelessness, the most severe form of housing need, and its impact on some users of social services. Chapter 20 provides a concluding commentary.

All the contributors to this book have taught in the School of Applied Social Studies at the Robert Gordon University, Garthdee, Aberdeen, which has significantly expanded and developed its social policy teaching over a number of years. In this regard, we would like to acknowledge the contributions (explicit and implicit) of the many students we have taught whose interactions, discussions and debates have encouraged us to produce what will be seen as a core text in social policy studies.

## References

Mooney, G. and Scott, G. (eds) (2005), *Exploring Social Policy in the 'New' Scotland* (Bristol: Policy Press).

Stewart, J. (2004), *Taking Stock: Scottish Social Welfare after Devolution* (Bristol: Policy Press).

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# Part I

## Context

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# 1 What *is* social policy?

Steve J. Hothersall

## Introduction

In this chapter we shall provide a general overview of the subject area of social policy and look in general terms at what it is, how it is made, why it exists and what it generally looks like. We shall also consider the relationship between social policy and the law and the relevance to and the effect upon professional practice, highlighting some significant themes that will be developed in subsequent chapters.

In the world of social work and related professions and disciplines, policy is *everywhere*. Some would say that over the past 10–15 years there has been a veritable explosion of policy-making. When New Labour came to power in 1997, there was an increased emphasis upon 'government by objectives' tied very much to the 'what works?' agenda and the whole notion of 'modernising government' (Cabinet Office 1999). Within Scotland, as in the rest of the UK, there is still a clear focus around these centralised themes. If you look at the Scottish Government website (http://www.scotland.gov.uk/Topics/), you can see at a glance the differing, broad policy areas to which the Government addresses itself. These policies have an influence upon the lives of all of us, directly or indirectly, so it is worth spending some time becoming familiar with these areas and this is a good place to start. It is also the case that policy development, as one aspect of government, is based on the notion of *collective decision-making* (Scottish Government 2008a).

## What *is* social policy?

Social policy is a subject area that appears unfamiliar to most people when you refer to the topic, and yet it affects all of us on a daily basis and it is probably true to say that most of us think or hear about it *every day*. Even giving a cursory glance to a daily newspaper or listening to your favourite radio station, you will invariably come across some reference to social policy. Look at the box and undertake Exercise 1.1.

**Exercise 1.1 Policies for everyone!**

Think about your own personal situation and make a list of the types of 'policies' that exist in your own home. For example, you might have a policy that says that everyone who comes into the house by the front door must remove their shoes before going into the living room. This is the 'Shoe Removal Policy'. You may also have a policy that says that the last person to go to bed at night must check that all the doors are locked. This is the 'Check the Doors are Locked Last Thing at Night Policy'. And so on.

When you have done your list, think of these as your own 'social policies' for your own social space. Why do you have them? What is their purpose? What would happen if these 'policies' did not exist or were not followed? How would this make life at home?

(This exercise, when done with groups of students, highlights a fascinating (and often hilarious!) range of policies and offers interesting insights into how we all attempt to order our private lives, sometimes in very different ways!).

Now, think about other social phenomenon: the care and protection of children, the treatment of people with a mental disorder, the provision of education and health care. These issues are deemed to be of such importance to us as a society as to require a coherent and consistent response to them so that irrespective of who you are or where you are, you are guaranteed to obtain help or access to a particular service whenever you need it. Ideally, the assistance received should be of high quality, coherently planned and managed and efficiently delivered in accordance with the individual's requirements (needs). Whether these characteristics are present at an individual level is as much about *practice* as it is about policy, but from the broad perspective of policy, dealing

with broad-based social phenomena is, in principle, no different from putting in place arrangements for dealing with issues at home. The issue of whether such *collective* and *state-coordinated* responses to such phenomena are the most appropriate will be the subject of discussion in Chapter 3.

The basic function of any policy, social or otherwise (for example economic policy, agricultural policy, defence policy) is to provide what I will refer to (ideally) as a *coherent and consistent response to particular (social) phenomena*. In the examples above regarding your own social space, such phenomena initially referred to removing shoes and locking doors.

Briefly, that is what a social policy is and why it exists. So the next time you listen to the radio, watch the TV or go on-line, make a note of the range of information you find that relates to social policy.

In terms of definitions, social policy can be regarded as referring to the 'actions taken within society to develop and deliver services for people in order to meet their needs for welfare and wellbeing' (Alcock 2008: 2), whereas the *study* of social policy 'is concerned with those aspects of public policies, market operations, personal consumption and interpersonal relationships which contribute to, or detract from, the well-being or welfare of individuals or groups' (Erskine cited in Alcock, Erskine and May 2003: 15). The study of public/social policy used to be referred to as *social administration* and had as its central concern the impact of those policies connected to what used to be referred to as 'the big five'. These were health, education, the personal social services, and social security and housing, which were those areas of governmental intervention that were seen as priorities after the Second World War (see Chapter 2). Respectively, these interventions were designed to address what were perceived as the five giant ills affecting society at that time; respectively disease, ignorance, want, idleness and squalor.

Central to an understanding of social policy is the issue of *public* (state) involvement in *private* life. When we refer to social policy, we are referring to *public* policy, that is, that policy made by government(s), (arguably) on behalf of the people through the (democratic) political process. Erskine (cited in Alcock, Erskine and May 2003: 15) goes on to remind us that social policy 'explores the *social, political, ideological and institutional context* within which welfare is *produced, distributed and consumed*. It seeks to provide an account of the *processes* which contribute to or detract from welfare, and it does this within a normative framework which involves

*debating moral and political issues* about the *nature* of the desired *outcomes*' (emphases added), whereas Jones et al. (2004) refer to policy as being 'a set of ideas and proposals for action culminating in a government decision' (p. 596). Thus, to study policy is to study (collective) decision-making.

Hill (2005) reminds us that policymaking is not a simple linear process or one that involves just a few key (governmental) individuals. He suggests the following:

- Firstly, that a *decision network* may be involved in producing action (via policy), which may itself be quite complex and may involve a number of people across a range of different agencies, organisations and departments, many of whom may be unknown to each other.
- Secondly, that policy is often not expressed as a single decision; it is often expressed as a *series* of decisions which, when taken as a whole, represent the policy position on a particular issue. Examples here would be child care policy (Hothersall 2008) and mental health policy (Hothersall, Maas-Lowit and Golightley 2008), both of which cover a range of issues including early intervention, prevention, support, treatment and public education. This should remind us of the need to be aware of the inter-relationships between policies and policy areas and to try to appreciate the influence each may have on the other, particularly when the connections may not be immediately apparent. For example, changes to policy surrounding housing allocations for homeless people may (inadvertently) affect the chances of someone with a learning disability leaving residential care being allocated their own tenancy because the priority for the allocation of houses has now shifted its focus.
- Thirdly, that policy will change over time and may represent aspects of major change or reform as well as *incremental adjustments* to existing policies in response to changing circumstances. It is a fact that many existing policies are founded upon earlier policy positions, which may not always be a good thing. Incremental policy change can be effective but it can also simply 'tinker at the edges' and avoid addressing what may well be deeper underlying issues.
- Finally, that policy 'decisions' may in fact arise as a result of non-decisions or inaction. For example, where the government is seen not to act in relation to certain issues, a response may be forced upon them if things begin to get out of hand. Thus, not doing something initially may result in an untenable situation becoming apparent which forces the government to take action to control the consequences of previous inaction. Some writers would argue that this constitutes a significant proportion of the policy-making activity of governments today (Dery 1999).

Another view taken by Gil (1992) is that the term 'social policy' can be conceived of as having four distinct but interrelated uses:

- As a *philosophical concept* representing the principle whereby political entities and large organisations (in this sense, society) *collectively* seek enduring solutions to the problems that affect them. In this sense, this notion would present itself as the polar opposite of *individualism*.
- As a *product* referring to the conclusions reached by those who concern themselves with the betterment of community and social conditions and social life generally, along with the amelioration of deviance (as defined at any given time) and social disorganisation by reference to the presence of an effective and efficient policy.
- As a *process* which, through its *products* seeks to promote and maintain stability whilst improving conditions. Most extant (current) policies are developments or additions to pre-existing ones and have therefore not gone through the full policy formation process.
- As *a framework for action*, incorporating both *product* and *process*. In this sense, it assumes the presence of well developed policies implemented within a context which is flexible enough to respond effectively to changes in values, structures and the conditions of the so-called 'target group' (Gil 1992: 4).

Gil's commentaries and analyses are quite penetrating, as he makes the point that simply to equate social policies with social welfare is to *fragment* the social world and detach it from the influences of the wider world, particularly the effects of economics and, more recently, the effects of globalisation. He argues that one of the inherent weaknesses of social policy development and analysis is that social policies are often developed simply to absorb the social fall-out of economic and other policies, rather than being the driving force in defining the shape of social organisations and societies. In the West at least, economics is often perceived as the 'Grand Master'. We shall look further at these issues when we consider the relationship between people and policy in Chapter 4.

All governments at various times have recognised the need for a more or less consistent approach to particular (social) issues, often as a means of ensuring that social order does not break down. The historical antecedents of policy are an important element in helping you to understand policy and Chapter 2 looks at this in some depth. Over time, various approaches to the issues of social living and the attendant prospect of social disorder have resulted in the creation of a wide range of policies that are and have been applied to particular situations at particular times with variable effects, and are evident from medieval times to the present day. How differing governments have formulated and subsequently implemented

or given effect to policies depends as much upon *ideology* and the nature of government in that society at that particular time as it does upon the perceived and/or expressed needs of the people. In some societies, policies are repressive and implemented with force, often being designed to control the people and express the will (or the whim) of the government, or monarch in some instances. In the West (to be broadly interpreted), democracy as the prevailing form of government attempts to develop policy along the lines of the perceived needs of society as a whole with the needs of the individual being largely assumed to be represented within that general, often state-coordinated response, certainly in the UK and many other developed countries. Inevitably in such an arrangement there will be those who disagree with certain policy approaches to certain issues and will attempt to have their voice heard through the democratic process. At a more acute level, the presence of certain approaches to certain phenomena will, adopting the above 'broad-brush' approach, leave some people marginalised as their requirements (needs) may not quite 'fit' into the policy frame. In these instances, policy makers would claim that they can and will review and modify policy in response to representation regarding these perceived inadequacies. Very often it will be social workers and other professionals who are the best people to highlight the limitations of policy and to bring these to the attention of managers and, ultimately, policy makers. It must be emphasised here that because professional workers are those tasked to implement government policy, they are really the major players in determining how effective policy is *in relation to actually meeting people's needs*.

## Policy and the law

The language used to describe policy often confuses many students. Is policy the same as law? Is law policy? What is a 'strategy'? What about government 'initiatives' and 'consultations'? What about 'Rules and Regulations', 'Secondary Legislation' and (Scottish) Statutory Instruments? Often, these terms are used interchangeably, particularly where there are references to the law.

**Sources of Scots Law**
These can be ranked thus:

1. legislation
2. judicial precedent
3. institutional writings
4. custom
5. equity
   (see Auchie et al. 2006).

Our concern here is with *legislation* and the different types of it that exist. UK Parliamentary legislation is held to be supreme and therefore the most significant legislation within Scotland is still the legislation of the UK Parliament in spite of the presence of the Scottish Parliament; the doctrine of the supremacy of Parliament remains intact. It was the passing of the Scotland Act 1998 that created the Scottish Parliament and granted to it (under section 28) the power to make laws, but only in those areas where it has been granted legislative competency through a range of *devolved* powers (under section 29) (see below).

**UK Parliamentary/Scottish Parliamentary Legislation**
Government usually initiates these Acts of Parliament/Acts of the Scottish Parliament and once approved and given Royal Assent, they become laws. This type of legislation (or 'statute law') is also referred to as 'primary legislation'.

**Subordinate Legislation**
Ministers or other executive bodies often make this type of legislation (also called 'delegated' or 'secondary' legislation) by reference to provisions previously laid out in *primary legislation*. This is done because any Act can only really concern itself with the broad principles of the matter being referred to and MPs/MSPs are not experts on the matters being legislated for (for example, child care or mental health). Subordinate legislation, *which has the same force as primary legislation*, is therefore a useful means of utilising expert knowledge and a range of experience to apply to primary legislation *to make it work more effectively*. In some respects, it 'oils the wheels' and makes primary legislation easier to apply in the real world and it can also be enacted very quickly indeed without the need for extensive Parliamentary time or further approval by the Sovereign. The most important examples of subordinate legislation are *statutory instruments/Scottish statutory instruments* (also known as *Rules* and/or *Regulations*) and *Orders of*

*Council*, although the last of these tend to be used more for matters of constitutional significance.

As an example, the *Looked After Children (Scotland) Regulations 2009* are a Scottish Statutory Instrument (SSI 2009/210) that shall 'revoke and replace both the Fostering of Children (Scotland) Regulations 1996 and the Arrangements to Look After Children (Scotland) Regulations 1996 (collectively referred to as "the fostering Regulations")' and 'should be read with the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003; and the Residential Establishments – Child Care (Scotland) Regulations 1996, which remain in force' (Scottish Government 2009: 1). These new Regulations are subordinate legislation and as such carry the force of law but they also make the job of implementing the Children (Scotland) Act 1995 easier by virtue of their specifying what should happen in certain situations when a child or young person is 'looked after' by the local authority.

In relation to your practice, the next 'level' downwards, so to speak, is that of National/Governmental *policy* followed by local authority or agency *policy* followed by policies developed by particular branches of the service or a particular team (see the example in Exercise 1.2). A *policy* can be defined as 'a course of action or principle adopted or proposed by a government, party, individual, etc.; any course of action adopted as advantageous or expedient' (SOED 2007).

## Law and policy in a devolved Scotland

We now need to look at the political structure within Scotland. Firstly though, we need to look beyond Scotland to the rest of the UK and to Europe as both UK constitutional and other Westminster arrangements, and European rulings are relevant.

### The wider picture

The UK has a *constitution*, headed by the Sovereign, which is comprised of lots of rules and procedures, many unwritten (for example, *common law*) and many written (for example, *statute law* and *case law*) which determine how the country is governed and how the different institutions within society relate to each other. This *constitutional law* derives its authority from *convention*, *legislation* and *judicial decisions* and from some other sources

like the writings of some institutional writers such as Erskine, Hume and Stair who are considered, certainly within Scots law, to be authoritative.

The Parliament of the UK is comprised of the *Sovereign*, the *House of Lords* and the *House of Commons*. Between them, they provide a government, which generates legislation (laws) and regulations and policies to support these. The subsequent categories of law, *public* and *private* and *civil* and *criminal*, serve to regulate our conduct by providing a framework of rules, which aim to promote cooperation within society. By existing they set up a series of expectations against which society can determine (by and large) whether these expectations have been fulfilled. Criminal law (public law) aims to punish criminal behaviour and impose sanctions on people's liberty (Ferguson and Sheldon 2009; Jones and Christie 2003) if it is felt that their actions were criminal '*beyond all reasonable doubt*' (the standard of proof in criminal law). Civil law (private law) operates in order to arbitrate between private individuals and the (lesser) standard of proof used here to determine whether a wrong has been done against another (delict) is that of 'the balance of probability', that is, it is more likely to be the case than not.

Civil and criminal laws operate UK wide although there are differences in relation to their operation in Scotland as well as laws that are *specific* to Scotland. If you look at Figure 1.1 you will notice that the highest criminal court in Scotland is the High Court; there is no right of appeal to the Supreme Court of the UK in Scotland in relation to criminal matters as there is in England, Wales and Northern Ireland. The names of the courts are also different. In England and Wales there are Magistrates' Courts, County Courts, Crown Courts, the High Court and the Court of Appeal. In Scotland, there are District and Justice of the Peace Courts, Sheriff Courts, the High Court and the Court of Session for civil matters, and ultimately for civil cases only, the Supreme Court of the UK. Judges are also called Sheriffs in the Sheriff Courts. The High Court in Scotland acts as both a *trial court* and an *appeal court* under criminal law, and if it is felt that there has been a miscarriage of justice, there is recourse to the *Scottish Criminal Cases Review Tribunal* which has the power to refer cases back to the Appeal Court for consideration. There are also two different procedures in Scottish Courts: *summary procedure* which means that the Sheriff will hear the case sitting alone, and *solemn procedure* which means that the Sheriff or Judge will sit with a jury of 15 people. As the name implies, solemn procedure is used in more serious matters and in all appeals

In social work and other related professions within Scotland, most (but not all) of the law you will refer to will be civil law and will be dealt with either through the Sheriff Court or the High Court or a tribunal. For example, where a child is allegedly harmed by a parent, redress would be through civil proceedings under the Children (Scotland) Act 1995 to

| The Courts in Scotland | |
|---|---|
| ***Civil Law*** | ***Criminal Law*** |
| Supreme Court | The High Court of the Justiciary (Solemn Procedure) |
| Court of Session (Inner House) | Sheriff Court (Summary or Solemn Procedure) |
| Court of Session (Outer House) | District Court (Summary Procedure) |
| Sheriff Principal | |
| Sheriff Court (All Summary Procedure) | |

**Figure 1.1 The court structure in Scotland**

protect the child, usually done through the children's hearing (a *tribunal*), but if it was thought that a criminal offence had been committed (sexual assault), then the criminal law would apply in relation to the alleged perpetrator of the deed and would be dealt with, at least initially, through the Sheriff Court. Thus, in complex situations like child sexual abuse, both strands of the law would operate (Hothersall 2008). In relation to Criminal Justice social work, the criminal law is utilised much more and many of its provisions concerning probation orders, drug-testing orders and so on arise from a range of criminal statutes (see Chapter 17).

## Legislation and policy in Scotland after devolution

Scotland now has its own devolved Parliament, which came into existence following the granting of Royal Assent to the Scotland Act on 19 November 1998. Prior to this and as a direct result of the Act of Union of 1707, there had only been one Parliament in the UK, located at Westminster which

had legislated for England, Scotland, Northern Ireland and Wales since that time, although the general affairs of Scotland (and Northern Ireland and Wales) have had some form of representation through their respective offices. In the case of Scotland this was the Scottish Office, headed up by a UK Government Minister with the title of Secretary of State for Scotland. During the latter part of the twentieth century, however, concessions were made by the Westminster Parliament which granted limited powers to the other countries within the UK and Regional Assemblies were formed in Northern Ireland and Wales, although their powers are not as clearly devolved as those in Scotland are now. This process of *devolution*, which is the delegation of central government powers to another body without the relinquishment of sovereignty, now means that the Scottish Parliament can control some of its own affairs. However, there are a number of matters that the Westminster Parliament and its UK Government have reserved the right to continue to control. We therefore have a range of *devolved* matters which can be controlled through the Scottish Parliament and the Scottish Government, and a number of *reserved* matters which are still controlled from Westminster (see Tables 1.1 and 1.2).

**Table 1.1 The devolved powers of the Scottish Parliament**

| Social work | Health |
|---|---|
| Education and training | Local government |
| Housing | Planning |
| Tourism and economic development | Transport (aspects of) |
| Law and home affairs | Police and fire services |
| The environment | Sport and the arts |
| Natural and built heritage | Statistics, records and registers |
| Agriculture, forestry and fishing | |

**Table 1.2 The reserved powers of the Westminster Parliament**

| Constitutional matters | UK foreign policy |
|---|---|
| UK defence and national security | Immigration and nationality |
| Fiscal and economic policy | Energy |
| Common markets | Trade and industry |
| Transport (aspects of) | Employment law |
| Data protection | Gambling and the lottery |
| Social security | Equal opportunities |
| Abortion, human fertilisation, embryology | Genetics and vivisection |

(Schedules 4 and 5 of the Scotland Act 1998 detail devolved and reserved provisions.)

In relation to statute law which regulates these specific matters, however, it is important to remember that those that apply only to particular parts of the UK will have a *suffix* attached to them, for example, Children (Scotland) Act 1995; Children (Northern Ireland) Order 1991. The only exception to this general rule that a Scottish Act has a suffix is the Scotland Act 1998. Those Acts that apply to England and Wales and *in some cases the whole of the UK, including Scotland*, will have no such suffix, for example, NHS and Community Care Act 1990. This anomaly requires caution, although each act made by the Scottish Parliament in relation to devolved matters *should* have the suffix 'Scotland' in parentheses in its title (often abbreviated to (S): for example, Mental Health (Care and Treatment) (S) Act 2003).

If you come across a statute with no suffix, then check the *Arrangement of Sections* for the number of the section that refers to the *Extent* of the Act, that is, to which area(s) it does or does not apply. If you don't, you could end up trying to apply a law to a country to which it does not belong or alternatively, *fail to recognise that a particular statute has UK-wide and therefore, Scottish applicability*.

## The structure and functions of the Scottish Parliament

The Scottish Parliament is responsible for forming committees and overseeing the work of the Scottish Government. The members of the Government include the First Minister, the Lord Advocate, the Solicitor General and Members of the Scottish Parliament (MSPs) appointed as Ministers. Thus, a Scottish Minister is both a member of the Scottish Government and the Scottish Parliament. MSPs can also be members of the UK and European Parliaments.

The Scottish Government has six Cabinet departments or *portfolios* with responsibility for particular areas of government, some of which have Executive Agencies attached to them, which focus on specific topics and are accountable and report directly to Scottish Ministers.

The current administration has six *portfolios* or Cabinet departments:

- Office of the First Minister
- Finance and Sustainable Growth
- Education and Lifelong Learning (this includes children's services and education)
- Health and Well-Being
- Justice
- Rural Affairs and the Environment

In addition, there are the Law Officers, which include the Lord Advocate and the Solicitor General, who are responsible for the Crown Office and

the Procurator Fiscal Service, and although these areas continue to be a part of the Government, they maintain a degree of independence as a prosecution service.

The Government also has a number of Ministerial Offices within the Cabinet portfolios, headed by a Cabinet Secretary and include:

- Culture, External Affairs and the Constitution
- Parliamentary Business
- Enterprise, Energy and Tourism
- Transport, Infrastructure and Climate Change
- Children and Early Years
- Schools and Skills
- Public Health and Sport
- Housing and Communities
- Community Safety
- Environment

It is largely through these Ministerial Offices that most of the major policy initiatives and directives emanate and it is worthwhile visiting the Scottish Government website and following the links to look at these. These Offices also have a number of specialised sections within them that focus on particular areas within the remit of that particular portfolio.

## The political and policy-making process in Scotland

The Scottish Parliament does most of its work through the use of *committees*. These hold the Government to account and may inquire into particular issues and report to Parliament. There are a number of standing committees that exist all of the time and these are referred to as Mandatory Committees. These focus upon issues like Audit, Parliamentary Procedures and other matters mainly related to the business of Parliament as a whole. There are also a number of Subject Committees, which Parliament has established, with the aim of addressing specific policy issues within broad subject areas. These include Education, Health and Community Care, Social Inclusion, Housing and the Voluntary Sector and Justice and Home Affairs, amongst others. These committees, be they mandatory or subject related, are able to form sub-committees which can be used to focus upon very specific issues from within the broader topic of inquiry. They can do this by seconding individuals or groups into their midst who may have expertise derived from social work practice, academia, business or some other sphere which it is felt can offer something to the matter under consideration.

With regards to the creation of new or the amendment of existing laws (legislation), section 29 of The Scotland Act 1998 defines the parameters

of the Scottish Parliament's power in this regard. Any legislation or subsequent amendments must be consistent with European Union Law and be compatible with the European Convention on Human Rights and Fundamental Freedoms (1950) and the Human Rights Act (1998) (UK). It is important to realise at this point that not all legislation currently in force in Scotland *is necessarily consistent or compatible* as mentioned above. This does not mean that the Scottish Parliament (or the Westminster Parliament) has acted or is acting with blatant disregard for these principles; they could not. Rather, this reflects the incremental and piecemeal development of legislation (and policy) over time. Those aspects that are felt to be out of step, as it were, are and will be amended accordingly, although it is not always as straightforward as that. If the Scottish Parliament feels that its current laws and policies *are* consistent and compatible, then it can appeal to the European Courts for a ruling on these matters.

Where there is a need for new legislation or the need to amend existing laws, then a Bill is introduced before Parliament, although a consultation exercise *must* be undertaken beforehand. A consultation must precede the introduction of any Bill and they are the means through which interested parties may comment and respond to the proposals, including you. There are four main types of Bill:

- *Government Bills* are those drafted and introduced by the Scottish Government. These Bills have to be accompanied by a *Financial Memorandum* and a *Ministerial Statement* explaining the rationale for the Bill, its objectives and its likely (hoped for) impact. Of note is the notion of developing *Child Impact Statements* that are being considered for use in relation to all legislative and policy initiatives to make *explicit* the likely impact upon children (in general) of any initiative, irrespective of its main focus. So, for example there may be a Bill introduced relating to Fish Quotas in the North Sea. The Child Impact Statement may well assess the impact upon children to be negligible; probably correctly. However, a Bill introduced with the intention of regulating child minding arrangements would have a major impact upon children and the possible effects would need to be clearly articulated in order that Ministers, and the public (through *consultations*) can respond in order to influence such matters through the democratic process.
- *Members Bills* are introduced by any MSP who is not a member of the Scottish Government.
- *Committee Bills* are introduced by committees. These Bills may arise following the deliberations of a committee into a particular issue.
- *Private Bills* are introduced by an individual or an organisation.

Each Bill, irrespective of its origin, *must* be preceded by a period of consultation, and consultations can be found via http://www.scotland.gov.uk/Consultations/About.

There is also an important aspect of the devolution settlement referred to as the *Sewel Convention* whereby the Scottish Parliament can adopt a piece of Westminster legislation and apply it to Scotland. This avoids the need to duplicate relevant activity. For information on the key features of the Sewel Convention go to http://www.scotland.gov.uk/About/Sewel/KeyFacts.

The political process and that of policymaking are interconnected. It is through these processes that laws and policy become real and have an impact upon people's lives. But people's lives and experiences and the actions of professionals in the field also affect these processes. Figure 1.2 shows how this happens in general terms. It is important to note that the law applies *directly* to society; it is not all necessarily filtered through policy or practice. However, many laws are quite circumspect with regards to particular issues, offering broad scope for subsequent interpretation by the courts (via *case law* and *precedent*) and other tribunals, and Regulations and Guidance invariably accompanies legislation. For example, the Children (S) Act 1995 (the 1995 Act) is accompanied by four volumes of Regulations and Guidance (Scottish Office 1997a; 1997b; 1997c; 1997d) and the Mental Health (Care and Treatment) (Scotland) Act 2003 is accompanied by a three-volume *Code of Practice* (Scottish Executive 2005). Interestingly, in relation to the Children (Scotland) Act 1995, recent changes to the law relating to the adoption of children under the Adoption and Children (Scotland) Act 2007 (the 2007 Act) have repealed certain parts of the 1995 Act and as a result, Volume 3 of the guidance to the 1995 Act relating to adoption and parental responsibilities orders will have changed and will have to be read differently, largely because Parental Responsibilities Orders no longer exist. New guidance on the 2007 Act comes in several forms, including *Explanatory Notes* (Stationery Office 2007) and a range of *Scottish Statutory Instruments*.

The law can be defined as '(T)he body of rules, whether formally enacted or customary, which a particular state or community recognises as governing the actions of its subjects or members and which it may enforce by imposing penalties' (SOED 2007). Its main practical purpose is quite simply to regulate and in some cases, restrict certain kinds of behaviour within society. Using this definition and understanding of its purpose, we can see how the laws relevant to social work, social care and other forms of human service practice have their broad effect.

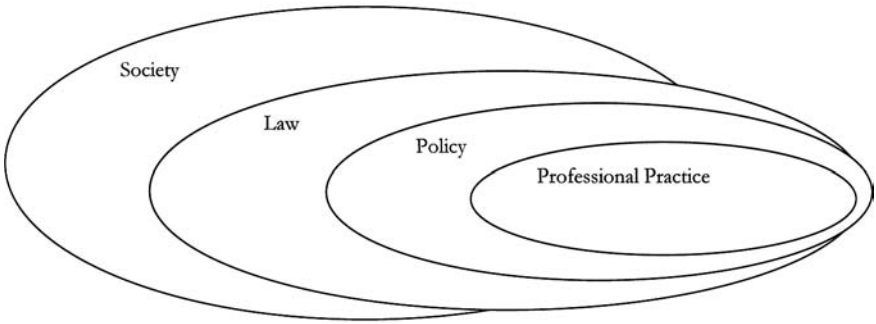


**Figure 1.2 An ecological representation of the relationship between society, law, policy and professional practice (after Bronfenbrenner 1979)**

## The law and policy in action

In essence, the law (usually what we refer to as 'statute law') acts as a set of broad principles to be adopted in relation to particular aspects of life. Laws are given practical effect by policy. (For access to all Acts of the Scottish Parliament, as well as a wide range of other Scottish and UK-wide legislation and other materials, go to www.opsi.gov.uk.) For example, the Children (Scotland) Act 1995 contains a range of differing provisions which focus on issues relating to *Parents, Children and Guardians* (Part 1), which is essentially aimed at regulating, by law and where necessary, certain aspects of the relationships between these groups of people: essentially, it is law relating to issues between *private individuals*. Part 2 of this Act refers to the *Promotion of Children's Welfare by Local Authorities and Children's Hearings etc.* and therefore to what we refer to as *public matters* and has as its focus the regulation of relationships between children, parents and others *where the state, in the form of the local authority*, is seen as having a role to play in these arrangements. This might be necessary because a child is being abused or neglected or it could be the case that a child actually has no one to look after him or her. In these situations, the state, in the form of the local authority, is seen to have a *duty* to become involved because of the generally perceived vulnerability of a child (Smith 2010), and the need to afford them the necessary protections consistent with the promotion of their general well-being, especially in situations when those ordinarily tasked with, and assumed to take on-board those responsibilities, appears to fail to do so, either by omission or commission.

Similarly, the Mental Health (Care and Treatment) (Scotland) Act 2003 'establishes new arrangements for the detention, care and treatment of persons who have a mental disorder. It also refines the role and functions of the (Mental Welfare) Commission and establishes the (Mental Health) Tribunal as the principal forum for approving and reviewing compulsory measures for the detention, care and treatment of mentally disordered persons' (Stationery Office 2005: 3). The 2003 Act is based around a number of fundamental principles (section 1) that have to be adhered to. Their function is generally to *prescribe* certain actions on the part of those implementing their functions under the Act in order to ensure (insofar as possible) that the general approach to the issues relating to the care and treatment of those individuals with a mental disorder is *consistent* and *coherent*, which, as we saw earlier, is one of the principle underpinning themes within policy making, policy implementation and, from your perspective, *professional practice*.

Using the Children (Scotland) Act 1995 as an example, we shall look at how certain policies give effect to this (statute) law, and Exercise 1.2 offers a working example for you to consider.

**Exercise 1.2 Law and policy in action**

Consider the following scenario: Mary, aged 6, and her brother Ryan, aged 4, have been orphaned. Their extended family is unwilling and unable to care for them. Therefore, the terms of section 25(1) of the Children (Scotland) Act 1995 apply in respect of them:

'25 Provision of accommodation for children, etc.

(1) A local authority shall provide accommodation for any child who, residing or having been found within their area, appears to them to require such provision because –

(a) no-one has parental responsibility for him;
(b) he is lost or abandoned; or
(c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care.'

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> The word 'shall' simply means that the local authority is under a legal obligation to provide accommodation, that is, given the presence of certain conditions, they have no choice but to do this. In relation to Mary and Ryan, their circumstances can be seen to be covered by the general conditions laid out under s25(1)a) and c). Notice that I refer to the conditions as being 'general'. Within statute, conditions, or 'grounds' as they are often called, will tend to be rather broad in their purview. This is simply because it would be almost impossible to specify *every possible condition, situation or set of circumstances* which might require the local authority (as the representative of the government or state) to act. Law is generally phrased in such a way and it is here that we can begin to see why we need *policy* in order to make the law work and become *dynamic*.

In relation to all statute law, including the Children (Scotland) Act 1995 and the Adoption and Children (Scotland) Act 2007 there exist a range of *statutory instruments (Rules and Regulations)* (refer to subordinate legislation above) which function to put into action, or *operationalise*, their various provisions. At the time of writing, there are a number of significant changes taking place in Scotland regarding the arrangements for looked after and accommodated children and for those children who require permanency either through adoption or through the new *permanency orders* now available under the Adoption and Children (Scotland) Act 2007. These developments mean that new *regulations and guidance* must be produced to replace earlier versions, which are now rendered obsolete. This is a good illustration of the impact of new legislation on practice and how regulation and guidance is essential to implement such changes correctly (see Scottish Office 1997a; 1997b; 1997c; 1997d; Stationery Office 2007).

This subordinate legislation and other such policies work by offering more detailed and explicit regulation (that is, *you must do*) and guidance (that is, *you should do*) on how the local authority should *interpret* and *implement* the provisions of this or any other Act, although they may be called something else. For example, the Mental Health (Care and Treatment) (Scotland) Act 2003 provides significant guidance in the form of a three-volume *Code of Practice* (Scottish Executive 2005) as does the Adults with Incapacity (Scotland) Act 2000 (Scottish Government 2008b; and see Hothersall, Maas-Lowit and Golightley 2008).

Figure 1.3 offers a pictorial explanation of the way in which the law, referring in this case to the 1995 Act, is put into operation by the provisions of subordinate legislation and policy at a number of different levels, each becoming more specific and more attuned to local practice, each offering

more specific guidance on how to interpret differing aspects of the law, initially, then of higher-level (national) policy. It is an iterative process. As we saw above, the 1995 Act states what must happen in the situation where children have no one to look after them, for whatever reason. Volume 1 of the Rules and Regulations to the 1995 Act offers advice to professionals on what kinds of services might be required in order to assist Mary and Ryan (see Annex A and Annex B of Volume 1) whilst Hothersall (2008) offers detail on the issues regarding *providing accommodation* for children, covering such things as the range of accommodation that might be available in a local authority area and the sorts of arrangements local authorities might put in place.

All policy documents will refer back to principle sections of the primary or secondary statute (in this case the 1995 Act) which are intended to be reference points towards other duties and powers of the local authority and which, taken together, aim to provide a coherent overview of how, in this example, to provide a service for children and their families under certain circumstances.

As you look at policy at this level (governmental/national) you will become aware that much of what is referred to is somewhat generalised (although less so than in statute). Policy at this level offers a fairly broad interpretation of statute; it is the function of policy at the next level (that of the local authority and/or the agency or organisation, as these might be the same thing) to be more specific as to the *when* and the *how* in terms of implementation. For example, Northshire City Council is bound by the

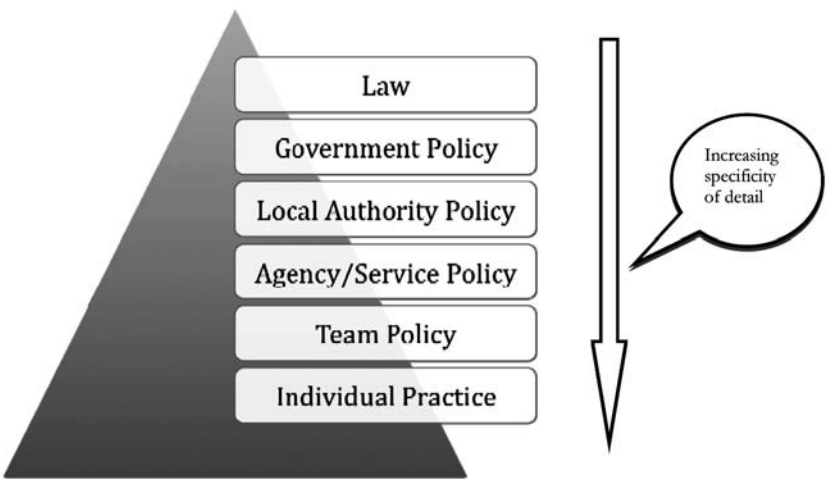


**Figure 1.3 The hierarchical relationship between law and policy**

terms of the 1995 Act and the associated *Rules and Regulations*. In relation to the accommodation of children under the terms of section 25 (remember Mary and Ryan?), it already has in place a range of services for children (in compliance with section 22 of the 1995 Act and *Scotland's Children: Regulations and Guidance* Volume 1, Annexes A and B and the *Looked After Children Regulations 2009*) and has developed its own Northshire City Council policy which refers to the accommodation of children in *foster care*. This policy would offer more specific guidance on *what* and *how* to respond to a situation like that involving Mary and Ryan. It might for example offer information about the *process* involved in meeting with the children, what details to obtain and from whom, how to ensure that they have sufficient clothing, how to make arrangements to find a suitable foster carer or kinship carer and how best to facilitate this within certain timescales.

This authority-wide policy may then be added to by reference to policy documents at the level of the particular *service* involved. For example, some local authorities will have a *children's services division* or *sector*, which may be sub-divided into *fieldwork services*, *foster care services* and *residential services* for children. The policy you might be working to might be entitled the *Accommodating Children Policy for Fieldwork Services*. This policy would be applied to all *fieldwork services* for children in Northshire City Council's area in situations where children need to be accommodated. This particular policy may then be added to by reference to a further policy document that applies to a particular *team*. It may be that there are particular issues for that team that need to be addressed in order for them to be able to comply fully with the broader Northshire policy. For instance, a particular team may feel that once completed, all relevant documentation appertaining to a particular situation should be given to a particular person or it may impose particular timescales or other requirements on the frequency of visits to children that are in excess of those required by the policy within the service and that stipulated in regulation 46 of the 2009 *Regulations*. So long as each of these so-called *secondary policies* is *consistent* and *compatible* with those from which they are essentially derived, in the same way that *governmental policy* is *consistent*, *compatible* and therefore *compliant* with the law from which it is derived (including European law and other supra-state rulings), all is well.

Finally, at the most personal and intimate level of policy we come to its *integration* and *implementation* by the practitioner. This is the level at which policy *really* affects people, and there are a number of things to discuss regarding this, but first it must be said that effective policy implementation at the practitioner level presupposes that those practitioners have taken the time to study and reflect upon relevant policy at all levels in order that they can then integrate this with their own knowledge, values and skills.

Understanding policy, its genesis, purpose, structure, form and potential effects are but some of the essential pre-requisites for ethical and effective practice, and with this is the need to appreciate the essence of policy and its principle function: the well-being of people, and we shall consider this in Chapter 4.

## Chapter summary

This chapter has introduced you to social policy and provided illustrations of the fundamental principles underpinning its existence and you are now probably well aware that social policy is all around us. You have devised your 'own' policies in an attempt to appreciate the basic functions of policy development and application and have then considered these basic principles in relation to two examples of extant social policies in the areas of child care and mental health. You have also seen how the law and its different strands relates to policy and works with it as well as looking at the current arrangements within Scotland for the development of law and policy. The chapter has concluded with a 'working example' of how law and policy come together to provide a service for two children who are orphaned. All of these points will be essential background knowledge for you as you proceed through the rest of the book.

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## Further reading

For a good introduction to social policy see:
Spiker, P. (2008), *Social Policy: Themes and Approaches* (Bristol: Policy Press).

## Web-based resources

Scottish Executive (2005), *Adoption: Better Choices for our Children*. Report of Phase II of the Adoption Policy Review Group (Edinburgh: Scottish Executive). All documentation relating to the review and all relevant policy documents can be found at: http://www.scotland.gov.uk/Topics/People/Young-People/children-families/17972/10958 (accessed 29 May 2010).
Explanatory notes to the Adoption and Children (Scotland) Act 2007 can be found at: http://www.opsi.gov.uk/legislation/scotland/acts2007/en/aspen_20070004_en_1 (accessed 29 May 2010).
For a range of useful fact sheets on the structure and function of the Scottish Parliament and the legislative process, go to:
http://www.scottish.parliament.uk/business/research/ (accessed 29 May 2010).

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