

FIFTH EDITION

# SOCIAL WORK LAW

ALISON BRAMMER

# **SOCIAL WORK LAW**



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# SOCIAL WORK LAW

**Alison Brammer**

School of Law, Keele University

Fifth Edition



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# Brief contents

Foreword by Professor, The Lord Patel of Bradford OBE	xxi
Preface	xxiii
Author's acknowledgements	xxviii
Publisher's acknowledgements	xxix
Table of cases	xl
Table of legislation	lvi
List of abbreviations	lxix
<b>Part 1 Legal context of social work practice</b>	<b>1</b>
<b>1</b> Introduction to law and social work practice	3
<b>2</b> Sources of law	27
<b>3</b> Courts and law officers	48
<b>4</b> Social workers' role in law	74
<b>5</b> The Human Rights Act 1998 and social work practice	106
<b>6</b> Discrimination	136
<b>Part 2 Children and families</b>	<b>155</b>
<b>7</b> Supporting children and families	157
<b>8</b> Children and family breakdown	188
<b>9</b> Child protection	218
<b>10</b> Looked after children	269
<b>11</b> Adoption	295
<b>12</b> Education	329
<b>13</b> Youth justice	352
<b>Part 3 Vulnerable adults</b>	<b>377</b>
<b>14</b> Adult social care	379
<b>15</b> Mental health	406
<b>16</b> Mental capacity	440
<b>17</b> Adult safeguarding	463
<b>18</b> Criminal justice	492
<b>19</b> Welfare and homelessness	517
<b>20</b> Asylum	534
Glossary	550
Bibliography	554
Index	560



# Contents

Foreword by Professor, The Lord Patel of Bradford OBE	xxi
Preface	xxiii
Author's acknowledgements	xxviii
Publisher's acknowledgements	xxix
Table of cases	xl
Table of legislation	lvi
List of abbreviations	lxix

<b>Part 1 Legal context of social work practice</b>	<b>1</b>
<b>1 Introduction to law and social work practice</b>	<b>3</b>
Learning objectives	3
Introduction	4
Relationship between law and practice	4
The qualifying framework	5
Standards of Proficiency	6
Professional Capabilities Framework	6
QAA Benchmarks	8
Regulation of social work	9
Legal framework of social work	10
Summary of key legislation impacting on social work practice and defining service user groups	11
Limitations of law	14
Key legal concepts	14
Confidentiality	14
Accountability	17
Duties and powers	17
Rights	19
Values	19
Partnership	20
Choice	21
Anti-discriminatory, anti-oppressive practice	22
Formal guidance on values and principles	24
A framework for decision-making	24
Chapter summary	25
Websites	26
Further reading	26



<b>2 Sources of law</b>	27
Learning objectives	27
Talking Point	28
Introduction	28
Language of law	29
Legislation	31
Process of new legislation	32
Delegated legislation	37
Regulations	37
Guidance documents	37
Directions	38
Codes of practice	39
The common law: case law and precedent	39
Precedent	39
Accessing and understanding case law	40
Judge-made law	41
Practice Directions	42
Judicial review	42
Law reform	43
The Law Commission	44
Chapter summary	44
Exercises	45
Websites	46
Further reading	47
<b>3 Courts and law officers</b>	48
Learning objectives	48
Talking Point	49
Introduction	49
Courts and the English legal system	50
Distinguishing between civil and criminal law	50
Courts exercising civil jurisdiction	52
Outline of a civil case	53
Courts exercising criminal jurisdiction	54
Brief outline of the criminal process	54
The court structure	55
Magistrates' Court	56
County Courts	56
Crown Court	57
The High Court	57
Court of Protection	59
Family Court	59
Court of Appeal	59
The Supreme Court	60
European Court of Justice	60
European Court of Human Rights	60
Coroners' Court	61
Tribunals	61
Public and private hearings	62
Social work involvement in the courts	62
Rules of evidence	63
Law officers	63
Solicitors	64

Barristers	64
Crown Prosecution Service	65
Criminal Defence Service	65
Magistrates/Justices of the Peace (JPs)	65
Justices' clerk	66
Judges	67
Attorney-General	67
Director of Public Prosecutions	67
Official Solicitor	67
Children's guardian	67
Probation service	68
Lord Chancellor and the Ministry of Justice	68
Access to law and representation issues	68
Chapter summary	70
Exercises	71
Websites	72
Further reading	73
<b>4 Social workers' role in law</b>	<b>74</b>
Learning objectives	74
Talking Point	75
Introduction	75
Social work roles in the legal system	75
Applicant	75
McKenzie friend	76
Witness	76
Report writer	77
Children's guardian	77
General principles of report writing	78
Appropriate adult	79
Advocacy	80
Working in court	80
Courtcraft skills	80
Giving evidence	82
Rules of evidence	85
Admissibility	85
Hearsay	85
Opinion	86
Corroboration	86
Competence	87
Evidence of children and vulnerable adults	87
Relationship with lawyers	87
Challenging social work practice	88
Local authority's complaints procedure	89
Local government ombudsman	90
Default power of the Secretary of State	92
Judicial review	92
Monitoring officer	93
Action for damages	93
Human Rights Act 1998	95
Employer's duty of care to staff	95
Record keeping	97
Data Protection Act 2018	98
Freedom of Information Act 2000	100

Chapter summary	101
Exercises	102
Websites	104
Further reading	104
<b>5 The Human Rights Act 1998 and social work practice</b>	<b>106</b>
Learning objectives	106
Talking Point	107
Introduction	108
What does the HRA 1998 do?	109
Incorporation of the rights into English law	110
Consideration of case law	110
Compatibility of legislation	111
Public authorities	111
Proportionality	114
Margin of appreciation	114
The Convention rights (s. 1)	115
The Articles	115
Using the HRA 1998	128
Remedies	129
Equality and Human Rights Commission	129
Influence of European and international law and Conventions	130
Universal Declaration of Human Rights 1948	130
United Nations Convention on the Rights of the Child 1989	130
United Nations Convention on the Rights of Persons with Disabilities 2006	132
Chapter summary	132
Exercises	133
Websites	134
Further reading	134
<b>6 Discrimination</b>	<b>136</b>
Learning objectives	136
Talking Point	137
Introduction	138
Evidence of discrimination	140
Institutional racism	141
Discrimination – general	141
Legislation	142
Guidance	142
Other responses to discrimination	144
The Equality Act 2010	144
Race s. 9	145
Pregnancy or maternity	146
Gender reassignment s. 12	146
Disability s. 6	146
Reasonable adjustments	146
Religion s. 10	147
Age s. 5	147
Sexual orientation s. 12	147
Forms of discrimination	147
Permitted discrimination	149
Positive action s. 158	149
Public sector equality duty	150
Enforcement	151

Equality and Human Rights Commission	152
Chapter summary	152
Exercises	153
Websites	153
Further reading	154

## Part 2 Children and families 155

<b>7 Supporting children and families</b>	<b>157</b>
Learning objectives	157
Talking Point	158
Introduction	159
Introduction to the Children Act 1989	160
Central principles	162
Welfare	162
Welfare of the child: parental involvement	164
Avoidance of delay	168
Non-intervention	169
Litigation limit	170
Children's rights	171
Children's Commissioner	173
Children Act 2004	174
Background to the Act	174
Local authority support for children in need	177
Interpretation of need	178
Children with disabilities	182
Young carers and parent carers	184
Chapter summary	184
Exercises	185
Websites	186
Further reading	186
<b>8 Children and family breakdown</b>	<b>188</b>
Learning objectives	188
Talking Point	189
Introduction	189
Parental responsibility	190
Who has parental responsibility?	191
Private law orders (s. 8)	194
Mediation	195
Child arrangements order	195
Contact	197
Specific issue	201
Prohibited steps	202
Who may apply for an order?	202
Investigation of the child's circumstances (s. 37)	203
Family assistance order	204
Domestic violence	205
Social work and local authority involvement in domestic violence cases	207
Family Court Welfare Service	207
Divorce	209
Marriage	209
Forced marriage	209
Ground for divorce	211
Civil partnership and same-sex marriage	213

Openness in the family courts	214
Chapter summary	215
Exercises	215
Websites	216
Further reading	216
<b>9 Child protection</b>	<b>218</b>
Learning objectives	218
Talking Point	219
Introduction	219
Definitions of child abuse	221
'Working Together to Safeguard Children – A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children' (2018)	222
Family Justice Review	223
Safeguarding arrangements	223
Duty to investigate	223
Case conferences and reviews	225
Short-term and emergency orders	227
Child assessment orders	227
Emergency protection orders	228
Police protection	233
Recovery orders	234
Children's refuges	234
Power of exclusion	234
Care and supervision orders	235
Effect of a care order	243
Interim care orders	243
Care plans	244
Procedure	245
Human rights and child protection	249
Contact with children in care	250
Supervision orders	251
Discharge and variation	252
The role of the children's guardian	253
Expert witnesses	255
Wardship and the inherent jurisdiction	257
Screening child care workers	258
Child abuse inquiries	258
Types of inquiries/reviews	259
Key findings from public inquiries	259
Child protection and the criminal law	262
Evidence of children	263
Chapter summary	265
Exercises	266
Websites	266
Further reading	267
<b>10 Looked after children</b>	<b>269</b>
Learning objectives	269
Talking Point	270
Introduction	271
Duties towards looked after children	272
Provision of accommodation	273
Outcomes for looked after children	277

Fostering	278
Local authority foster carers	279
Private foster carers	281
Usual fostering limit	281
Residential care	282
Regulation of children's homes	282
Secure accommodation	284
Independent visitors	287
Leaving care	288
Chapter summary	290
Exercises	291
Websites	291
Further reading	292
<b>11 Adoption</b>	<b>295</b>
Learning objectives	295
Talking Point	296
Introduction	297
Children Act 1989 changes to adoption	297
Background to the Adoption and Children Act 2002	298
Current law on adoption	299
Introduction	299
The adoption service	299
National Standards	300
Guidance	301
Principles	301
Who can adopt?	307
Who can be adopted?	310
Conditions for making an adoption order – placement and consent	310
Placement	310
Parental consent	313
Adoption application	315
Effect of an adoption order	315
Open adoption	315
Contact under the Adoption and Children Act 2002	317
Concurrent planning	318
Fostering for adoption	319
The adoption panel	319
Information to prospective adopters	320
Adoption proceedings	321
Adoption support services	321
Adoption or residence?	322
Special guardianship	322
Chapter summary	326
Exercises	326
Websites	327
Further reading	327
<b>12 Education</b>	<b>329</b>
Learning objectives	329
Talking Point	330
Introduction	330
Framework of education law	332
School structures and the role of governors	334

Social work responsibilities	334
School attendance	335
Discipline and exclusions	340
Special educational needs (SEN)	343
Looked after children	344
A right to education?	346
Sex education	348
Chapter summary	349
Exercises	350
Websites	350
Further reading	351
<b>13 Youth justice</b>	<b>352</b>
Learning objectives	352
Talking Point	353
Introduction	353
Social worker's role in youth justice	355
Institutional arrangements	356
Prevention of youth crime	358
Child curfew schemes	359
Child safety order	360
Parenting order	361
Parenting contracts	362
Anti-social behaviour	363
Anti-social Behaviour, Crime and Policing Act 2014 Injunctions	363
Gang injunctions	363
Offending and orders	364
Offending behaviour	364
Pre-court measures	365
Arrest and charge	366
The appropriate adult	366
The Youth Court	368
Serious offences	368
Dangerousness	369
Disposal	369
Referral orders (PCC(S)A 2000, ss. 16–20)	370
Reparation order (PCC(S)A 2000, ss. 73–75)	370
Custodial sentences	371
Detention and training order (PCC(S)A 2000, ss. 100–107)	371
Powers of Criminal Court (Sentencing) Act 2000, s. 90	371
Youth rehabilitation order	372
Chapter summary	373
Exercises	374
Websites	375
Further reading	375
<b>Part 3 Vulnerable adults</b>	<b>377</b>
<b>14 Adult social care</b>	<b>379</b>
Learning objectives	379
Talking Point	380
Introduction	380

Adult service users	381
The Care Act 2014	383
The well-being principle	383
Other principles	385
Prevention, integration, information and diversity	386
Cooperation	387
Assessment and eligibility	387
Personalisation	391
Care and support plan	393
How to meet needs	394
Choice, preference or need?	394
Home closures	395
Anti-discriminatory practice and assessment	396
Advocacy	396
Adult social care and human rights	397
Charging for services	398
Complaints procedure	398
Carers	400
Meeting need: particular services	401
Residential accommodation	401
Regulation of residential accommodation	402
Care Quality Commission	402
Domiciliary services	402
Chapter summary	403
Exercises	403
Websites	404
Further reading	404
<b>15 Mental health</b>	<b>406</b>
Learning objectives	406
Talking Point	407
Introduction	408
Code of practice	409
Mental health and mental capacity	409
Government strategy for mental health	411
Definitions	411
Learning disability	413
The role of the approved mental health professional	414
Other professional roles	416
Approved clinician	416
Responsible clinician	416
The nearest relative	417
Role of the nearest relative	417
Choice of nearest relative	417
Displacement of nearest relative	418
Compulsory powers	419
Mental health and risk	420
Medical support	421
Applicant	421
Section 2	421
Section 3	421
Section 4	422
Section 5	422
Independent mental health advocacy	422
Human rights and detention	423



Informal patients in hospital	423
Guardianship	426
Powers of the guardian	426
Short-term powers	427
Rights of patients in hospital	428
Treatment	429
Voting rights	430
Correspondence	430
Visits	431
Legal proceedings	431
Discharge	431
Mental Health Review Tribunal	432
After-care	433
Supervised community treatment	434
Leave of absence	435
Children and young people and mental health	435
Criminal proceedings affecting those with mental illness	436
Chapter summary	437
Exercises	437
Websites	438
Further reading	438
<b>16 Mental capacity</b>	<b>440</b>
Learning objectives	440
Talking Point	441
Introduction	441
Capacity and decision-making before the Act	442
Declarations	442
Litigation friend	443
The Mental Capacity Act 2005	444
Background	444
Principles	444
What is capacity?	446
Issue-specific capacity	447
Best interests	448
Acts in connection with care or treatment	449
Lasting power of attorney	450
Advance decisions	451
Deprivation of Liberty Safeguards	451
Reform	453
Liberty Protection Safeguards	454
Court of Protection	454
The independent mental capacity advocate service	458
Criminal offence	458
Code of practice	458
Chapter summary	459
Exercise	460
Websites	461
Further reading	461
<b>17 Adult safeguarding</b>	<b>463</b>
Learning objectives	463
Talking Point	464
Introduction	465

Existence and definitions of abuse	466
Definitions	466
Prevalence	469
Responding to abuse	470
A duty to investigate	470
Safeguarding Adults Boards	472
Legal options	472
Preventing abuse	474
Screening out unsuitable people	475
Safeguarding Vulnerable Groups Act 2006	475
Preventing financial abuse	476
Residential settings	478
Action by the victim	480
Family Law Act 1996	480
Contract	481
Tort	481
Formal responses	482
Declaratory relief	482
Independent mental capacity advocates and adult protection	484
Criminal law	485
Domestic Violence, Crime and Victims Act 2004	487
Mental Capacity Act 2005	488
Criminal Justice Act 2003	488
Mental Health Act 1983	488
Chapter summary	489
Exercises	490
Websites	490
Further reading	491
<b>18 Criminal justice</b>	<b>492</b>
Learning objectives	492
Talking Point	493
Introduction	493
Machinery of the criminal justice system	494
Preventing crime and disorder	494
Social workers' responsibilities in the criminal justice system	495
Constituents of the criminal justice system	495
Police	495
Crown Prosecution Service	495
Criminal Defence Service	496
National Offender Management Service	496
Probation	496
Prison service	497
Courts	497
The witness service	497
Process of the criminal justice system	498
Arrest	498
Time limits for detention	499
Appropriate adult	499
Police powers	500
Remands	502
Trial	503
Outcomes in the criminal justice system	503
Sentences	503

Sentencing guidelines	505
Discharges	506
Fines	506
Fixed penalties	506
Compensation	506
Community sentences	507
Suspended sentences	508
Pre-sentence reports	508
Custody	508
Vulnerable witnesses	509
Mentally disordered offenders	510
Racism and the criminal justice system	510
Miscarriages of justice	512
Victims	512
Criminal injuries compensation	513
Human Rights Act 1998 implications for criminal justice	514
Chapter summary	514
Exercises	515
Websites	516
Further reading	516
<b>19 Welfare and homelessness</b>	<b>517</b>
Learning objectives	517
Talking Point	518
Introduction	518
Homelessness	519
Specific duties	519
Duties of the authority	525
Review of homelessness decisions	525
Duty to refer	526
Cooperation with social services	526
Homelessness strategies	526
Code of Guidance	526
What is a home?	527
Anti-social behaviour and housing	527
Welfare	528
Chapter summary	531
Websites	532
Further reading	533
<b>20 Asylum</b>	<b>534</b>
Learning objectives	534
Talking Point	535
Introduction	535
Seeking asylum – the current law	536
Anti-discriminatory practice	536
Refugee status	537
Provision of support	538
Seeking asylum	538
Accommodation	539
Financial support	540
Appeals	540
Removal of support	540
Voluntary sector	541

Human Rights Act 1998 implications	541
Social services responsibilities	542
Unaccompanied children	542
Accompanied children	544
Education	545
Adult asylum seekers	545
Adult social care	545
Mental health	547
National Health Service	547
Chapter summary	547
Exercises	548
Websites	548
Further reading	549
Glossary	550
Bibliography	554
Index	560



## Foreword

It has been said that social work is one of the easiest professions to do badly and one of the most difficult to do well. As a former social worker, and now as the Chair of Social Work England, I wholeheartedly agree with this statement.

Social workers have a strong sense of social justice as they have to engage with a range of social issues that lie at the heart of their professional practice. They have to work with individuals and families with some of the most complex issues and needs, and are often required to intervene alongside other professionals when services or interventions have failed to keep some of the most vulnerable people in our communities safe and supported. It is, therefore, essential that social work students not only understand their role, but also learn the importance of its legal context and framework so they can operate safely and effectively within the boundaries of the law and ensure that their work upholds the highest standards of professional practice.

It is for this reason that I believe in the importance and value of this new edition of Alison Brammer's *Social Work Law*, which updates the legislation and practice changes for students of social studies. Brammer will introduce students to basic legal skills, identify their statutory responsibilities and improve their knowledge of the law and its application to social work practice, but it will also help students to understand the links between the law and social work values, and how the law can promote good practices and empower service users.

This is necessary because social workers are able to exercise significant legal powers in their role and they have a responsibility and a duty to exercise these powers safely and with due diligence. The confidence of the public must be maintained and protected, and it is only through the highest standards of practice that social workers can do this effectively. Trust in social workers is vital to the successful operation of their role and this is especially evident when it comes to the use of their legal powers.

But the law is not a fixed body of rules; it changes over time, and social work students must keep abreast of these changes. Students need to understand how, as social workers, they can use the law in a positive way. They should examine the value of law from the perspectives of the people who use services, their carers and professionals. They should also focus on learning and understanding the underlying principles – for example, the use of powers under the Mental Health Act are there to protect people and ensure their rights are upheld, not to simply take away their liberty.

This is particularly important once students have become qualified social workers. As the Chair of Social Work England, I want to stress that regulation means that social workers must maintain their knowledge base and skills, including keeping up to date with law learning as part of their Continuing Professional Development. Law learning can also be a rewarding journey that brings out the social issues that lie at the heart of professional practice and so enables social workers to make the links between theory, research and legislation, and to translate it into everyday practice, enhancing their critical and risk analysis abilities.

Moreover, when social workers take charge of their learning and understand the legal framework in which they are working, they are well placed to recognise when the law is inadequate in its protection of vulnerable groups or has an adverse impact on their lives. For example, while they must work within the existing legal framework, they may come to understand that some aspects may be having a discriminatory impact on some groups of people who use services and/or carers. Based on my own personal experience, I know how important it is that social workers can use their professional voice to highlight its limitations and to campaign for reform.

At its heart, social work is a profession that is concerned with promoting social change, safeguarding service users and carers, protecting the public and challenging social injustice. However, social workers can only fully appreciate and respond to these professional challenges if they take the time to learn and understand the law, and how it works in conjunction with professional social work practices.

**Professor, The Lord Patel of Bradford OBE**

# Preface

## Aims

The aims of this book are to:

- Improve knowledge of law and its application to social work practice.
- Clarify legal terminology, conventions and practice and introduce basic legal skills.
- Identify the statutory responsibilities of social workers.
- Establish links between law and social work values.
- Demonstrate how law can promote good practice and empower service users while acknowledging the converse.
- Provide a comprehensive account of 'service user law'.
- Engage with professional and contextual issues surrounding law and social work.

The law covered in this text is specifically that which applies in England and Wales. The law applicable in Scotland and Northern Ireland is not included other than on occasion by way of comparison. Social work practice in statutory Social Services Departments forms the main focus of discussion although it is recognised that an increasing number of people in the social work profession are employed in the private and voluntary sector and where possible relevant issues relating to those areas are addressed.

## Terminology

It is important to add a note on terminology at this stage. Language in law and social work practice is always changing – though not necessarily at the same pace. At times a choice had to be made between various terms and styles and a brief explanation for those choices follows.

Throughout the text the term 'service user' is employed rather than 'client'. In practice this term is now more commonly accepted as the appropriate term. The reasoning behind this preference is that reference to 'service user' is less discriminatory as it implies a more active and equal position with the social worker and emphasises that social work practice and the law deal significantly with provision of services and support and are not confined to issues of protection and control. It is recognised that in some particular circumstances the term may not seem appropriate to all or some of the players. For example, in child protection where a parent emphatically denies the existence of 'significant harm' yet action is taken to remove



the child, that parent may not perceive herself as a service user or a client and may relate more closely to terms such as victim or adversary.

He is used throughout the text rather than s/he or they, which can appear clumsy, though more acceptable in terms of anti-discriminatory practice. The main reason for use of he is that legislation is framed in these terms, though application of the Interpretation Act 1978 means that he should be taken to refer to she also. This usage is adopted therefore for reasons of clarity and consistency.

The glossary includes explanations of a range of terms used throughout the book. Some are technical legal terms which are unavoidable and in rare cases may still be expressed in Latin. Other terms are more recent in origin and an explanation is provided of their meaning in the context of social work law. Terms included in the glossary are highlighted in red bold the first time they appear in the text. Abbreviations used are highlighted in black bold in the text at first mention.

## Approach

A few thoughts about learning the law will further explain the approach of this text.

Learning social work law is most effective as part of an approach which conforms to what Biggs (1994) describes as 'the qualitative outlook'. Under this premise, students learn in a cumulative fashion through interpretation of new materials with existing knowledge and understanding. The task for teachers of social work law is thus to encourage understanding, not simply to transmit vast amounts of content which can be reproduced in a test situation without any real understanding of the subject matter or its interrelationship with other areas (the quantitative outlook). The qualitative approach involves use of activities to help understanding. Elements typically present in this approach include: a positive motivational context; a high degree of learner activity, both task-related and reflective; interaction with others, at peer level and hierarchically; a well-structured knowledge base that provides depth and breadth for conceptual development and enrichment (Biggs, 1994).

To learn a new subject it is necessary to be aware of expectations, motivation and attitudes. It is possible that some social work students feel that the study of law is imposed on them if they wish to pursue a career in social work, rather than it being a genuine choice. A few students may still consider that law has no relevance to social work and therefore have little commitment to its study. Others may grasp the aspects of law that might be interpreted as oppressive or discriminatory and see their role as fighting against law rather than embracing it as a tool to improve practice.

For some students, reluctance to study law is founded in a preconception that law is dry and boring. A response to such concerns is to encourage students to take some ownership of the study of law by incorporating it fully into their professional development as a social work practitioner. Guiding this approach, is Rogers' (1969) view that significant learning takes place when the subject matter is perceived as having relevance to your own purpose.

To learn law it is necessary to spend some time on basic skills of legal research, 'the ability to find, use and apply legal source material; the ability to read cases and statutes and apply them to new or complex situations' (Kenny, 1994, p. 47). The introduction of these skills should be set against a context of an understanding of the respective roles of social workers and solicitors. In practice social workers should have access to legal advice for complex cases. The aims of studying law as a social worker should not include a desire to turn into quasi-lawyers, but having an appropriate knowledge of law and awareness of how to access the law that supports professional practice.

Before embarking on the study of law as part of a social work course, it is apposite to develop an awareness of the sensitive nature of some areas of study. It is important to acknowledge the possible existence of personal and professional experience of certain issues, e.g. domestic violence, and the need to foster a 'safe' working environment.

One way to achieve this is through the development of 'ground rules' which can if necessary be revisited throughout a course of study. Ground rules might include issues such as: respect for each other's beliefs and opinions, confidentiality within the group, sharing resources, appropriate use of language, time out if appropriate, and full participation. From my experience of following this approach with groups of mature students I would support the view of Egan (1974) that 'an adult way of learning is best established when a group agrees to and respects and values each other, and that this is best achieved through a contract that establishes ground rules' (in Rowland, 2000, p. 65).

The approach taken in this text is to provide the opportunity to learn law in a way which is relevant to social work practice and develops critical analysis. Chapters therefore include learning objectives, discussion points, signals to evaluate law, including deficiencies in current law and commentary on proposals for reform, case analysis and exercises in the form of case study discussion, as a facet of problem-based learning (Savin-Baden, 2000). A limitation of case studies is that it is not usually possible to provide the amount of detail that would be available in a real situation. This can be a positive feature, however, in that it can encourage questioning and provide for a greater range of options to be considered e.g. a reference in a case study to a 'child in need' as defined by the Children Act 1989, s. 17 might prompt thought or discussion about gate-keeping, prioritisation of services, concepts of need versus protection, ethnocentric interpretations of need, medical versus social need – all issues hidden behind a seemingly straightforward legal term. The companion website will include answers to case studies and exercises.

## Keeping ahead of the game – further reading and website addresses

Professionals working in all of the areas covered in this book need to be alert to changes in policy, legislation and case law, all of which impact on practice. Reading a textbook on social work law, however comprehensive, is unlikely to equip the social practitioner fully for the diverse situations which will be encountered. In part this is an inevitable result of the speed of changes and developments in law.

Some sections of this text have had to consider both existing law and future, as yet unimplemented, legislation or proposals for reform. In addition, the potential for challenge of existing law via the Human Rights Act 1998 should not be overlooked and its impact is considered throughout. The approach adopted therefore is to encourage and enable the reader to consider the study of law as a career-long aspect of professional development, and to achieve this to develop the skills necessary to access up-to-date materials and indications of future direction. Three principal features of the book support this aim.

### Further reading

Space dictates that certain important publications, such as government policy and consultation documents, can only be referred to in brief. References are provided in further reading to encourage the reader to access the original documents and to expand and develop on the

knowledge gained in the text. Certain key documents, e.g. 'Working Together to Safeguard Children', will become an essential part of the social work 'toolkit'. The text aims to encourage a critical and reflective approach to the role of law. Published research and academic articles included in further reading support this notion and the requirement for research-based practice. This is a generic text but it is recognised that on qualification most social workers will choose an area of specialism and may wish to research that area in greater depth.

## Website addresses

In addition to the more traditional library-based sources of information, there is a wealth of information which can be accessed via the internet. Website addresses are included at the end of each chapter. Sites are included through which significant documents such as government publications can be accessed. In addition, for each topic there are websites listed reflecting the particular issues, e.g. charitable or research-based organisations, which can provide further insight into an area.

## Outline of content

The remainder of this text is divided into three parts: the legal context of social work practice; children and families; and vulnerable adults. Criminal justice issues are dealt with in Chapter 13 regarding juvenile offenders and Chapter 18 for adults. Two additional chapters at the end of the text cover asylum law and welfare. Both areas are relevant to each of the three parts of the text but have been positioned at the close of vulnerable adults as it is arguable that asylum seekers and people who are homeless have a vulnerability. There have been significant changes within social work law since publication of the fourth edition and these are reflected in the updated fifth edition.

While I hope the views in this chapter are persuasive and coherent, ultimately they are expressed by a lawyer. Accordingly, a summary of feedback follows from two exercises carried out with social work students.

## Why study law?

- relevant to ALL areas of practice
- avoid litigation
- social workers operate within tight guidelines which are dictated by law
- know powers within law and limitations
- understand nature of State's role in protection
- understand clients/service-users' rights and lack of rights – enables empowerment
- advocacy
- defines boundaries of how citizens should behave
- law protects client group and social workers
- social workers need a good working knowledge of the legal system, e.g. access to services
- to fulfil obligations to service users/clients
- to challenge unfair discrimination

- to influence and shape legal systems
- to guard against personal litigation
- social workers work in partnership with other professionals and agencies which are dominated by the legal framework – to know professional boundaries
- because it's interesting!

## What are the barriers to use and understanding of the law?

- rigidity
- jargon, language and terminology
- format
- continuous change in some areas, lack of change in others
- contradictory content
- not accessible
- inconsiderate to victim
- subject to interpretation
- discriminatory
- elitist
- tradition, e.g. dress etc. in court setting
- time – adjournments etc.
- too generic
- lack of time and resources to learn
- politics influences changes in law.

The author has endeavoured to explain the law as at 30 June 2019 and some developments thereafter are included.

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**Dedicated to Colin Freshney.  
My Dad, my hero.**

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Baker LJ; 484 Baker LJ: Quote by Baker LJ; 485 **The National Archives**: Care and Support Statutory Guidance Issued under the Care Act 2014, Department of Health. 83; 493 **Court of Appeal**: Criminal Practice Directions [2015] EWCA Crim 1567; 494 **The National Archives**: Section 17, Crime & Disorder Act 1998; 498 **The National Archives**: Section 142 Legal Aid, Sentencing and Punishment of Offenders Act 2012; 499 **The National Archives**: Section 28 of Police and Criminal Evidence Act 1984; 500 **The National Archives**: Police and Criminal Evidence Act 1984 at para. 11.16; 501 **The National Archives**: Police and Criminal Evidence Act 1984; 509 **Home Office Police Integrity and Powers Unit**: The report which made recommendations on which the Act is based, Home Office (1998); 509 **The National Archives**: Youth Justice and Criminal Evidence Act 1999; 510 **The National Archives**: Section 95(1)(b) of the Criminal Justice Act 1991; 511 **Association of Chief Police Officers**: Records of the Association of Chief Police Officers 1985; 511 **The National Archives**: Sections 28(1) and 29(1)(b) and (2) of the Crime and Disorder Act 1998; 512 **The Ministry of Justice**: The Code of Practice for Victims of Crime, issued by the Ministry of Justice (2015); 519 **The National Archives**: Homelessness Reduction Act 2017; 521 **LexisNexis**: Court of Appeal Judgment Template, para. 8.10; 521 **Thomson Reuters Corporation**: *R v Camden London Borough, ex parte Pereira* (1998) 31 HLR 317; 522 **Court of Appeal**: *Boreh v Ealing London Borough Council* [2008] EWCA Civ 1176 the Court of Appeal; 522 **The National Archives**: Homelessness code of guidance for local authorities Ministry of Housing, Communities & Local Government, para. 8.26; 524 **The National Archives**: Housing Act 1996; 525 **The National Archives**: Housing Act 1996, Section 203; 527 **European Human Rights Reports**: *Buckley v United Kingdom* (1996) 23 EHRR 101; 536 **Thomson Reuters Corporation**: Stevens, D. (2004). *UK Asylum Law and Policy: Historical and Contemporary Perspectives*. London: Sweet & Maxwell, p. 164; 536 **Taylor & Francis Group**: Shah, P. (2000). *Refugees, Race and the Legal Concept of Asylum in Britain*. London: Cavendish Publishing, p. 1; 537 **The European Commission**: Geneva Convention Relating to the Status of Refugees 1951 (Art 1A(2)); 537 **The Incorporated Council of Law Reporting**: *Islam v Secretary of State for the Home Department; R v Immigration Appeals Tribunal, ex parte Shah* [1999] 2 AC 629, the House of Lords; 538 **The National Archives**: Immigration and Asylum Act 1999; 538 **The National Archives**: Immigration and Asylum Act 1999; 540 **The National Archives**: Nationality, Immigration and Asylum Act 2002 84(1)(g); 541 **Council of Europe**: Article 5: Right to liberty and security (1)(f); 542 **Kluwer Law International**: Bhabha, J. (2001). 'Minors or aliens? Inconsistent state intervention and separated child asylum-seekers', *European Journal of Migration and Law*, vol. 3 no. 3, p. 283; 544 **High Court of England and Wales**: *In AS (by his litigation friend the Official Solicitor) v London Borough of Croydon* [2011] EWHC 2091 (Admin); 546 **The National Archives**: National Assistance Act 1948; 546 **Simon Brown LJ**: Quote by Simon Brown LJ; 546 **The National Archives**: Immigration and Asylum Act 1999, Section 95.



## Table of cases

A, re [2019] EWHC 612 (Fam)	198
A v East Sussex CC [2003] EWHC 167 (Admin); [2003] All ER (D) 233 (Feb)	397
A v Essex CC [2003] EWCA Civ 1848; [2004] 1 RCR 660	320
A v Essex CC [2010] UKSC 33	347
A v Headteacher and Governors of the Lord Grey School [2006] 2 AC 363; [2004] EWCA Civ 382; [2004] 4 All ER 628	347
A v Liverpool City Council [1981] 2 All ER 385	203
A v London Borough of Enfield [2016] EWHC 567 (Admin)	179
A v N (Committal: Refusal of Contact) [1997] 1 FLR 533	198
A v SM and HB (Forced Marriage Protection Orders) [2012] EWHC 435 (Fam)	41, 210
A v United Kingdom (Human Rights: Punishment of Child) (1998) 27 EHRR 611	117
A (A Child) (Separate Representation in Contact Proceedings), re [2001] 1 FLR 715	207
A (A Child) [2014] EWHC 1445 (Admin)	172
A (A Minor) (Shared Residence Orders), re [1994] 1 FLR 669	196
A (by his litigation friend the Official Solicitor) v Independent News & Media Ltd [2010] EWCA Civ 343	456
A (Children) (Conjoined Twins: Surgical Separation), re [2000] 4 All ER 961	168, 257
A (Family Proceedings: Expert Witness), re [2001] 1 FLR 723	256
A (Intractable Contact Proceedings: Human Rights Violations) [2013] EWCA Civ 1104	200
A (Mental Patient: Sterilisation) [2000] 1 FLR 549	443
A (Prohibited Steps Order), re [2013] EWCA Civ 1115	202
A and S (Children) v Lancashire CC [2012] EWHC (Fam) 1689	277
A and W (Minors) (Residence Order: Leave to Apply), re [1992] 3 All ER 872	165
ABB, BBB, CBB, DBB v Milton Keynes Council [2011] EWHC 2754 (QB)	93
Abdi (Dhudi Saleban) v Secretary of State for the Home Department [1996] Imm AR 148	541
A-C; Re A (Fact-finding: Possible Perpetrators) [2013] EWCA Civ 132	241
AD (A Minor) (Child's Wishes), re [1993] 1 FCR 573	202
AH v Hertfordshire Partnership NHS Foundation Trust [2011] EWHC 276	449
Aintree University Hospitals NHS Foundation Trusts v James [2013] UKSC 67	449
Airedale NHS Trust v Bland [1993] 1 All ER 821	58, 442
AJ (Adoption Order or Special Guardianship Order) [2007] EWCA Civ 55; [2007] 1 FLR 507	323
Ali v Birmingham City Council; Moran v Manchester City Council [2009] UKHL 36	520
AM (Afghanistan) v. Secretary of State for the Home Department and Lord Chancellor [2017] EWCA Civ 1123	539
Anufrijeva v Southwark LBC [2003] EWCA Civ 1406; [2004] QB 1124	124, 397

Arthurworrey <i>v</i> Secretary of State for Education and Skills [2004] EWCST 268 (PC)	9–10
Artico <i>v</i> Italy (Application No. 6694/74) (1980) 3 EHRR 1	465
Armes <i>v</i> Nottinghamshire CC [2017] UKSC 60	280
AS (by his litigation friend the Official Solicitor) <i>v</i> London Borough of Croydon [2011] EWHC 2091 (Admin)	543
Ashingdane <i>v</i> United Kingdom (1985) 7 EHRR 528	119
Associated Provincial Picture Houses Ltd <i>v</i> Wednesbury Corporation [1948] 1 KB 223	58, 280
Association X <i>v</i> United Kingdom (1978) 14 DR 31	116
Aston Cantlow and Wilmcote with Billesley Parochial Church Council <i>v</i> Wallbank [2003] UKHL 37; [2004] 1 AC 546	112
Attorney-General's Reference (No. 24 of 2001); sub nom R <i>v</i> David Graham Jenkins (2001) CA C9500543	57
Avon, North Somerset and Gloucestershire Public Law Case (2013) No. 1, re [2013] EWCC 4 (Fam)	255
B [2010] EWCA Crim 4	264
B <i>v</i> B (Grandparent: Residence Order) [1992] 2 FLR 327	197
B <i>v</i> Lewisham BC [2008] EWHC 738 (Admin); [2008] 2 FLR 523	324
B <i>v</i> United Kingdom (Application No. 36337/97); P <i>v</i> United Kingdom (Application No. 35974/97) (2002) 34 EHRR 19; [2001] 2 FLR 261	62, 120, 227
B <i>v</i> United Kingdom (Application No. 9840/82) (1988) 10 EHRR 87	121
B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33	242, 296
B (A Child) (Adoption by One Natural Parent) [2001] UKHL 70; [2002] 1 All ER 641	313
B (A Child: Interim Care Order), re [2002] EWCA Civ 25; [2002] 2 FCR 367	243
B (A Child) (Post-adoption Contact), re [2019] EWCA Civ 29	318
B (A Minor) (Wardship: Sterilisation), re [1987] 2 All ER 206	443
B (Children) (Sexual Abuse: Standard of Proof), re [2008] UKHL 35; [2008] 4 All ER 1	239
B (Children: Uncertain Perpetrator) [2019] EWCA Civ 575	241
B (Interim Care Orders: Renewal), re [2001] 2 FLR 1217	243
B (Residence Order: Status Quo), re [1998] 1 FLR 368	166
B (Role of Biological Father), re [2007] EWHC 1952 (Fam); [2007] 1 FLR 1015	189
B-S (Children) [2013] EWCA Civ 1146	247, 296, 315, 321
B and G (Minors) (Custody), re (1985) 15 Fam Law 127	168
Barrett <i>v</i> Enfield LBC [1999] 3 All ER 193	94
Batty <i>v</i> Secretary of State for Work and Pensions [2005] EWCA Civ 1746; [2005] All ER (D) 189 (Dec)	529
BBC Scotland <i>v</i> Souster [2001] IRLR 150	145
BBC <i>v</i> Cafcass Legal [2007] EWHC 616 (Fam); [2007] 2 FLR 417	120
Belgian Linguistics Case (No. 2) (Application Nos. 1474/62, 1691/62, 1769/63, 1994/63, 2126/24, 1677/62) (1968) 1 EHRR 252	347
Bellinger <i>v</i> Bellinger (Lord Chancellor Intervening) [2003] UKHL 21; [2003] 2 AC 467	111, 209
Berkshire CC <i>v</i> B [1997] 1 FLR 171	245
Birmingham City Council <i>v</i> Aweys and Others [2008] EWCA Civ 48; [2008] 1 FLR 1025	524
Birmingham City Council <i>v</i> H (No. 2) [1993] 1 FLR 883	168
Bond <i>v</i> Leicester City Council [2001] EWCA Civ 1544; [2002] 1 FCR 566	524
Boreh <i>v</i> Ealing LBC [2008] EWCA Civ 1176; [2009] 2 All ER 383	522
Botta <i>v</i> Italy (Application No. 21439/93) (1998) 26 EHRR 241	123

Bracking (Stuart) and Others <i>v</i> Secretary of State for Work and Pensions [2013] EWCA Civ 1345	151
Buckley <i>v</i> United Kingdom (Application No. 20348/92) (1996) 23 EHRR 101	527
C <i>v</i> C (Minors: Custody of Children) [1988] 2 FLR 291	167
C <i>v</i> Flintshire CC (formerly Clwyd CC) [2001] EWCA Civ 302; [2001] 1 FCR 614	284
C <i>v</i> Salford City Council [1994] 2 FLR 926	257
C <i>v</i> Solihull MBC [1993] 1 FLR 290	169, 241
C (A Child) [2014] EWCA Civ 128	249
C (A Child) (HIV Testing), re [1999] 2 FLR 1004	201
C (A Child) (Immunisation: Parental Rights) [2003] EWCA Civ 1148; [2003] 3 FCR 156	201
C (A Child) (Residence), re [2007] EWCA Civ 866; [2008] 1 FLR 211	198
C (A Minor) (Adoption Order: Conditions), re [1988] 2 FLR 159	316
C (A Minor) (Detention for Medical Treatment), re [1997] 2 FLR 180	257
C (A Minor) (Family Assistance Order), re [1996] 1 FLR 424	204
C (Adult: Refusal of Medical Treatment), re [1994] 1 All ER 819	430
C and V (Minors) (Contact: Parental Responsibility Order), re [1998] 1 FLR 392	192
CA (A Baby), re [2012] EWHC 2190 (Fam)	275
Caballero <i>v</i> United Kingdom (Application No. 32819/96) (2000) <i>The Times</i> , 29 February	503
Camden LBC <i>v</i> RZ [2015] EWHC 3751 (Fam)	211
Campbell and Cosans <i>v</i> United Kingdom (Application No. 7511/76) (1982) 4 EHRR 293	129
Chapman <i>v</i> United Kingdom (Application No. 27238/95) (2001) 10 BHRC 48	527
Cheshire West and Chester Council <i>v</i> P [2011] EWCA Civ 1257	453
City Council, A <i>v</i> T, J and K (by her Children's Guardian) [2011] EWHC 1082 (Fam)	286
City of Westminster <i>v</i> IC (by his friend the Official Solicitor) and KC and NN [2008] EWCA Civ 198; [2008] 2 FLR 267	455
Cleary <i>v</i> Cleary [1974] 1 All ER 498	211
Clingham <i>v</i> Kensington and Chelsea RLBC [2001] EWHC 1 (Admin); (2001) <i>The Times</i> , 20 February	86
Close <i>v</i> Secretary of State for Health [2008] EWCST 852	474
Clunis <i>v</i> Camden and Islington HA [1998] 2 WLR 902; [1998] 3 All ER 180	433
Colclough <i>v</i> Staffordshire CC [1994] CLY 2283	95
Cossey <i>v</i> United Kingdom (Application No. 10843/84) (1991) 13 EHRR 622	127
Craig (Deceased), re [1971] Ch 95	481
CS <i>v</i> SBH and Others [2019] EWHC 634 (Fam)	172
D <i>v</i> Bury Metropolitan BC; H <i>v</i> Bury Metropolitan BC [2006] EWCA Civ 1; (2006) <i>The Times</i> , 24 January	94
D <i>v</i> East Berkshire Community NHS Trust; K <i>v</i> Dewsbury Healthcare NHS Trust; K <i>v</i> Oldham NHS Trust [2003] EWCA Civ 1151; [2004] QB 558	94, 95
D <i>v</i> National Society for the Prevention of Cruelty to Children (NSPCC) [1978] AC 171	15
D (A Child), re [2014] EWFC 39	49
D (A Minor) (Adoption: Freeing Order), re [1991] 1 FLR 48	314
D (A Minor) (Care or Supervision Order), re [1993] 2 FLR 423	241
D (A Minor), re [1987] AC 317	238
D (Care of Supervision Order), re (2000) 30 Fam Law 600	252
D (Children) (Shared Residence Orders), re [2001] 1 FLR 495	196

D (Intractable Contract Dispute: Publicity) [2004] EWHC 727 (Fam); [2004] 3 FCR 234	199
D (Minors) (Child Abuse: Interviews), re [1998] 2 FLR 11	263
Dawkins <i>v</i> Crown Suppliers (PSA) [1993] IRLR 284	145
Dawkins <i>v</i> Department of the Environment <i>See</i> Dawkins <i>v</i> Crown Suppliers (PSA)	
Dawson <i>v</i> Wearmouth [1999] 2 WLR 960	201
Devon CC <i>v</i> C [1985] FLR 1159	78
DH (A Minor) (Child Abuse) [1994] 1 FLR 679	202
Dhaliwal (A Child), re [2005] EWCA Civ 743; [2005] 2 FCR 398	120
DL <i>v</i> A Local Authority and others [2012] EWCA Civ 253	45, 58, 483
Donoghue <i>v</i> Stevenson [1932] AC 562	93
DP, re (Revocation of Lasting Power of Attorney) [2014] EWHC B4 (COP)	450
DPP <i>v</i> Blake [1989] 1 WLR 432	367
D-R (Adult: Contact), re [1999] 1 FLR 1161	443
DW, re (A Child) (Termination of Parental Responsibility) [2014] EWCA Civ 315	192
E <i>v</i> United Kingdom (Application No. 33218/96) [2003] 1 FLR 348	117
E (A Child), re [2013] EWCA Civ 1614	296
E (A Minor) (Adopted Child: Contact: Leave), re [1995] 1 FLR 57; [1995] 2 FCR 655	316, 317
E (A Minor) (Care Order: Contact), re [1994] 1 FLR 146	316
E (Care Proceedings: Social Work Practice), re [2000] 2 FCR 297	220
Egan <i>v</i> Egan [1975] Ch 218	481
Ekpe <i>v</i> Commissioner of Police of the Metropolis [2001] IRLR 605	147
F, re [1990] 2 AC 1	127
F <i>v</i> F [2013] EWHC 2683 (Fam)	201
F <i>v</i> Suffolk CC [1981] 2 FLR 208	82
F <i>v</i> West Berkshire HA (Mental Health Act Commission intervening) [1989] 2 All ER 545; sub nom re F [1990] 2 AC 1	425, 429
F, re <i>see</i> F <i>v</i> West Berkshire HA (Mental Health Act Commission intervening)	
F (A Child) (Placement Order) [2008] EWCA Civ 439; [2008] 2 FLR 550	313
F (Adult: Court's Jurisdiction), re [2000] 3 WLR 1740	442, 482
F (Children) (Care: Termination of Contact), re [2000] 2 FCR 481	109, 251
F (Children) (Declaration of Paternity), re (2007) <i>The Times</i> , 6 August	201
F (Children) (Interim Care Order), re [2007] EWCA Civ 516; [2007] 2 FLR 891	244
F (Children) (Shared Residence Order) [2003] EWCA Civ 592; [2003] 2 FCR 164	196
F (Contact: Restraint Order), re [1995] 1 FLR 956	170
F (Mental Health Act Guardianship), re [2000] 1 FLR 192	414
F (Mental Patient: Sterilisation), re <i>See</i> F <i>v</i> West Berkshire HA	
F (Minors) (Care Proceedings: Contact), re <i>See</i> F (Children) (Care: Termination of Contact)	
Fallon <i>v</i> Lancashire CC (1992) Decision 2018	84
F-H (Dispensing with Fact-Finding Hearing), re [2008] EWCA Civ 1249; [2009] 1 FLR 349	262
Finucane [2019] UKSC 7	43
Freeman and Goodwin <i>v</i> Northamptonshire CC (2000) Decision 421	478, 479
Fuller <i>v</i> Fuller [1973] 2 All ER 650	212
G <i>v</i> E [2010] EWHC 2042 (Fam); [2010] EWCO 621	122, 456, 457
G <i>v</i> F (Non-molestation Order: Jurisdiction) [2000] 3 WLR 1202	206

G (A Child) (Interim Care Order: Residential Assessment), re [2005] UKHL 68; [2006] 1 All ER 706	243
G (A Minor) (Social Worker: Disclosure), re [1996] 2 All ER 65; [1996] 1 FLR 276	16, 252
G (Adoption: Contact) [2002] EWCA Civ 761; [2003] 1 FLR 270	316
G (Children) (Care Order: Evidence) [2001] EWCA Civ 968; [2001] 1 WLR 2100	238
G (Children: Intractable Dispute), re [2019] EWCA Civ 548	46, 171
G (Children) (Residence Order: No Order Principle) [2005] EWCA Civ 1283; (2006) 36 Fam Law 93	170
G (Children) (Residence: Same-Sex partner), re [2006] EWCA Civ 372; [2006] 2 FLR 614	196
Re G (Education: Religious Upbringing) [2012] EWCA Civ 1233	163
Ghaidan <i>v</i> Mendoza [2004] UKHL 30; [2004] 2 AC 557	127
Gill <i>v</i> El Vino Co Ltd [1983] 1 All ER 398	148
Gillick <i>v</i> West Norfolk and Wisbech AHA and Another [1986] AC 112	45, 60, 166, 172, 190, 435
Glass <i>v</i> United Kingdom [2004] 1 FLR 1019	122
Godson <i>v</i> Enfield London Borough Council [2019] EWCA Civ 486	524
Golder <i>v</i> UK (Application No. 4451/70) (1975) 1 EHRR 524	110
Goodwin <i>v</i> Patent Office [1999] ICR 302	146
Goodwin <i>v</i> United Kingdom [2002] 2 FLR 487	127
Goodwin <i>v</i> United Kingdom (Application No. 28957/95) [2005] 2 FLR 287	127
Griffin <i>v</i> Westminster City Council [2004] EWCA Civ 108	521
H, re [2014]	49
H <i>v</i> H [2014] EWCA Civ 733	165
H (Care and Adoption: Assessment of wider family) [2019] EWFC 10	314
H (Children), re [2012] EWCA Civ 1797	76
H (A Child) (Adoption: Consultation of Unmarried Fathers), re; G (A Child) (Adoption: Disclosure), re [2001] 1 FLR 646	313
H (A Child – Breach of Convention Rights: Damages), re [2014] EWFC 38	129, 246
H (A Child) (Contact: Domestic Violence), re [2005] EWCA Civ 1404; [2006] 1 FLR 943	199
H (A Child: Parental Responsibility), re [2002] EWCA Civ 542	201
H (A Minor) (Section 37 Direction), re [1993] 2 FLR 541	238
H (Children) (Summary Determination of Issues), re [2002] EWCA Civ 1692; [2002] All ER (D) 28 (Nov) 264; [2008] 2 FLR 581	249
H; G (Adoption: Consultation of Unmarried Fathers) [2001] 1 FLR 646	313
H (Minors) (Local Authority: Parental Rights) (No. 3), re [1991] Fam 151	191
H (Minors) (Prohibited Steps Order) [1995] 4 All ER 110	202
HA (A Child) [2013] EWCA Civ 3634	296
H-B (Children) (Contact: Prohibitions on Further Application), re [2015] EWCA Civ 389	200
H-L (A Child) (Care Proceedings: Expert Evidence) [2013] EWCA Civ 655	257
H and R (Child Sexual Abuse: Standard of Proof) [1996] 1 All ER 1; [1996] 1 FLR 80	238, 239, 553
Hammond <i>v</i> Osborn [2002] EWCA Civ 885; [2002] All ER (D) 232 (Jun)	481
Handyside <i>v</i> United Kingdom (Application No. 5493/72) (1976) 1 EHRR 737	114
Harrow LBC <i>v</i> Qazi [2003] UKHL 43; [2004] 1 AC 983	527
Harvey <i>v</i> Northumberland CC [2003] All ER (D) 347 (Feb)	95
Hereford and Worcester CC <i>v</i> S [1993] 2 FLR 360	287

Hewer <i>v</i> Bryant [1969] 3 All ER 578	190
Hillingdon LBC <i>v</i> Neary [2011] EWHC 1377 (COP)	452
Hills <i>v</i> Chief Constable of Essex Police [2006] EWHC 2633 (Admin); [2006] All ER (D) 35 (Oct)	353, 557
Hirst <i>v</i> United Kingdom (No. 2) [2005] ECHR 681	430
HL <i>v</i> United Kingdom (2004) 40 EHRR 761	119, 425, 451
Holmes-Moorhouse <i>v</i> Richmond-upon-Thames LBC [2007] EWCA Civ 970; [2008] 1 FLR 1061	196
Humberside CC <i>v</i> B [1993] 1 FLR 257	237
Hussein <i>v</i> Saints Complete House Furnishers [1979] IRLR 337	148
Hyde <i>v</i> Hyde (1866) LR 1 P&D 130	209
Investigation into Complaint No. 97/A/2959 against Hackney LBC (1998) 2 CCLR 66	90, 399
Ireland <i>v</i> United Kingdom (Application No. 5310/71) (1978) 2 EHRR 25	117, 479
Islam <i>v</i> Secretary of State for the Home Department (United Nations High Commissioner for Refugees intervening); R <i>v</i> Immigration Appeal Tribunal, ex parte Shah (United Nations High Commissioner for Refugees intervening) [1999] 2 AC 629	537
Isle of Wight Council <i>v</i> Platt [2017] UKSC 28	338
J, re [1992] Fam Law 229	164
J (A Child) (Adopted Child: Contact), re [2010] EWCA Civ 581	317
J (A Minor) (Specific Issue Order: Leave to Apply), re [1995] 1 FLR 669	181, 201
J (Adoption: Contacting Father), re [2003] EWHC 199 (Fam), [2003] 1 FLR 933	313
J (Care Proceedings: Possible Perpetrators) [2013] UKSC 9	41
J (Children), re [2017] EWCA Civ 398	247
J (Child's Religious Upbringing: Circumcision), re [2000] 1 FCR 307	202
J (Leave to Issue Application for Residence Order) [2002] EWCA Civ 1346; [2003] 1 FLR 114	203
J (Reporting Restriction: Internet: Video) [2013] EWHC 2694 (Fam)	214
JD and others v. East Berkshire Community Health [2003] EWCA Civ 1151	93
JE <i>v</i> DE and Surrey CC [2006] EWHC 3459 (Fam)	452
JH <i>v</i> RH (A Child) [2001] 1 FLR 641	206
Joel <i>v</i> Morrison (1834) 6 C & P 501	94
Johnson <i>v</i> United Kingdom (1999) 27 EHRR 296	423
Jordan <i>v</i> UK (2001) 37 EHRR 52	117
JT <i>v</i> United Kingdom [2000] 1 FLR 909	417
K, re; re F [1988] 1 All ER 358	477
K (A Child) (Post Adoption Placement Breakdown) [2013] 1 FLR 1	241
K (A Child) (Secure Accommodation Order: Right to Liberty), re [2001] Fam 377	119, 286
K (A Child) (Shared Residence Order), re [2008] EWCA Civ 526; [2008] 2 FLR 380	196
K (Contact), re [2008] EWHC 540 (Fam)	251
KB (Adult) (Mental Patient: Medical Treatment), re [1994] 19 BMLR 144	413
Kannan v. Newham LBC [2019] EWCA Civ 57	150
Kenny <i>v</i> Hampshire Constabulary [1999] IRLR 76	149
Kent CC <i>v</i> C [1993] 1 FLR 308	245
Kings College Hospital NHS Foundation Trust <i>v</i> C and V [2015] EWCOP 80	445
Kirklees MDC <i>v</i> S [2006] 1 FLR 333	243

KP (A Child) [2014] EWCA Civ 554	166
KR <i>v</i> Bryn Alyn Community (Holdings) Ltd (in liq) [2003] EWCA Civ 85; [2004] 2 All ER 716	284
L, re [2013] EWCA Civ 1481	296
L <i>v</i> Reading BC [2001] EWCA Civ 346; [2001] 1 WLR 1575	225
L <i>v</i> United Kingdom (Disclosure of Expert Evidence) (Application 34222/96) [2000] 2 FCR 145	256
L (A Child), re [2019] EWHC 867 (Fam)	165
L (A Child) (Contact: Domestic Violence), re; V (A Child) (Contact: Domestic Violence), re; M (A Child) (Contact: Domestic Violence), re; H (Children) (Contact: Domestic Violence), re [2000] 4 All ER 609; [2000] EWCA Civ 194	198, 200
L (A Child) (Special Guardianship: Surname), re [2007] EWCA Civ 196; [2007] 2 FLR 50	323
L (A Minor) (Section 37 Direction), re [1999] 3 FCR 642	203
L (Care Proceedings: Human Rights Claims) [2003] EWHC 665 (Fam); [2004] 1 FCR 289; [2003] 2 FLR 160	113, 250
L (Care: Threshold Criteria), re [2007] 1 FLR 2050	237, 256
L (Children), re [2001] EWCA Civ 151	234
L (Minors) (Sexual Abuse: Standard of Proof), re [1996] 1 FLR 116	243
L-A (Children), re [2009] EWCA Civ 822	244
L and H (Residential Assessment), re [2007] EWCA Civ 213; [2007] 1 FLR 1370	243
Lancashire CC <i>v</i> B (A Child) (Care Orders: Significant Harm) [2000] 1 FLR 583	240
Lawrence <i>v</i> Pembrokeshire CC [2007] EWCA Civ 446; [2007] 2 FLR 705	95
LBL <i>v</i> RYJ, VJ [2010] EWHC 2665 (COP)	86
Leach <i>v</i> Chief Constable of Gloucestershire [1999] 1 All ER 215	367
Leeds CC <i>v</i> C [1993] 1 FLR 269	198, 204
Lewis <i>v</i> Gibson [2005] EWCA Civ 587; [2005] 2 FCR 241	414, 419
Lewisham LBC <i>v</i> Malcolm [2008] UKHL 43; [2008] 4 All ER 525	137
Livingstone-Stallard <i>v</i> Livingstone-Stallard [1974] 2 All ER 766	211
Local Authority, A <i>v</i> A and B [2010] EWHC 978 (Fam)	452
Local Authority, A <i>v</i> BF [2018] EWCA Civ 2962	484
Local Authority X <i>v</i> MM (by the Official Solicitor) and KM [2007] EWHC 2003 (Fam); [2009] 1 FLR 443	447
London Borough of Camden <i>v</i> IC EA/2007/0021	101
London Borough of Tower Hamlets <i>v</i> The Queen on the application of X [2013] EWCA Civ 904	280
London Underground Ltd <i>v</i> Edwards (No. 2) [1998] IRLR 364	148
L-W (Enforcement and Committal: Contact), re; CPL <i>v</i> CH-W and Others [2010] EWCA Civ 1253	200 210
M <i>v</i> B [2005] EWHC 1681 (Fam); (2005) 35 Fam Law 860	443
M <i>v</i> Birmingham City Council [1994] 2 FLR 141	241
M <i>v</i> M (Specific Issue: Choice of School) [2005] EWHC 2769 (Fam); [2005] All ER (D) 14 (Dec)	201
M <i>v</i> South West London and St George's Mental Health NHS Trust [2008] EWCA Civ 1112; [2008] All ER (D) 63 (Aug)	421
M <i>v</i> Warwickshire CC [2007] EWCA Civ 1084; [2008] 1 FLR 1093	313
M (A Child) (Secure Accommodation Order), re [2001] EWCA Civ 458; [2001] 1 FCR 692	286
M (A Child) (Secure Accommodation), re [2018] EWCA Civ 2707	286–7

M (A Minor) (Adoption or Residence Order), re [1998] 1 FLR 570	307, 322
M (A Minor) (Care Order: Threshold Conditions), re [1994] 3 WLR 558	238
M (Children), (Abduction), re [2007] UKHL 55; [2008] 1 All ER 1157	173
M (Contact: Welfare Test), re [1995] 1 FLR 274	303
M (Intractable Contact Dispute: Interim Care Order) [2003] EWHC 1024 (Fam); [2003] 2 FLR 626	203
M (Leave to Remove Child from Jurisdiction), re [1999] 2 FLR 334	160
M (Minors) (Breach of Contact Order: Committal), re [1999] 2 All ER 56	198
M (Minors) (Care Proceedings: Child's Wishes), re [1994] 1 FLR 749	254
M (Minors) (Contact: Violent Parent), re [1999] 2 FLR 321	198
M, N, re <i>ν</i> O and P [2013] COPLR 91	457
Mabon <i>ν</i> Mabon [2005] EWCA Civ 634; [2005] 2 FCR 354	208
Manchester City Council <i>ν</i> Moran [2008] EWCA Civ 378; [2008] 4 All ER 304	518
Manchester City Council <i>ν</i> Pinnock [2010] UKSC 45	528
Mandla (Sewa Singh) <i>ν</i> Dowell Lee [1983] 2 AC 548	145, 147
Marckx <i>ν</i> Belgium (Application No. 6833/74) (1979) 2 EHRR 330	111
Marshall <i>ν</i> Southampton and South West Hampshire AHA [1986] 2 All ER 584	147
Masterman-Lister <i>ν</i> Brutton & Co; Masterman-Lister <i>ν</i> Jewell [2002] EWCA Civ 1889; [2003] 3 All ER 162	442, 446
Mba v. Merton LBC [2013] EWCA Civ 1562	125
MC <i>ν</i> Liverpool City Council [2010] EWHC 2211	543
McKenzie <i>ν</i> McKenzie [1970] 3 All ER 1034	76
McKerry <i>ν</i> Teesside and Wear Valley Justices [2000] Crim LR 594	368
Megyeri <i>ν</i> Germany (Application No. 13770/88) (1993) 15 EHRR 584	432
MF <i>ν</i> LB of Brent and Others [2013] EWHC 1838 (Fam)	317
MH (A Child) (Supervision Orders), re; SB (Children) (Supervision Orders), re [2002] 1 FCR 251	252
Mitchell (William) <i>ν</i> Commission for Social Care Inspection [2004] 0369 EA	283
N (Contact: Minor Seeking Leave to Defend and Removal of Guardian), re [2003] FLR 652	78
Newham LBC <i>ν</i> Attorney-General [1993] 1 FLR 281	238
Newham LBC <i>ν</i> S (Adult: Court's Jurisdiction) [2003] EWHC 1909 (Fam); [2003] 2 FLR 1235	414
NHS Trust, An <i>ν</i> K [2012] EWHC 2922 (COP)	449
NHS Trust, An <i>ν</i> Y [2018] UKSC 46	456
NHS Trust A <i>ν</i> H [2001] 2 FLR 501	442
NS <i>ν</i> MI [2006] EWHC 1646 (Fam), [2007] 2 FLR 748	209
Northamptonshire CC <i>ν</i> S [1993] Fam 136	240
Northamptonshire CC <i>ν</i> S [2015] EWHC 199 (Fam)	120
Nottinghamshire CC <i>ν</i> P [1993] 3 All ER 815	203
O (A Child) (Supervision Order: Future Harm), re [2001] EWCA Civ 16; [2001] 1 FCR 289	5, 114, 241, 251
O (A Minor) (Care Proceedings: Education), re [1992] 4 All ER 905	239
O (Children), re; re W-R (A Child); re W (Children) [2005] EWCA Civ 759; [2006] Fam 1	76, 119
O (Contact: Imposition of Conditions), re [1996] 1 FCR 317	198
O (Transracial Adoption: Contact), re [1995] 2 FLR 597	305, 317
O and N (Children) (Non-accidental Injury: Burden of Proof); re B (Children) (Non-accidental Injury) [2003] UKHL 18; [2003] 2 All ER 305	51, 240, 241



Oldham MBC <i>v</i> GW and PW [2007] EWHC 136 (Fam); [2007] 2 FLR 597	256
Open Door Counselling Ltd and Dublin Well Woman Centre <i>v</i> Ireland (Application Nos. 14234/88, 14235/88) (1992) 15 EHRR 244	126, 386
Osman <i>v</i> United Kingdom (1998) 5 BHRC 293; (1999) 1 FLR 193	94
Owens <i>v</i> Owens [2018] UKSC 41	212
Oxfordshire CC <i>v</i> M [1994] 2 All ER 269	80
P, re [2010] EWHC 1592 (Fam)	457
P (A Minor), re [1990] FCR 260	305
P (A Minor) (Education: Child's Views), re [1992] FCR 145	166
P (A Minor) (Residence Order: Child's Welfare), re [1999] 3 All ER 734	170
P (by his litigation friend the Official Solicitor) <i>v</i> Cheshire West and Chester Council and Another; P and Q (by their litigation friend the Official Solicitor) <i>v</i> Surrey CC [2014] UKSC 19	119, 453
P (Children Act 1989, ss. 22 and 26: Local Authority Compliance), re [2000] 2 FLR 910	273
P (Forced Marriage) [2010] EWHC 3467 (Fam)	210
P (Minor: Wardship), re [1992] Fam Law 229	166
P (Minors) (Parental Responsibility: Change of Name), re [1997] 2 FLR 722	192
P (Placement Orders: Parental Consent) [2008] EWCA Civ 535; [2008] 2 FLR 625	257
P, C and S <i>v</i> United Kingdom (2002) 35 EHRR 1075	250
Patel <i>v</i> Patel [1988] 2 FLR 179	481
Payne <i>v</i> Payne [2001] EWCA Civ 166; [2003] UKHL 34; [2004] 1 All ER 339	197
Pelling <i>v</i> Bruce-Williams [2004] EWCA Civ 845; [2004] 3 All ER 875	120
Phelps <i>v</i> Hillingdon LBC [1999] 1 All ER 421, CA; [2001] 2 AC 619, HL	94, 320
Poole BC <i>v</i> GN [2019] UKSC 25	94, 220
Practice Direction 12J (Child Arrangements and Contact Orders: Domestic Violence and Harm) (2014) 44 Fam Law 745	200
Practice Direction (Crown Court: Trial of Children and Young Persons) [2000] 2 All ER 285	42, 372, 558
Practice Direction 16A (Family Proceedings: Representation of Children) [2004] 2 All ER 459	208
Practice Direction (Residence and Contact Orders: Domestic Violence and Harm) [2008] All ER (D) 132 (May)	199
Practice Direction (Residence and Contact Orders: Domestic Violence) (No. 2) [2009] 1 WLR 251	206
Practice Directions (Criminal) [2015] EWCA Crim 1567	493
President's Direction: HIV Testing of Children [2003] 1 FLR 1299	46
Pretty <i>v</i> United Kingdom (Application No. 2346/02) (2002) 35 EHRR 1	116, 121
Price <i>v</i> Civil Service Commission [1977] IRLR 291	148
Prospective Adopters for T (Children) <i>v.</i> Herefordshire DC [2018] EWFC 76	306
Protocol for Judicial Case Management of Public Children Act Cases [2003] 2 FLR 719	246
Re P-S (Children) [2018] EWCA Civ 1407	325
PW (Adoption), re [2011] EWHC 3793 (Fam)	315
R (Adoption: Contact), re [2005] EWCA Civ 1128	317
R <i>v</i> Avon CC, ex parte M [1994] 2 FCR 259	395
R <i>v</i> Bexley LBC, ex parte B (Care Hours Provision) [2000] 3 CCLR 15	182
R <i>v</i> Billam (Keith) (1986) 8 Cr App R (S) 48	506
R <i>v</i> Birmingham City Council, ex parte Killigrew [1999] 3 CCLR 109	393
R <i>v</i> Boness [2005] EWCA Crim 2395, [2005] All ER (D) 153 (Oct)	353

<i>R v Bournemouth Community and Mental Health NHS Trust, ex parte L</i> [1999] 1 AC 458, [1998] 3 All ER 289	119, 423, 424, 432, 451, 460, 480
<i>R v Bristol City Council, ex parte Penfold</i> [1998] 1 CCLR 315	387
<i>R v Camden LB, ex parte Pereira</i> (1998) 31 HLR 317	521, 522
<i>R v Cannings</i> [2004] EWCA Crim 1, [2004] 1 All ER 725	239
<i>R v Central London County Court, ex parte London</i> [1999] 3 All ER 991	418
<i>R v Cleveland CC, ex parte Cleveland Care Homes Association</i> (1993) 17 BMLR 122	480
<i>R v Cornwall CC, ex parte LH</i> [2000] 1 FLR 236	226
<i>R v Cox</i> [2012] EWCA Crim 549	509
<i>R v Criminal Injuries Compensation Appeals Panel, ex parte August;</i> <i>R v Criminal Injuries Compensation Appeals Panel, ex parte Brown</i> [2001] 2 All ER 874	514
<i>R v Criminal Injuries Compensation Authority, ex parte Leatherland;</i> <i>R v Criminal Injuries Compensation Board, ex parte Bramall; R v Criminal</i> <i>Injuries Compensation Panel, ex parte Kay</i> (2000) <i>The Times</i> , 12 October	514
<i>R v David Graham Jenkins</i> see <i>Attorney-General's Reference</i> (No. 24 of 2001)	
<i>R v DPP</i> [2001] EWHC Admin 17, <i>The Times</i> , 20 February	486
<i>R v E and F (Female parents: Known father)</i> [2010] EWHC 417	193
<i>R v Ealing London Borough, ex parte Sidhu</i> (1983) 2 HLR 45	521
<i>R v Gloucestershire CC, ex parte Barry</i> [1997] 2 All ER 1	5, 39, 42, 58, 183, 390
<i>R v Governors of Dunraven School, ex parte B</i> [2000] LGR 494	341
<i>R v Hammersmith and Fulham LBC, ex parte M</i> (1998) 30 HLR 10	545
<i>R v Harrow LBC, ex parte D</i> [1990] 3 All ER 12	43
<i>R v Hereford and Worcester CC, ex parte Chandler</i> (1992) (unreported)	11
<i>R v Hinks</i> [2001] 2 AC 241	473, 481
<i>R v Islington LBC, ex parte Batantu</i> [2001] HLR 76	394
<i>R v Islington LBC, ex parte Rixon</i> [1997] ELR 66	38
<i>R v Kensington and Chelsea RLBC, ex parte Kujtim</i> [1999] 4 All ER 161	401
<i>R v Kent CC, ex parte Marston</i> (9 July 1997) (unreported)	427
<i>R v Kirklees MBC, ex parte C (A Minor)</i> [1993] 2 FLR 187	435
<i>R v Lambeth LBC, ex parte A</i> [2001] EWCA Civ 1624; [2001] 3 FCR 673	181
<i>R v Lambeth LBC, ex parte K (A Child)</i> (2000) 3 CCLR 141	178
<i>R v Lancashire CC, ex parte Ingham</i> (1995) 5 July QBD: CO/774	395
<i>R v Liddle; R v Hayes</i> [1999] 3 All ER 816	487
<i>R v Manchester City Council, ex parte Stennett; R v Redcar and Cleveland BC, ex</i> <i>parte Armstrong; R v Harrow London BC, ex parte Cobham</i> [2002] UKHL 34; [ 2002] 4 All ER 124	433
<i>R v Mujuru</i> See <i>R v Stephens</i>	
<i>R v North and East Devon HA, ex parte Coughlan</i> [2000] 3 All ER 850	479
<i>R v Ribbans</i> (1995) 16 Cr App Rep (S) 698	511
<i>R v Richmond LBC, ex parte W</i> (1999) 2 CCLR 402	398
<i>R v Saunders</i> [2000] 1 Cr App Rep 458	511
<i>R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei</i> <i>Hadass School Trust</i> (1985) <i>The Times</i> , 12 April	336
<i>R v Secretary of State for Health, ex parte Hammersmith and Fulham LBC</i> (1998) 31 HLR 475	545
<i>R v Secretary of State for the Home Department, ex parte A</i> [2000] 2 AC 276	366
<i>R v Secretary of State for the Home Department, ex parte Adan</i> [1999] 1 AC 293	537
<i>R v Spencer</i> (Alan Widdison) [1987] AC 128	87

R <i>ν</i> Stephens sub nom R <i>ν</i> Mujuru [2007] EWCA Crim 1249; [2007] All ER (D) 438 (May)	263
R <i>ν</i> Stone [1977] 2 All ER 341	473
R <i>ν</i> Tameside MBC, ex parte J [2000] 1 FCR 173	275
R <i>ν</i> United Kingdom [1988] 2 FLR 445	226
R <i>ν</i> Watts (James Michael) [2010] EWCA Crim 1824	509
R <i>ν</i> White [2001] EWCA Crim 216; [2001] 1 WLR 1352	511
R <i>ν</i> Wokingham DC, ex parte J [1999] 2 FLR 1136	320
R (A Minor) (Contact), re [1993] 2 FLR 762	198
R (A Minor) (Contempt: Sentence), re [1994] 2 All ER 144	258
R (A Minor) (Expert Evidence), re [1991] 1 FLR 291	256
R (A, T and S) <i>ν</i> Newham LBC [2008] EWHC 2640; [2008] 1 FLR 311	320
R (on the application of A) <i>ν</i> Lambeth LBC [2010] EWHC 1652 (Admin)	288
R (on the application of Allen) <i>ν</i> HM Coroner for Inner North London [2009] EWCA Civ 623	117
R (on the application of AN) <i>ν</i> Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605	432
R (on the application of Axon) <i>ν</i> Secretary of State for Health and Another [2006] EWHC 37 (Admin); [2006] 2 FLR 206	172
R (on the application of B) <i>ν</i> Ashworth Hospital Authority [2005] UKHL 20; [2005] 2 AC 2	429
R (on the application of B) <i>ν</i> DPP [2009] EWHC 106 (Admin)	496
R (on the application of B) <i>ν</i> Merton London BC [2003] EWHC 1689 (Admin); [2003] 4 All ER 280	543
R (on the application of Beeson) <i>ν</i> Dorset CC [2002] EWCA Civ 1812	90, 120, 525
R (on the application of Begum) <i>ν</i> Headteacher and Governors of Denbigh High School [2006] UKHL 15; [2007] 1 AC 100	347
R (on the application of Ben-Abdelaziz) <i>ν</i> Haringey LBC [2001] 1 WLR 1485	109
R (on the application of Bernard) <i>ν</i> Enfield LBC [2002] EWHC 2282 (Admin); [2003] LGR 423	122–4, 397
R (on the application of Bhatti) <i>ν</i> Bury MBC [2013] EWHC 3093 (Admin)	93
R (on the application of Blackwood) <i>ν</i> Secretary of State for the Home Department [2003] EWHC 97 (Admin); [2003] HLR 638	539
R (on the application of Carmichael and Others) <i>ν</i> Secretary of State for Work and Pensions [2016] UKSC 58	127
R (on the application of Chester) <i>ν</i> Secretary of State for Justice [2013] UKSC 63	430
R (CR) <i>ν</i> Independent Review Panel of Lambeth LBC [2014] EWHC 2461 (Admin)	342
R (on the application of D) <i>v.</i> Brent Council [2015] EWHC 3224 (Admin)	388
R (on the application of D) <i>ν</i> Camberwell Youth Court; R (on the application of DPP) <i>ν</i> Camberwell Youth Court [2005] UKHL 4; [2005] 1 All ER 999	264
R (on the application of DR) <i>ν</i> Headteacher and Governing Body of St George's Catholic School [2002] EWCA Civ 1822; [2003] LGR 371	342
R (on the application of Davey) <i>ν</i> Oxfordshire County Council and Others [2017] EWCA Civ 1308	45, 384
R (on the application of Dudley, Whitbread and Others) <i>ν</i> East Sussex CC [2003] EWHC 1093 (Admin)	395
R (on the application of E) <i>ν</i> Bristol City Council [2005] EWHC 74 (Admin)	418
R (on the application of E) <i>ν</i> Islington LBC [2017] EWHC 1440 (Admin)	347

R (on the application of Eisai Ltd) <i>v</i> National Institute for Health and Clinical Excellence [2007] EWHC 1941 (Admin); [2007] All ER (D) 67 (Aug)	143
R (on the application of EL) <i>v</i> . Essex County Council [2017] EWHC 1041 (Admin)	313
R (on the application of G) <i>v</i> Barnet LBC; R (on the application of W) <i>v</i> Lambeth LBC; R (on the application of A) <i>v</i> Lambeth LBC [2003] UKHL 57; [2004] 2 AC 208	181, 274
R (on the application of G) <i>v</i> Nottingham City Council [2008] EWHC 152 (Admin) [2008] 1 FLR 1660	232
R (on the application of G) <i>v</i> Southwark LBC [2009] UKHL 26	523
R (on the application of H) <i>v</i> London North and East Region Mental Health Review Tribunal [2001] EWCA Civ 415; [2002] QB 1	111
R (on the application of H) <i>v</i> Wandsworth LBC [2007] EWHC 1082 (Admin); [2007] 2 FLR 822	542
R (on the application of HC) <i>v</i> Secretary of State for the Home Department [2013] EWHC 982 (Admin)	367
R (on the application of Heather) <i>v</i> Leonard Cheshire Foundation [2002] EWCA Civ 366; [2002] 2 All ER 936	112
R (on the application of Hollow) <i>v</i> Surrey CC [2019] EWHC 618 (Admin)	343
R (on the application of Howard League) <i>v</i> Secretary of State for the Home Department [2002] EWHC 2497 (Admin); [2003] 1 FLR 484	355
R (on the application of Husain) <i>v</i> Asylum Support Adjudicator [2001] EWHC 852 (Admin); (2001) <i>The Times</i> , 15 November	541
R (on the application of Ireneschild) <i>v</i> Lambeth LBC [2006] EWHC 2354 (Admin)	399
R (on the application of J) <i>v</i> Caerphilly County BC [2005] EWHC 586 (Admin); [2005] 2 FCR 153	289
R (on the application of J) <i>v</i> Newham LBC [2001] EWHC 992 (Admin)	388
R (on the application of JF) <i>v</i> Merton LBC [2017] EWHC 1519 (Admin)	389–90
R (on the application of Johns and Johns) <i>v</i> Derby CC [2011] EWHC 375	279
R (on the application of KM) <i>v</i> Cambridgeshire CC [2010] EWHC 3065 (Admin)	392
R (on the application of L) <i>v</i> Manchester City Council; R (on the application of R) <i>v</i> Manchester City Council [2001] EWHC Admin 707; [2002] 1 FLR 43	280
R (on the application of Limbuela) <i>v</i> Secretary of State for the Home Department [2005] UKHL 66	539, 540
R (on the application of Lloyd) <i>v</i> Barking and Dagenham LBC [2001] EWCA Civ 533; [2002] 1 FCR 136	393
R (on the application of M) <i>v</i> Barnet LBC [2008] EWHC 2354 (Admin); (2008) 38 Fam Law 1197	181
R (on the application of M) <i>v</i> Birmingham City Council [2008] EWHC 1863 (Admin); [2009] 1 FLR 1068	197, 457
R (on the application of M) <i>v</i> Hammersmith and Fulham LBC [2008] UKHL 14; [2008] 4 All ER 271	182, 522
R (on the application of M) <i>v</i> Hammersmith and Fulham LBC [2010] EWHC 562 (Admin)	434
R (on the application of M) <i>v</i> Inner London Crown Court [2003] EWHC 310 (Admin); [2004] 1 FCR 178	362
R (on the application of M) <i>v</i> Secretary of State for Health [2003] EWHC 1094 (Admin); [2003] 3 All ER 672	418
R (on the application of M) <i>v</i> Slough BC [2000] EWCA Civ 655; [2007] LGR 225	547

R (on the application of Mani) <i>v</i> Lambeth LBC [2003] EWCA Civ 836; [2004] LGR 35	547
R (McDonagh) <i>v</i> London Borough of Enfield [2018] EWHC 1287 (Admin)	525
R (on the application of McDonald) <i>v</i> Kensington and Chelsea RLBC [2011] UKSC 33	384
R (on the application of ML) <i>v</i> Secretary of State for the Department of Health (2000) 4 CCLR 59	431
R (on the application of Munjaz) <i>v</i> Mersey Care NHS Trust [2005] UKHL 58; [2006] 4 All ER 736	409, 429
R (on the application of N) <i>v</i> Ashworth Special Hospital Authority [2001] EWHC Admin 339	431
R (on the application of Ouji) <i>v</i> Secretary of State for the Home Department [2002] EWHC 1839 (Admin)	544
R (on the application of P) <i>v</i> Secretary of State for the Home Department [2001] EWCA Civ 1151	121, 514
R (on the application of P) <i>v</i> Secretary of State for the Home Department; R (on the application of Playfoot) <i>v</i> Governing Body of Millais School [2007] EWHC 1698 (Admin); [2007] 3 FCR 754	347
R (on the application of PS) <i>v</i> Responsible Medical Officer [2003] EWHC 2335 (Admin)	429
R (on the application of Q) <i>v</i> Secretary of State for the Home Department [2001] EWCA Civ 1151; [2001] 3 FCR 416; [2001] 1 WLR 2002	514
R (on the application of Raphaela Savva) <i>v.</i> Kensington and Chelsea [2010] EWCA Civ 1209	392
R (on the application of RO) <i>v</i> East Riding of Yorkshire Council [2011] EWCA Civ 196	274
R (on the application of S) <i>v.</i> London Borough of Croydon & Anor [2017] EWHC 265 (Admin)	543
R (on the application of S) <i>v</i> Mental Health Review Tribunal [2004] EWHC 2958 (Admin)	421
R (on the application of S) <i>v</i> Swindon BC [2001] EWHC Admin 334; [2001] 3 FLR 702	225
R (on the application of Saadi) <i>v</i> Secretary of State for the Home Department [2001] 4 All ER 961	541
R (on the application of SB) <i>v</i> Headteacher and Governors of Denbigh High School [2005] EWCA Civ 199; [2005] 2 All ER 396; <i>rvsd</i> [2006] UKHL 15	124, 125
R (on the application of Sessay) <i>v</i> South Maudsley NHS Foundation Trust [2011] EWHC 2617 (Admin)	428, 450
R (on the application of SG) <i>v.</i> London Borough of Haringey [2015] EWHC 2579 (Admin)	80, 397, 547
R (on the application of Spink) <i>v</i> Wandsworth LBC [2005] EWCA Civ 302; [2005] 2 All ER 954	183
R (on the application of Steinfeld and Keidan) <i>v.</i> Secretary of State for International Development [2018] UKSC 32	111
R (on the application of Stone and others) <i>v</i> South East Coast Strategic Health Authority [2006] EWHC 1668 (Admin); [2006] All ER (D) 144 (Jul)	125
R (on the application of von Brandenburg (aka Hanley)) <i>v</i> East London and the City Mental Health NHS Trust [2003] UKHL 58; [2004] 2 AC 280	431
R (on the application of W) <i>v</i> Acton Youth Court [2005] EWHC 954 (Admin); [2005] All ER (D) 284 (May)	353

R (on the application of W) <i>v</i> Birmingham City Council [2011] EWHC 1147 (Admin)	151
R (on the application of Watkins-Singh) <i>v</i> Governing Body of Aberdare Girls' High School [2008] EWHC 1865 (Admin); [2008] 3 FCR 203	348
R (on the application of Weaver) <i>v</i> L & Q Housing Trust [2009] EWCA Civ 587	112
R (on the application of Westminster City Council) <i>v</i> National Asylum Support Service [2001] EWCA Civ 512; [2002] UKHL 38; [2002] 4 All ER 654	546
R (on the application of Williamson) <i>v</i> Secretary of State for Education and Employment [2005] UKHL 15; [2005] 2 AC 246	125
Rabone & Rabone <i>v</i> Pennine Care NHS Trust [2012] UKSC 2	116
Rees <i>v</i> United Kingdom (Application No. 9532/81) (1987) 9 EHRR 56	127, 209
Renolde <i>v</i> France [2008] ECHR 5608/05	117
RK <i>v</i> SK [2013] EWHC 4386 (Fam)	171
Roberts <i>v</i> Carlin [2010] UKEAT 612	392
Roberts <i>v</i> Nottinghamshire Healthcare NHS Trust [2008] EWHC 1934 (QB)	99
Rochdale Metropolitan BC (03/C/18598) (2005)	91
RT <i>v</i> LT and a Local Authority [2010] EWHC 1910 (Fam)	446, 448
Runa Begum <i>v</i> Tower Hamlets LBC [2003] UKHL 5; [2003] 2 AC 430	525
S <i>v</i> B and Newport City Council; re K [2007] 1 FLR 1116	323
S (A Child Acting by the Official Solicitor) <i>v</i> Rochdale MBC [2008] EWHC 3283 (Fam)	276
S (A Child) (Adoption Order or Special Guardianship Order), re [2007] EWCA Civ 54	325
S (A Child) (Adoption Order or Special Guardianship Order) (No. 2), re [2007] EWCA Civ 90; [2007] 1 FCR 340	324
S (A Child) (Residence Order: Condition), re [2002] EWCA Civ 1795; [2003] 1 FCR 138	196
S (A Child) (Split Hearing: Fact Finding), [2014] EWCA Civ 25	249
S (A Minor) (Change of Surname), re [1999] 1 FLR 672	166
S (A Minor) (Parental Responsibility), re [1995] 2 FLR 648	191
S (Children) (Termination of Contact) [2004] EWCA Civ 1397; [2005] 1 FCR 489	251
S (Children: Care Plan), re; re W (Children: Care Plan) [2002] UKHL 10; [2002] 2 All ER 192	78, 243
S (Hospital Patient: Court's Jurisdiction), re [1996] Fam 1	483
S (Placement Order: Revocation), re [2008] EWCA Civ 1333; [2009] 1 FLR 503	313
S and W (Care Proceedings), re [2007] EWCA Civ 232; [2007] 2 FLR 275	245
SA (Vulnerable Adult with Capacity: Marriage), re [2005] EWHC 2942 (Fam); [2007] 2 FCR 563	483, 484
Sandwell MBC <i>v</i> GC [2008] EWHC 2555 (Fam); [2009] 1 FLR 299	311
Saulle <i>v</i> Nouver [2007] EWHC 2902 (QB); [2007] All ER (D) 08 (Dec)	447
Savage <i>v</i> South Essex Partnership NHS Foundation Trust (MIND intervening) [2007] EWCA Civ 1375; [2008] 1 WLR 1667; [2008] UKHL 74	116
Savage <i>v</i> South Essex Partnership NHS Trust [2008] UKHL 74	116
S-C (Mental Patient: Habeas Corpus), re [1996] QB 599	415
Seide <i>v</i> Gillette Industries [1980] IRLR 427	145
Sepe <i>v</i> Secretary of State for the Home Department [2001] EWCA Civ 681; [2003] 3 All ER 304	537
Sheffield City Council <i>v</i> E [2004] EWHC 2808 (Fam); [2005] Fam 326	443
Showboat Entertainment Centre <i>v</i> Owens [1984] 1 All ER 836	145
SK (Vulnerable Adult: Capacity), re [2008] EWHC 636 (Fam); [2008] 2 FLR 720	457

SMD <i>v</i> LMD [2014] EWHC 302 (Fam)	171
Smith and Grady <i>v</i> United Kingdom (Application Nos. 33985/96 and 33986/96) (1999) 29 EHRR 493	129, 140
Soering <i>v</i> United Kingdom (Application No. 14038/88) (1989) 11 EHRR 439	122
Southend on Sea BC <i>v</i> Armer [2014] EWCA 231	528
Southwark LBC <i>v</i> D [2007] EWCA Civ 182; [2007] 1 FLR 2181	274
Street <i>v</i> Derbyshire Unemployed Workers' Centre [2004] EWCA Civ 964; [2004] 4 All ER 839	96
Surrey CC <i>v</i> M and Others [2013] EWHC 2400 (Fam)	98
T <i>v</i> United Kingdom; V <i>v</i> United Kingdom (2000) 30 EHRR 121	120, 371
T (A Child) (Care Order) [2009] EWCA Civ 121; [2009] All ER (D) 47 (Mar)	250
T (A Minor) (Adoption: Contact Order), re [1995] 2 FLR 251	316
T (Adult: Refusal of Treatment), re [1992] 4 All ER 649	451
T (Children: Placement Order), re [2008] EWCA Civ 248; [2008] 1 FCR 633	311–12
T (Minors) (Adopted Children: Contact), re [1995] 2 FLR 792	316
T and Another <i>v</i> . OCC and Another [2010] EWHC 964 (Fam)	309
TG (Care Proceedings: Case Management: Expert Evidence) [2013] EWCA Civ 5	256
Thomas <i>v</i> News Group Newspapers Ltd [2001] EWCA Civ 1233	144
Tinsley <i>v</i> . Manchester City Council [2017] EWCA Civ 1704	398
TP <i>v</i> United Kingdom (2002) 34 EHRR 42	250
Traveller Movement <i>v</i> JD Wetherspoon [2015] 5 WLUK 440	145
Tyrer <i>v</i> United Kingdom (Application No. 5856/72) (1978) 2 EHRR 1	111
U (A Child) (Serious Injury: Standard of Proof), re; re B (A Child) (Serious Injury: Standard of Proof) [2004] EWCA Civ 567; [2005] Fam 134	51, 239
V (A Child) (Care Proceedings: Human Rights Claims), re [2004] EWCA Civ 54; [2004] 1 All ER 997	113, 250
Valsamis <i>v</i> Greece (Application No. 21787/93) (1996) 24 EHRR 294	347
Venables <i>v</i> News Group Newspapers Ltd; Thompson <i>v</i> News Group Newspapers Ltd [2001] 1 All ER 908	116
W <i>v</i> A Local Authority (Exclusion Requirement) [2000] 2 FCR 662	235
W <i>v</i> Egdell [1989] 1 All ER 1089	16
W <i>v</i> L [1974] QB 711; [1974] 3 WLR 859	412
W, re [2010] UKSC 12	264
W (A Child) [2016] EWCA Civ 804	285
W (A Minor) (Adoption: Homosexual Adopter), re [1997] 2 FLR 406	308
W (A Minor) (Parental Contact: Prohibition) [2002] 1 FCR 752	251
W (A Minor) (Residence Order: Baby), re [1992] 2 FLR 332	165, 166
W (A Minor) (Wardship: Medical Treatment), re [1992] 4 All ER 627	172
W (An Adult: Mental Patient) (Sterilisation), re [1993] 1 FLR 381	443
W (Change of Name) [2013] EWCA Civ 1488	201
W (Children: Domestic Violence) [2012] EWCA Civ 528	200
W (Minors) (Residence), re (1992) The Times, 3 March, CA	196
W and B (Children: Care Plan), re [2001] EWCA Civ 757; [2001] 2 FCR 450	243
W and others <i>v</i> Essex CC and another [1998] 3 All ER 111, CA; <i>rvsd</i> [2000] 2 All ER 237, HL	94, 280
Wakefield DC <i>v</i> T [2008] EWCA Civ 199; [2008] 1 FLR 1569	253
Walker <i>v</i> Northumberland CC [1995] 1 All ER 737	95
WB (Minors) (Residence Orders), re [1993] Fam Law 395	196
Westminster City Council <i>v</i> National Asylum Support Service [2002] UKHL 38	546

White <i>v</i> Southwark LBC [2008] EWCA Civ 792	524
Williams and Another <i>v</i> . London Borough of Hackney [2018] UKSC 37	236, 270
Winterwerp <i>v</i> The Netherlands (Application No. 8978/80)) (1979) 2 EHRR 387	423
Wye Valley NHS Trust <i>v</i> . B [2015] EWCOP 60	457
X <i>v</i> Secretary of State for the Home Department [2001] 1 WLR 740	547
X (A Child) (Female Genital Mutilation Protection Order), re [2018] EWCA Civ 1825	114
X and Y <i>v</i> Netherlands (Application No. 8978/80) (1985) 8 EHRR 235	121, 465
X Council <i>v</i> B (Emergency Protection Orders) [2004] EWHC 2015 (Fam); [2005] 1 FLR 341	230–2
X (Emergency Protection Orders), re [2006] EWHC 510 (Fam); [2006] 2 FLR 701	45, 219, 227
X (Minors) <i>v</i> Bedfordshire CC [1995] 3 All ER 353	94, 249
X (Non-Accidental Injury: Expert Evidence), re [2001] 2 FLR 90	256
X (Parental Responsibility: Children in Care), re [2000] 2 All ER 66	191
Y (A Child: Section 38(6) Assessment) [2018] EWCA Civ 992	243
Y and K (Children) (Care Proceedings: Split Hearing), re [2003] EWCA Civ 669; [2003] 3 FCR 240	249
Yemshaw <i>v</i> Hounslow LB [2011] UKSC 3	206
YL <i>v</i> Birmingham City Council [2007] UKHL 27; [2007] 3 All ER 957	112
YLA <i>v</i> PM and NZ [2013] EWHC 3622 (Fam)	210
Z <i>v</i> United Kingdom (Application 29392/95) (2001) 34 EHRR 97; [2001] 2 FLR 612	94, 117, 220, 249
Z (Local Authority: Duty), re [2004] EWHC 2817 (Fam); [2005] 3 All ER 280	470
ZH <i>v</i> Commissioner of Police for the Metropolis [2012] EWHC 604 (QB)	128



# Table of legislation

Abortion Act 1967	32	s. 18	310
Academies Act 2010	12, 333	s. 19	310, 311
Access to Justice Act 1999	11	s. 20	310, 311
Adoption Act 1926	298	s. 21	202, 310, 311
Adoption Act 1958	298	ss. 22–24	310
Adoption Act 1976	14, 297, 298, 302, 314	s. 24	313
s. 6	302	s. 25	194, 310
s. 16(2)	314	s. 26	310, 317
Adoption and Children Act 2002	4, 12, 14,	s. 27	310, 317
33, 34, 46, 78, 80, 167, 169, 173, 181, 191, 197,		s. 28	310
213, 297, 298–99, 301, 302, 304, 306, 307, 308,		s. 29	310
315, 317, 326, 552		s. 42	310
Pt 1	301	s. 46(6)	317
Pt 2	322	s. 47	310, 313
s. 1	302, 308	s. 47(5)	296
s. 1(1)	302	s. 49	307, 308
s. 1(2)	302	s. 50	307
s. 1(3)	306	s. 51	307, 308
s. 1(4)	302–6	s. 51A	318
s. 1(4)(a)	302, 303	s. 52	314
s. 1(4)(b)	302, 303	s. 52(1)	314
s. 1(4)(c)	302, 304	s. 67	315
s. 1(4)(d)	303, 304	s. 111	191, 194
s. 1(4)(e)	303, 305	s. 112	192, 194
s. 1(4)(f)	303, 306, 317	s. 115	322
s. 1(4)(f)(ii)	314	s. 120	237
s. 1(5)	304, 305	s. 122	208
s. 1(6)	307	s. 144(4)	308
s. 1(8)(a)	306	s. 144(4)(a)	309
s. 2	299	s. 144(4)(b)	213, 309
s. 3	299, 321	Adults with Incapacity (Scotland) Act 2000	444
s. 3(5)	321	Anti-social Behaviour Act 2003	13, 337, 362, 527,
s. 4A	321		528
s. 4B	321	s. 19	339
s. 5	321	s. 23	340
s. 12	320	Anti-Social Behaviour, Crime and Policing Act 2014	
ss. 18–29	310		13, 211, 353, 354, 363, 528

Pt 1	363	s. 17	398
Pt 2	363	s. 18	391
s. 2	363	s. 24	393
s. 4	363	s. 27	393
Asylum and Immigration Act 1996	545	ss. 31–33	392
Asylum and Immigration Act 2004		s. 42	467, 470
s. 9	540	s. 42(1)	470, 471
s. 55	538, 539	s. 42(2)	470
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004	535	s. 42(3)	467
Bail Act 1976	13, 54, 502, 515	s. 43	471
s. 4	502	s. 44	471
Bill of Rights 1689	108	ss. 60–62	401
Care Act 2014	4, 13, 19, 28,	ss. 63–64	400
44, 112, 182, 183, 380, 383–405, 411, 466, 467,		s. 67	80, 396, 397, 547
470, 471, 472, 473, 474, 489, 491, 547, 549		s. 67(4)	396
s. 1	383, 384, 390, 466	s. 68	80, 470
s. 1(1)	383	s. 73	112, 397
s. 1(2)	383	Care Standards Act 2000	13, 98, 161, 173, 261, 282,
s. 1(2)(c)	466, 474		283, 402, 403, 472, 477
s. 1(3)	384, 385, 390	s. 1(2)	282
s. 1(3)(g)	466	s. 81	474
s. 2	383, 386, 389	Carers and Disabled Children Act 2000	400
s. 3	383, 386	Carers (Equal Opportunities) Act 2004	400
s. 4	386, 389	Carers (Recognition and Services) Act 1995	400
s. 5	383, 386	Child Abduction Act 1984	12
s. 5(1)	386	Child Poverty Act 2010	12
s. 6	383, 387, 471	Childcare Act 2006	12
s. 6(2)	387	Children Act 1948	258
s. 6(3)	387	Children Act 1975	260, 298
s. 6(4)	387	Children Act 1989	4, 12, 19, 20–1, 31, 34, 35, 43,
s. 6(6)(e)	387		44, 46, 50, 56, 77, 80, 92, 99, 105, 113, 158,
s. 7	383, 387, 471		159, 160–74, 176, 180, 182, 183, 184, 186,
s. 8	394, 401		187, 190, 191, 195, 197, 201, 213, 214, 217, 220,
s. 8(a)	394		227, 236, 238, 241, 242, 243, 244, 245, 260,
s. 9	18, 387, 389, 400, 401		262, 266, 274, 285, 289, 290, 292, 297, 299,
s. 9(1)	387, 388		301, 302, 303, 304, 305, 306, 307, 308, 315, 316,
s. 9(3)	388		317, 321, 339, 355, 383, 396, 400, 542, 548,
s. 9(4)	388		554, 555, 556
s. 9(5)	388	Pt I	159, 161, 162, 170, 184, 241, 302
s. 9(7)	389	Pt II	34, 161
s. 10	400	Pt III	34, 161, 177, 179, 181, 274
s. 10(10)	400	Pt IV	113, 161, 165, 235
s. 10(11)	400	Pt V	161, 165, 227
s. 11	389	Pt VI	161
s. 11(1)	389	Pt VII	161
s. 11(2)	389	Pt VIII	161
s. 13	390	Pt IX	161, 281
s. 14	398	Pt X	161
		Pt XI	161

Pt XII	161	s. 11(4)	196
s. 1	31, 199, 200, 239, 287	s. 11(7)	194, 197, 198, 204
s. 1(1)	162, 171	s. 11A	199
s. 1(2)	168, 184, 552	s. 11B	199
s. 1(2A)	164	s. 11E	200
s. 1(2B)	164	s. 11J	197
s. 1(3)	83, 164–8	s. 12	192
s. 1(3)(a)	164, 165, 173	s. 12(2)	194
s. 1(3)(b)	164, 166	s. 13	197
s. 1(3)(c)	164, 166	s. 14A	34, 323
s. 1(3)(d)	31, 164, 167	s. 14A(1)	323
s. 1(3)(e)	165, 167	s. 14A(2)	323
s. 1(3)(f)	165, 167	s. 14A(8)	324
s. 1(3)(g)	165, 168	s. 14C(1)(a)	194
s. 1(5)	30, 162, 169–70, 184, 245	s. 16	161, 203, 204
s. 1(6)	164	s. 16(2)	204
s. 1(6) (a)	164	s. 17 xxv, 21, 158, 177, 178, 181, 182, 184, 185, 223, 356, 382, 435, 523, 526, 532, 543, 544	
s. 2(1)	191, 194	s. 17(1)	177
s. 2(2)(a)	194	s. 17(1)(a)	34
s. 2(3)	191	s. 17(3)	177
s. 2(7)	192	s. 17(4A)	179
s. 3	339, 552	s. 17(6)	181
s. 3(1)	190	s. 17(10)	177, 178
s. 3(5)	192, 193, 279	s. 17(10)(c)	182
s. 4	191, 339	s. 17(11)	178, 182
s. 4(1)(a)	191	s. 17Z	184
s. 4(1)(b)	191	s. 17ZA(1)	184
s. 4(2)(a)	194	s. 17ZA(3)	400
s. 4(2)(b)	194	s. 17ZD	184
s. 4A	192	s. 17A	183
s. 5	192, 323	s. 18	180
s. 5(3)	193, 551	s. 20	179, 182, 193, 220, 236, 241, 270–1, 272, 274, 275, 293, 311, 313, 435, 521, 522, 523, 532, 542, 543
s. 5(6)	194	s. 20(1)–(5)	270
s. 7	77, 168, 203, 246	s. 20(1)	270, 274, 523
s. 7(1)	77, 178, 207	s. 20(4)	270
s. 7(5)	77	s. 20(7)	270
s. 8	160, 161, 165, 169, 173, 192, 194, 197, 202, 203, 204, 205, 207, 208, 214, 257, 271, 312, 316, 317, 321, 323, 325, 435, 552	s. 20(8)	270, 275, 285
s. 8(1)	195	s. 20(9)–(10)	270
s. 8(2)	194	s. 20(11)	271
s. 9	202, 203	s. 22	271, 272, 273, 281, 311
s. 9(3)	279	s. 22(1)	523
s. 10	165, 202, 321	s. 22(2)	271
s. 10(4)	317	s. 22(3)	273
s. 10(8)	202	s. 22(3)(a)	344
s. 10(9)	202, 325	s. 22(3A)	344, 345
s. 11	169, 199		

s. 22(3B)	345	s. 37	63, 167, 203, 204, 210, 214, 246
s. 22(3C)	345	s. 37(1)	204, 254
s. 22(4)	273	s. 37(2)	203
s. 22(5)	23, 273, 305	s. 37(3)	203
s. 22(5)(c)	31, 167	s. 38	243
ss. 22A–F	272	s. 38(6)	243
s. 22C	273, 319	s. 38A	234
s. 22C (6)(a)	274	s. 39	252
s. 22G	276	s. 41	77, 253, 360
s. 23	272, 290	s. 41(2)(b)	254
s. 23(8)	183	s. 42	78, 255
s. 23ZZA(1)	331	s. 43	228, 231
s. 23ZA	273	s. 43(8)	228
s. 23CZA	281	s. 43(9)	228
s. 23CZB(5)	288	s. 44	228–9, 279
s. 24	288	s. 44(1)	228–9
s. 25	119, 285, 286, 287	s. 44(4)(a)	229
s. 25(1)	285	s. 44(4)(b)	229
s. 25(4)	285	s. 44(4)(b)(i)	232
ss. 25A–25C	276	s. 44(4)(c)	194, 229
s. 25B	276	s. 44(5)	232
s. 26	245, 273	s. 44(5)(a)	232
s. 26(2A)	245	s. 44(5)(b)	232
s. 26A	80	s. 44(6)	232
s. 27	179, 526	s. 44(6)(a)	229
s. 31	85, 86, 160, 221, 223, 231, 237, 248, 251	s. 44(6)(b)	229
s. 31(2)	236, 238, 239	s. 44(7)	229
s. 31(2)(a)	236, 240	s. 44(10)(a)	232
s. 31(2)(b)	236	s. 44(11)(a)	232
s. 31(2)(b)(i)	240	s. 44(12)	229
s. 31(3A)	245	s. 44(13)	229, 232
s. 31(9)	237	s. 44A	234
s. 31(10)	237, 239	s. 45(1)	229
s. 31A	244, 245, 276	s. 45(7)(b)	231
s. 32	247	s. 46	233, 234
s. 33	243	s. 46(1)	233
s. 33(3)	192	s. 46(4)	234
s. 33(3)(a)	194	s. 47	158, 179, 223, 224, 225, 230, 265, 356, 359
s. 33(6)	192	s. 47(1)	224
s. 34	250, 251	s. 47(1)(a)	224
s. 34(1)	250–1	s. 47(1)(a)(iii)	224
s. 34(4)	251	s. 47(1)(b)	224
s. 34(6)	251	s. 47(4)	224
s. 35	251, 337	s. 47(5)	224
s. 36	339, 551	s. 47(6)	224
s. 36(1)	339	s. 47(7)	224
s. 36(2)	339	s. 47(9)	224
s. 36(3)	339	s. 47(11)	224
s. 36(4)	339		

s. 48	234	s. 16	222
s. 49	234	s. 53	179
s. 50	234	Children and Adoption Act 2006	12, 199, 204
s. 66	281	Children and Families Act 2014	12, 34, 120, 159, 164, 174, 177, 184, 190, 194, 200, 219, 223, 243, 245, 247, 280, 281, 304, 318, 319, 322, 336, 343, 345, 400
s. 68	281	Pt 3	343
s. 69	281	s. 10(1)	195
ss. 85–108	161	s. 15	245
s. 85	435	s. 19	331
s. 91(1)	252	s. 20	343
s. 91(14)	170–1, 185, 189, 307, 322	s. 20(1)	343
s. 100	257	s. 20(2)	343
s. 100(3)	257	s. 27(1)	343
s. 105	161	s. 33(2)	343
Schs. 1–15	161	s. 36(1)	344
Sch 1, para 15	197	s. 36(1)	344
Sch 2	161, 178, 180, 181, 542	s. 42	344
Sch 2, para 1(1)	180	s. 51	344
Sch 2, para 1(2)	180	s. 136	255
Sch 2, para 1A	180	Children and Social Work Act 2017	12, 158, 160, 173, 219, 223, 259, 271, 288, 290, 331
Sch 2, para 2	183	s. 1(1)	272
Sch 2, para 3	180, 182	s. 34	348
Sch 2, para 4	180	Children and Young Persons Act 1933	
Sch 2, para 5	180, 235	s. 1	262
Sch 2, para 6	142, 182, 183	s. 44	368, 369
Sch 2, para 7	180, 355, 358	s. 47(2)	368
Sch 2, para 7(c)	285	s. 49(4A)	368
Sch 2, para 8	180	s. 50	364
Sch 2, para 8a	183	s. 53	271, 368
Sch 2, para 9	177, 180	Sch 1	262
Sch 2, para 10	180	Children and Young Persons Act 1963	12
Sch 2, para 11	180, 279	Children and Young Persons Act 1969	12, 241
Sch 2, para 16	18	s. 23(5)	366
Sch 2, para 17	287	Children and Young Persons Act 2008	12, 183, 197, 271, 272, 274, 276, 290
Sch 3, para 6	253	s. 16	287
Children Act 2004	4, 12, 21, 31, 87, 158, 160, 161, 174–6, 179, 185, 205, 223, 261, 280, 281, 314, 331, 344, 354, 357	s. 20	345
Pt 2	331	s. 25	184
s. 2	174	Children (Leaving Care) Act 2000	12, 272, 288, 289, 290, 293, 355, 522, 542, 548
s. 2A(1)	174	Children, Schools and Families Act 2010	12, 214
s. 10	21, 158, 175, 354	Chronically Sick and Disabled Persons Act 1970	180
s. 10(1)	175	s. 2	182, 183, 390
s. 10(2)	175, 176		
s. 10(3)	175		
s. 10(5)	175		
s. 11	158, 176, 222, 331		
s. 11(1)	176		
s. 11(2)	176		
s. 11(4)	222		

Civil Partnership Act 2004	12, 32, 127, 190, 213,	s. 40	357
	215	s. 41	358
s. 42	213	s. 73	371
s. 44	213	s. 80	369
s. 75(2)	194	s. 81	369
Civil Partnerships, Marriages and Deaths (Registra- tion etc) Act 2019	12, 190, 213, 214, 215	s. 97	366
Consumer Credit Act 1974	56	s. 115	15, 357
Coroners and Justice Act 2009	61	s. 115(1)	357
Crime and Courts Act 2013	59	s. 117	355
Crime and Disorder Act 1998	4, 13, 63, 87, 207,	Sch. 2	358
	224, 337, 353, 354, 356, 364, 365, 369, 370,	Crime and Security Act 2010	13, 363
	373, 375, 376, 494, 511, 515	Crime (Sentences) Act 1997	486, 493, 508
Pt I	356, 358	Criminal Injuries Compensation Act 1995	513
Pt II	511	Criminal Justice Act 1967	
Pt III	356	s. 67(1)	366
Pt IV	356	Criminal Justice Act 1988	57
s. 1	86, 363	Criminal Justice Act 1991	13, 56
s. 5	356	s. 3	508
s. 6	356	s. 95	142
s. 8	340, 361	s. 95(1)(b)	510
s. 8(1)	361	Criminal Justice Act 2003	57, 85, 369, 488, 503,
s. 9(7)	340		507, 508
s. 11	360	s. 156	371
s. 11(3)	360	s. 199	507
s. 12	360, 361	s. 202	507
s. 14	359	s. 203	507
s. 14(6)	359	s. 204	507
s. 14(7)	359	s. 205	507
s. 15	224, 359	s. 206	507
s. 15(2)	359	s. 207	507
s. 15(4)	359	s. 209	507
s. 17	358, 373, 494	s. 214	507
s. 17(1)	494	s. 225	369
s. 28	511	Criminal Justice and Court Services Act 2000	13, 207, 258
s. 28(1)	511	s. 12	78, 252
s. 29	142, 511	s. 60	371
s. 29(1)(b)	511	Sch. 4	258
s. 29(2)	511	Criminal Justice and Courts Act 2015	13, 42
s. 30	142, 511	Criminal Justice and Immigration Act 2008	13, 354, 369, 375, 507, 559
s. 31	142, 511	Criminal Justice and Police Act 2001	360, 506
s. 32	142, 511	ss. 48–49	360
s. 37	356, 373	Criminal Justice and Public Order Act 1994	13, 87, 499
s. 37(1)	356	s. 25	503
s. 37(2)	356	Criminal Procedure (Insanity and Unfitness to Plead) Act 1991	510
s. 38	357		
s. 38(4)	553		
s. 38(4)(a)	366		
s. 39	21, 357		

Data Protection Act 2018	11, 17, 19, 24, 98–100, 101, 102, 103	s. 550ZA s. 576(1)	341 335
Data Protection Act 1998	98–100, 126	Education Act 1997	
Disability Discrimination Act 1995	32, 137, 143, 146, 382	s. 4	341
s. 1	150	Education Act 2002	333, 334
s. 2(1)	146	Pt 3	334
s. 6	150	Pt 6	336
Disabled Persons (Services, Consultation and Representation) Act 1986	180	Pt 11	334
Domestic Violence, Crime and Victims Act 2004	12, 51, 205, 206, 241, 487, 489	s. 51A(4)	342
s. 1	206	s. 52	341
s. 5	51, 262, 263, 472, 487	s. 78	333
s. 5(6)	487	s. 80	348
s. 9	487	s. 175	333
s. 10	206	s. 175(2)	334
s. 12	206	s. 176	333
s. 32	206	Education Act 2005	333, 339
s. 42	206	Education Act 2011	333
s. 48	206	Pt 6	333
Domestic Violence, Crime and Victims (Amendment) Act 2012	12, 51, 263, 487	Sch. 11	
Education Act 1944		Education and Adoption Act 2016	299, 333
s. 6	332	Education and Inspections Act 2006	333
Education Act 1981	180, 343	s. 88	340
Education Act 1996	12, 331, 332, 333, 348, 349	s. 91	341
s. 7	335	s. 92	341
s. 8	332	s. 100	342
s. 8(3)	332	s. 162	332
s. 9	346	Education (Scotland) Act 2016	348
s. 13	332, 333	Education and Skills Act 2008	332
s. 13A(1)	331	s. 1	332
s. 19	342	Employment Rights Act 1996	96, 97, 142
s. 403	348	s. 43J	97
s. 404	348	Enduring Powers of Attorney Act 1985	450
s. 405	349	Equality Act 2006	129, 140, 152, 348
s. 436A	336	s. 16	129
s. 437	337, 338	Equality Act 2010	12, 22, 32, 69, 137, 138, 144–54, 183, 348, 382, 396
s. 437(1)	336	s. 4	144
s. 443	338, 362	s. 5	147
s. 444	337, 338, 362	s. 6	146
s. 444(1A)	338	s. 9	145–6
s. 444(1B)	338	s. 10	147
s. 444A	337, 340	s. 12	146, 147
s. 446	338	s. 13	148, 149
s. 447	338	s. 19	148
s. 548	125, 340	s. 26	149
s. 548(5)	341	s. 27	149
		s. 149	23, 150
		s. 149(1)	23, 150
		s. 149(3)	150

s. 158	149	Art. 2	125, 128, 346, 347
s. 159	149	Protocol 12	140
European Convention on Human Rights	23, 60, 65, 71, 95, 110–11, 112, 113, 114–29, 130, 132, 135, 152, 201, 242, 249, 347, 367, 372, 382, 398, 402, 417, 423, 425, 428, 430, 439, 465, 479, 484, 527, 538, 541	Family Law Act 1996	12, 20, 56, 63, 215, 265, 472, 473, 480, 489, 520
Art. 2	115, 116–17, 541	Pt IV	205
Art. 3	94, 115, 117–18, 123, 126, 132, 140, 249, 277, 347, 395, 397, 429, 430, 479, 496, 539, 540, 541	Pt 4A	210
Art. 4	115, 118, 126	s. 62	480
Art. 4(2)	115	s. 62(3)	206
Art. 5	65, 111, 115, 118–19, 126, 132, 286, 423, 425, 431, 451, 454, 502, 541	s. 64	205
Art. 5(1)	118, 425	Family Law Reform Act 1969	12
Art. 5(1)(a)	118	s. 8(1)	172
Art. 5(1)(b)	118	Family Law Reform Act 1986	33
Art. 5(1)(c)	118	Forced Marriage (Civil Protection) Act 2007	209, 210
Art. 5(1)(d)	118, 286	Freedom of Information Act 2000	11, 17, 98, 100–1, 102, 103, 104
Art. 5(1)(e)	423, 425, 484	ss. 21–44	101
Art. 5(1)(f)	541	Gender Recognition Act 2004	12, 111, 127, 209
Art. 5(3)	503	Geneva Convention Relating to the Status of Refu- gees 1951	537, 540, 547
Art. 5(4)	118, 425, 432	Art. 1A(2)	537
Art. 5(5)	503	Government of Wales Act 2006	31, 330
Art. 6	49, 62, 76, 119–21, 126, 129, 132, 226, 250, 256, 264, 277, 347, 367, 398, 525, 541	Health and Social Care Act 2008	12, 402, 472, 477
Art. 6(1)	86, 90, 115, 169, 251, 372	s. 3	477
Art. 6(3)	286	s. 3(1)	402
Art. 7	115	s. 145	112, 398
Art. 8	49, 62, 95, 100, 107, 108, 111, 113, 115, 116, 120, 121–4, 126, 128, 129, 132, 140, 190, 197, 199, 201, 209, 226, 232, 249, 250, 251, 256, 277, 280, 304, 306, 313, 347, 362, 368, 385, 395, 397, 417, 429, 430, 431, 446, 453, 456, 465, 479, 484, 514, 525, 527, 528, 539, 541	Health and Social Care Act 2012	9, 12
Art. 8(1)	121	Health and Social Services and Social Security Homelessness Act 2002	11, 519, 526, 531, 533
Art. 8(2)	121, 256, 430	Homelessness Reduction Act 2017	12, 519, 526, 533
Art. 9	115, 124–5, 279, 347, 401–2	Housing Act 1985	527
Art. 10	115, 120, 125–6, 140, 347, 368, 386, 456, 482	Housing Act 1988	527
Art. 11	115	Housing Act 1996	11, 196, 519, 523, 525, 526, 527, 531, 533
Art. 12	126–7, 140, 190, 209	Pt VII	525
Art. 13	94, 250	s. 175	520
Art. 14	20, 23, 111, 127–8, 140, 153, 280, 347, 382, 541	s. 175(3)	520
Protocol 1	128	s. 175(4)	519
Art. 1	128	s. 177	520, 524
		s. 177(1)	206
		s. 177(1A)	520
		s. 178	520
		s. 179	519
		s. 184	525
		s. 185	519
		s. 188	525
		s. 189A	525
		s. 191	524
		s. 196(1)	524



s. 203	525	s. 142	498
s. 206	150	Local Authority Social Services	
s. 213A	526	Act 1970	4, 10, 11, 38
Housing Act 2004	12	s. 6	11
Human Fertilisation and Embryology		s. 7	11, 38, 222, 301, 398
Act 1990	12	s. 7(1)	38
s. 30	255	s. 7B	89
Human Rights Act 1998	xxv, 11,	s. 7C	92
14, 17, 19, 23, 24, 29, 33, 42, 60, 65, 66, 89, 95,		s. 7D	92
102, 106–35, 140, 150, 153, 186, 201, 220, 225,		Sch. 1	10, 37
230, 241, 242, 250, 277, 286, 346, 348, 356,		Local Government Act 1972	11
362, 367, 372, 397, 402, 417, 428, 439, 456,		Local Government Act 2000	11, 540
465, 467, 473, 479, 493, 496, 514, 527, 528,		Local Government and Housing Act 1989	
540, 542, 554, 556, 557, 558, 559		s. 5	93
s. 1	115	Localism Act 2011	525
s. 2	110	Marriage (Same Sex Couples)	
s. 3	110, 111, 116	Act 2013	12, 111, 127, 190, 209, 214, 215
s. 3(1)	113	Matrimonial Causes Act 1973	
s. 6	23, 110, 111, 113, 397, 479, 540	s. 1(1)	211
s. 6(1)	113	s. 1(2)	211, 212
s. 6(3)	112	Mental Capacity Act 2005	
s. 7	95, 113–14	4, 9, 13, 20, 24, 33, 39, 42, 44, 58, 59, 63, 80,	
s. 7(1)(a)	113	86, 119, 142, 381, 385, 409, 410, 425, 428, 429,	
s. 7(1)(b)	113	437, 441, 442, 443, 444–62, 466, 472, 476, 477,	
s. 19	111	482, 483, 484, 488, 491, 551, 554, 555	
Immigration Act 2014	536, 537	Pt I	444
Immigration Act 2016	536	Pt II	444
Immigration and Asylum		Pt III	444
Act 1999	11, 535, 536, 539, 545, 546, 547	s. 1	24, 444, 445, 455
s. 95	538, 541, 544, 545, 546	s. 1(1)	24
s. 95(1)	538	s. 1(2)	24, 445
s. 95(3)	538	s. 1(3)	24, 445
s. 97	538	s. 1(4)	24, 445
s. 100	545	s. 1(5)	24, 445
s. 115	546	s. 1(6)	24, 445
ss. 116–122	545	s. 2	446
s. 122	544	s. 2(1)	446, 448
Immigration, Asylum and Nationality		s. 2(2)	446
Act 2006	535	s. 2(3)	142, 447
Interpretation Act 1978	xxiv, 11, 23	s. 3	275, 446
Juries Act 1974		s. 3(1)	446
s. 17	504	s. 4	448
Landlord and Tenant Act 1985	527	s. 5	428, 449, 450, 451, 459
Learning and Skills Act 2000		ss. 9–14	450
s. 114	175	ss. 15–23	454
Legal Aid Act 1988	68	s. 20(1)	457
Legal Aid, Sentencing and Punishment of Offend-		ss. 24–26	451
ers Act 2012	12, 68, 71, 354, 366, 369, 371, 511	s. 35(4)	458
ss. 91–92	366	s. 44	458, 473

s. 45(3)	455	s. 36	510
s. 50(3)	455	s. 37	141, 436, 510
Sch 1	450	s. 38	510
Mental Capacity (Amendment) Act 2019	13, 119, 452, 454	s. 41	141, 436, 510
Mental Health Act 1983	13, 14, 19, 63, 76, 119, 382, 394, 407, 408, 409, 410–39, 444, 451, 472, 473, 481, 488, 489, 530, 547, 552, 557	s. 57	422, 429, 430, 436
Pt I	436	s. 58	429, 430, 436
Pt II	436	s. 58A	422, 436
Pt III	428, 436	s. 62	430, 436
Pt IV	422, 429, 436	s. 63	429
Pt V	436	s. 66	432, 436
Pt VI	436	s. 68	432, 436
Pt VII	437	s. 72	111, 432, 436
Pt VIII	437	s. 73	111, 432
Pt IX	437	s. 114	437
Pt X	437	s. 115	427, 428, 437, 472, 488
s. 1	436	s. 117	112, 398, 421, 433, 434, 437, 472
s. 1(4)	412	s. 121	437
s. 2	417, 419, 420, 421, 422, 432, 433, 435, 436	s. 127	428, 437, 472, 473, 488
s. 3	417, 420, 421, 422, 432, 433, 434, 435, 436,	s. 130A(1)	422
s. 4	420, 422, 435, 436	s. 130B	423
s. 5	420, 422, 424, 431, 436	s. 131	423, 424, 437
s. 5(2)	416, 422	s. 131(1)	424
s. 5(4)	422	s. 132	428, 437
s. 7	426, 436, 473	s. 135	419, 427, 428, 437, 450, 472, 488
s. 8	426, 436	s. 136	427, 428, 437, 450
s. 11	418, 420, 426	s. 139	415, 431
s. 11(3)	421	s. 145	409
s. 12	421	Mental Health Act 2007	13, 119, 381, 408, 409, 410, 418, 425, 430, 434, 550, 552
s. 12(1)	421	Misuse of Drugs Act 1971	15
s. 13	436	Modern Slavery Act 2015	13, 118
s. 13(1A)	415	National Assistance Act 1948	23, 381, 546
s. 13(2)	421	s. 21	123, 545, 546, 547
s. 14	421	s. 21(1A)	546
s. 17	421, 435, 436	s. 22	434
s. 17A	436	s. 29	30, 139, 182
s. 17A(5)	434	National Health Service and Community Care Act 1990	13, 386, 396, 400
ss. 17B–17G	436	s. 46	386
s. 19	427	s. 47(1)(b)	390
s. 20	421	s. 50	398
s. 23	427, 431, 436	Nationality, Immigration and Asylum Act 2002	11, 535, 539, 540
s. 25	419, 431	s. 25	540
s. 26	417, 436	s. 33	540
s. 26(4)	417	s. 82	540
s. 26(7)	417	s. 84(1)(g)	540
s. 29	418, 431, 436	Sch 3	540
s. 35	510	Offences Against the Person Act 1861	472

s. 20	262	s. 5	487
s. 27	262	Protection of Children	
s. 47	262	Act 1999	9, 10, 474
Police (Detention and Bail) Act 2011	499	s. 4(3)	10
Police and Criminal Evidence Act 1984	13, 15, 39, 79, 355, 498, 500, 502, 514	Protection of Freedoms Act 2012	12, 474, 475
Pt IV	501	Public Health Act 1936	15
s. 17	234, 472	Public Interest Disclosure	
s. 28	499	Act 1998	11, 96, 102, 126, 482
s. 29	499	Public Order Act 1986	13, 67, 142
s. 37	499	s. 4	511
s. 38(6)	366	s. 18	142, 511
s. 56	501	ss. 19–22	142
s. 58	366, 501	Race Relations Act 1976	141, 143, 145, 149, 348
s. 76	502	Racial and Religious Hatred	
s. 78	367, 502	Act 2006	142
s. 80	87	Registered Homes Act 1984	402, 478, 554
Code A	501	Rent Act 1977	127
Code B	501	Representation of the People Act 2000	430
Code C	39, 79, 367, 501, 514	Road Traffic Acts	15
para 1.7	366	Safeguarding Vulnerable Groups	
para 8.8	366	Act 2006	9, 12, 122, 258, 266, 472, 474, 475
para 11.16	366, 500	Sch. 4	475
Code D	501	School Standards and Framework	
Code E	501	Act 1998	333, 334
Code F	501	s. 38	334
Code G	501	s. 88B	345
Code H	501	Serious Crime Act 2015	13, 488
Policing and Crime Act 2009	13, 364	Serious Organised Crime and Police	
Policing and Crime Act 2017	427	Act 2005	
Powers of Criminal Courts (Sentencing)		s. 110	498
Act 2000	13, 354, 364, 369, 373	s. 111	498
ss. 16–20	370	Sex Offenders Act 1997	13, 258
ss. 73–75	370	Sexual Offences Act 1956	485
s. 90	368, 371	s. 6	262
s. 91	368	Sexual Offences Act 2003	13, 54, 143, 258, 262, 428, 472, 473, 485, 486, 559
ss. 100–107	371	ss. 5–8	262
s. 130	506	s. 9	262
Prevention of Terrorism		s. 10	262
Act 2005	15	s. 11	262
Probation Service Act 1993	13	ss. 16–24	262
Prosecution of Offences		ss. 25–29	262
Act 1985	67, 495	ss. 30–33	475, 486
Protection from Eviction		ss. 34–37	475, 486
Act 1977	527	ss. 38–41	475
Protection from Harassment		Social Services and Well-Being (Wales)	
Act 1997	13, 69, 142, 144, 472, 486	Act 2014	31
s. 1	149	Special Educational Needs and Disability	
s. 4	149	Act 2001	12, 154

Standards in Scotland's Schools etc.		s. 25	264, 509
Act 2000		s. 26	264, 509
s. 1	348	s. 27	264, 509
s. 3A	348	s. 28	264, 509
Suicide Act 1961	116	s. 29	264, 509
Theft Act 1968	54, 473, 481	s. 30	264, 509
Tribunals, Courts and Enforcement		s. 44	368
Act 2007	62, 432		
United Nations Convention on the Rights of the			
Child 1989	130–1, 134, 171, 173, 186, 304, 327, 367, 371		
Art. 1	131	Adoption Agencies Regulations SI 2005/389	319
Art. 3	131	Adoption Support Services Regulations SI 2005/691	321
Art. 3(1)	131	Care Homes Regulations SI 2001/3965	143
Art. 3(2)	131	Care Planning, Placement and Case Review (England) Regulations SI 2010/959	244, 271, 275, 276, 334
Art. 3(3)	131	Sch. 7	276
Art. 9	131	Care Quality Commission (Registration) Regulations SI 2009/3112	478
Art. 12	131, 173, 253	Care and Support and After-care (Choice of Accommodation) Regulations SI 2014/2670	394
Art. 12(1)	171	Care and Support (Eligibility Criteria) Regulations SI 2015/213	390–1
Art. 12(2)	253	reg. 2	390
Art. 22	542	Care and Support (Independent Advocacy Support) (No. 2) Regulations SI 2014/2889	396
Art. 28	346	Children (Private Arrangements for Fostering) Regulations SI 2005/1533	281
Art. 28(1)	346	Children (Secure Accommodation) Regulations SI 1991/1505	285
Art. 37	364	reg. 2(1)	285
United Nations Convention on the Rights of Persons with Disabilities 2009	135, 154	Children Act 1989 Representations Procedure (England) Regulations SI 2006/1738	37
Art. 3	132	Children's Homes (England) Regulations SI 2015/541	283, 284, 290
Art. 12	132	reg. 6	283
Art. 19	132	reg. 7	283
Universal Declaration of Human Rights 1948	130	reg. 8	283
Art. 1	130, 139	reg. 9	283
Art. 2	139	reg. 10	283
Art. 6	130	reg. 11	283
Art. 14	130	reg. 12	283
Art. 16	130	reg. 13	283
Art. 21	130	reg. 14	283
Art. 33	130		
Welfare Reform Act 2009	191		
Welfare Reform Act 2012	12, 529, 531		
Welfare Reform and Work Act 2016	12, 531		
Youth Justice and Criminal Evidence			
Act 1999	13, 87, 264, 268, 354, 370, 372, 373, 485, 509, 516, 552, 554		
s. 16	264		
s. 16(2)(a)	509		
s. 16(2)(b)	509		
s. 17	509		
s. 23	264, 509		
s. 24	264, 509		

## Table of Statutory Instruments

reg. 17	284	Independent Review of Determinations	
reg. 26	283	(Adoption and Fostering) Regulations SI	
Civil Procedure Rules SI 1998/3132	53	2009/395	280
r. 21	479	Local Authority Adoption Service (England)	
Court of Protection Rules SI 1007/1744	37	Regulations SI 2003/370	
Data Protection (Subject Access Modification)		reg. 10	299
(Health) Order SI 2000/755 (NI 2)	99	Local Authority Social Services (Complaints	
art. 5	99	Procedure) Order SI 1990/2244	38
Disqualification for Caring for Children		Local Authority Social Services Complaints	
Regulations SI 1991/2094	281	(England) Regulations SI 2006/1681	37
Employment Equality (Age) Regulations SI		Management of Health and Safety at Work	
2006/1031	60, 147	Regulations SI 1999/3242	95
Employment Equality (Sexual Orientation)		Police (Amendment) Regulations SI	
Regulations SI 2003/1661	147	2004/3216	495
Family Law Act 1996 (Forced Marriage)		Relationships Education, Relationships and	
(Relevant Third Party) Order SI 2009/2023	210	Sex Education and Health Education	
Family Procedure Rules SI 2010/2955	121	(England) Regulations SI 2019/924	349
r. 25.1	257	School Discipline (Pupil Exclusions and	
Fostering Services (England) Regulations SI		Reviews) (England) Regulations SI 2012/	
2011/581	279	1033	341
reg. 27(5)	280	School Governance (Roles, Procedures and	
Health and Social Care Act 2008 (Regulated		Allowances) (England) Regulations SI	
Activities) Regulations SI 2010/781	142	2013/1624	334
reg. 11	478	reg. 6(1)	334
reg. 17	142	Social Workers Regulations SI 2018/893	37
Housing Benefit Regulations SI 2006/213	127	Special Guardianship Regulations SI 2005/1109	46
reg. B13	127	reg. 21	324

## List of abbreviations

<b>AA</b>	Adoption Act 1976
<b>ABC</b>	Acceptable behaviour contract
<b>ABCPA</b>	Anti-social Behaviour, Crime and Policing Act 2014
<b>AC</b>	Approved clinician
<b>ACA</b>	Adoption and Children Act 2002
<b>AEA</b>	Action on Elder Abuse
<b>AIA</b>	Asylum and Immigration Act 2004
<b>AMHP</b>	Approved Mental Health Professionals
<b>ASBA</b>	Anti-social Behaviour Act 2003
<b>ASBO</b>	Anti-social Behaviour Order
<b>ASYE</b>	Assessed and supported year in employment
<b>BAILII</b>	British and Irish Legal Information Institute
<b>BASW</b>	British Association of Social Workers
<b>CA 1989</b>	Children Act 1989
<b>CA 2004</b>	Children Act 2004
<b>CAFA</b>	Children and Families Act 2014
<b>CAFCASS</b>	Children and Family Court Advisory and Support Service
<b>CAMHS</b>	Child and Adolescent Mental Health Service
<b>CAO</b>	Child assessment order
<b>CCRC</b>	Criminal Cases Review Commission
<b>CDA</b>	Crime and Disorder Act 1998
<b>CDCA</b>	Carers and Disabled Children Act 2000
<b>CDS</b>	Criminal Defence Service
<b>C(EO)A</b>	Carers (Equal Opportunities) Act 2004
<b>CHAI</b>	Commission for Healthcare Audit and Inspection
<b>CJA</b>	Criminal Justice Act 2003
<b>C(LC)A</b>	Children (Leaving Care) Act 2000
<b>CMH</b>	Case Management Hearing
<b>CPS</b>	Crown Prosecution Service
<b>CQC</b>	Care Quality Commission
<b>CRE</b>	Commission for Racial Equality
<b>C(RS)A</b>	Carers (Recognition and Services) Act 1995
<b>CSA</b>	Care Standards Act 2000
<b>CSDPA</b>	Chronically Sick and Disabled Persons Act 1970
<b>CTO</b>	Community treatment order

<b>CYPA</b>	Children and Young Persons Act 2008
<b>DASS</b>	Director of Adult Social Services
<b>DCSF</b>	Department for Children, Schools and Families
<b>DDA</b>	Disability Discrimination Act 1995
<b>DfE</b>	Department for Education
<b>DfES</b>	Department for Education and Skills
<b>DoH</b>	Department of Health
<b>DOLS</b>	Deprivation of Liberty Safeguards
<b>DPA</b>	Data Protection Act 2018
<b>DPP</b>	Director of Public Prosecutions
<b>DP(SCR)A</b>	Disabled Persons (Services, Consultation and Representation Act) 1986
<b>DRC</b>	Disability Rights Commission
<b>DTO</b>	Detention and Training Order
<b>DVCVA</b>	Domestic Violence, Crime and Victims Act 2004
<b>DVPO</b>	Domestic Violence Protection Order
<b>DWP</b>	Department for Work and Pensions
<b>EA 1996</b>	Education Act 1996
<b>EA 2002</b>	Education Act 2002
<b>EA 2005</b>	Education Act 2005
<b>EA 2011</b>	Education Act 2011
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECT</b>	Electroconvulsive therapy
<b>EHC</b>	Education Health and Care Plan
<b>EIA</b>	Education and Inspections Act 2006
<b>EOC</b>	Equal Opportunities Commission
<b>EPA</b>	Enduring power of attorney
<b>EPO</b>	Emergency protection order
<b>ERA</b>	Employment Rights Act 1996
<b>EWO</b>	Education Welfare Officer
<b>FfA</b>	Fostering for Adoption
<b>FLA</b>	Family Law Act 1996
<b>FMA</b>	Forced Marriage Act
<b>FSM</b>	Free school meals
<b>GR</b>	Gender reassignment
<b>GSCC</b>	General Social Care Council
<b>HA</b>	Housing Act 1996
<b>HCPC</b>	Health and Care Professions Council
<b>HMCS</b>	Her Majesty's Courts Service
<b>HRA</b>	Human Rights Act 1998
<b>HSCA</b>	Health and Social Care Act 2008
<b>IAA</b>	Immigration and Asylum Act 1999
<b>IEP</b>	Individual education plan
<b>IMCA</b>	Independent Medical Capacity Advocate
<b>IMHA</b>	Independent mental health advocate
<b>IRH</b>	Issues Resolution Hearing
<b>IRO</b>	Independent Reviewing Officer
<b>ISSP</b>	Intensive supervision and surveillance programme

<b>LA</b>	Local authority
<b>LAA</b>	Legal Aid Agency
<b>LAC</b>	Local authority circular
<b>LAC</b>	Looked after children
<b>LASPO</b>	Legal Aid, Sentencing and Punishment of Offenders Act 2012
<b>LASSA</b>	Local Authority Social Services Act 1970
<b>LEA</b>	Local education authority
<b>LGO</b>	Local government ombudsman
<b>LPA</b>	Lasting power of attorney
<b>LSCB</b>	Local Safeguarding Children Boards
<b>MCA 1973</b>	Matrimonial Causes Act 1973
<b>MCA 2005</b>	Mental Capacity Act 2005
<b>MHA 1983</b>	Mental Health Act 1983
<b>MHA 2007</b>	Mental Health Act 2007
<b>MHRT</b>	Mental Health Review Tribunal
<b>MIAM</b>	Mediation Information and Assessment Hearing
<b>MJ</b>	Ministry of Justice
<b>NAA</b>	National Assistance Act 1948
<b>NASS</b>	National Asylum Support Service
<b>NHSCCA</b>	National Health Service and Community Care Act 1990
<b>NIAA</b>	Nationality, Immigration and Asylum Act 2002
<b>NR</b>	Nearest relative
<b>NSF</b>	National Service Framework
<b>OASYS</b>	Offender Assessment System
<b>ODPM</b>	Office of the Deputy Prime Minister
<b>PACE</b>	Police and Criminal Evidence Act 1984
<b>PCA</b>	Protection of Children Act 1999
<b>PCCA</b>	Protection of Children Act index
<b>PCC(S)A</b>	Powers of Criminal Courts (Sentencing) Act 2000
<b>PCF</b>	Professional Capabilities Framework
<b>PLO</b>	Public Law Outline
<b>POCA</b>	Protection of Children Act list of adults considered unsuitable to work with children
<b>POVA</b>	Protection of Vulnerable Adults
<b>PSHE</b>	Personal, social, health and economic education
<b>RC</b>	Responsible clinician
<b>RRA</b>	Race Relations Act 1976
<b>SAB</b>	Safeguarding Adults Boards
<b>SAO</b>	School attendance order
<b>SAR</b>	Subject Access Request
<b>SCIE</b>	Social Care Institute for Excellence
<b>SCT</b>	Supervised community treatment
<b>SEN</b>	Special educational needs
<b>SENCO</b>	Special Educational Needs Coordinator
<b>SENDA</b>	Special Educational Needs and Disability Act 2001
<b>SI</b>	Statutory Instrument
<b>SOA</b>	Sexual Offences Act 2003



<b>SRE</b>	Sex and relationships education
<b>SSFA</b>	School Standards and Framework Act 1998
<b>SSI</b>	Social Services Inspectorate
<b>UKBA</b>	United Kingdom Border Agency
<b>UNCRC</b>	UN Convention on the Rights of the Child
<b>YISP</b>	Youth inclusion and support panel
<b>YJB</b>	Youth Justice Board
<b>YJCEA</b>	Youth Justice and Criminal Evidence Act 1999
<b>YOP</b>	Youth Offender Panel
<b>YOT</b>	Youth offending team
<b>YRO</b>	Youth rehabilitation order

## Law Reports

<b>AC</b>	Appeal cases
<b>All ER</b>	All England Law Reports
<b>BHRC</b>	Butterworths Human Rights Cases
<b>BMLR</b>	Butterworths Medico-Legal Reports
<b>CCLR</b>	Community Care Law Reports
<b>Ch</b>	Chancery Division
<b>COP</b>	Court of Protection Law Reports
<b>CrApp R</b>	Criminal Appeal Reports
<b>ECHR</b>	European Court of Human Rights
<b>EHRR</b>	European Human Rights Reports
<b>EWCA</b>	England and Wales Court of Appeal
<b>EWHC</b>	High Court of Justice for England and Wales
<b>Fam</b>	Family Division
<b>FCR</b>	Family Court Reporter
<b>FLR</b>	Family Law Reports
<b>IRLR</b>	Industrial Relations Law Reports
<b>QB</b>	Queen's Bench Division
<b>UKHL</b>	UK House of Lords
<b>WLR</b>	Weekly Law Reports

## Journals

<b>BJSW</b>	British Journal of Social Work
<b>CC</b>	Community Care
<b>CFLQ</b>	Child and Family Law Quarterly
<b>Crim LR</b>	Criminal Law Review
<b>DCLD</b>	Discrimination Case Law Digest
<b>Fam Law</b>	Family Law
<b>JCL</b>	Journal of Child Law
<b>JSWFL</b>	Journal of Social Welfare and Family Law
<b>LAG</b>	Legal Action Group Bulletin
<b>LS</b>	Legal Studies
<b>MLR</b>	Modern Law Review
<b>NLJ</b>	New Law Journal
<b>SJ</b>	Solicitors Journal

# Part 1

## Legal context of social work practice

### Chapters:

<b>1</b>	Introduction to law and social work practice	3
<b>2</b>	Sources of law	27
<b>3</b>	Courts and law officers	48
<b>4</b>	Social workers' role in law	74
<b>5</b>	The Human Rights Act 1998 and social work practice	106
<b>6</b>	Discrimination	136