
Law of Child Care

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LAW OF CHILD CARE

Preface

At present there are approximately 100,000 children in the care of local authorities in England and Wales, and there seems to be little likelihood of this figure being reduced significantly in the foreseeable future. Children come into care for a wide variety of reasons under a bewildering number of different statutory provisions which pose numerous difficulties even for the expert working in this field. The aim of this book is to provide a general understanding of the law relating to children in care which will be of use primarily to social workers, but also to lawyers, magistrates, police officers, teachers and anyone else concerned with the welfare of children. Although this is first and foremost a book about the law, I have also attempted (in so far as a lawyer may presume to know about such matters) to deal with practice in this area.

As I have seen it, there are three basic questions which require consideration:

- (a) How do children come into care?
- (b) How do local authorities treat children in their care and what are the rights and duties of social workers, parents and others — including the children themselves — while they are in care?
- (c) How do children leave care?

In fact, the first and third of these questions are inextricably linked because the way in which a child comes into care determines the nature and extent of a local authority's rights as against his parents, which in turn determines the circumstances in which he may leave care. For this reason, the ways in which children come into and out of care are dealt with together in Part I of the book. Criminal proceedings involving juveniles are also considered in Part I.

Part II is concerned with the treatment of children in care and covers such matters as the general duty of local authorities in care cases, boarding out with foster parents, residential care, maintenance and so on, and includes (although strictly speaking these fall outside the scope of this book) private fostering and day-care, and after-care.

For the sake of convenience, adoption and custodianship (the provisions for which are not yet in force) are dealt with in Part III of the book. It should not be forgotten, however, that adoption is one of the range of services available to social workers for children in care.

Part IV of the book deals with wardship which is, of course, becoming increasingly important to local authorities.

A considerable problem for the person working in this field is that, not only is there a mass of legislation, but also that much of it has not been implemented. I have dealt with this difficulty in the following way. As regards the unimplemented sections of the Children and Young Persons Act 1969, these have merely been described briefly as there seems to be very little likelihood of their being implemented in the foreseeable future or at all. Where the Children Act 1975 is concerned, I have dealt with the law as it stands at the date of writing and have also discussed the changes to come. The Adoption Act 1976, which codified the law relating to adoption but which is not yet in force, I have dealt with by putting the new section numbers in footnotes. When this Act comes into effect, therefore, the reader may delete the name of the Act and section number in the text and substitute the reference given in the appropriate footnote.

Since this book was first written, the Child Care Act 1980, which consolidates various Acts relating to the care of children by local authorities and voluntary organisations, has come into force. I have inserted the 1980 section numbers in the text and the legislative provision from which it is derived in the footnotes. I have dealt with the Foster Care Act 1980 in the same way.

The following abbreviations are used in the book.

CYPA 1933	Children and Young Persons Act 1933
CA 1948	Children Act 1948
CA 1958	Children Act 1958

AA 1958	Adoption Act 1958
CYPA 1963	Children and Young Persons Act 1963
CYPA 1969	Children and Young Persons Act 1969
CA 1975	Children Act 1975
AA 1976	Adoption Act 1976
CCA 1980	Child Care Act 1980
FCA 1980	Foster Care Act 1980

A further word should be said about terminology. The words “infant”, “minor” and “child” are used in various statutes to refer to a person under the age of majority, that is, under eighteen years of age. In the Children and Young Persons Acts, however, “child” tends to mean a person under fourteen and “young person” a juvenile aged between fourteen and seventeen. The Education Act 1944 and the Legal Aid Act 1974, on the other hand, mean children under sixteen when they use the term. In this book I have usually used the word “child” to mean a person under eighteen unless the context specifically required a more precise term to be used. For the sake of standardisation, I have also used the masculine gender to include the feminine throughout.

I have used my best endeavours to ensure that this book accurately reflects the law as at 1st January 1982. Where possible later changes have been incorporated in the text (*see* Note overleaf). If I have made any serious errors I offer my apologies to the reader in advance.

Finally, I should say that this is, of course, a book about children in care. For this reason I have not dealt with all of the alternatives to care. It should be remembered, however, that by s. 1(1) of the Child Care Act 1980 (formerly, s. 1(1) of the Children and Young Persons Act 1963):

“It shall be the duty of every local authority to make available such advice, guidance and assistance as may promote the welfare of children by diminishing the need to receive children into or keep them in care under this Act or to bring children before a juvenile court; and any provisions made by a local authority under this subsection may, if the local authority think fit, include provision for giving assistance in kind or, in exceptional circumstances, in cash.”

NOTE

The law stands still for no man — even authors and publishers — and thus, although I have endeavoured to amend this book between writing and proof stage so as to state the law as at 1st January 1982, further changes have already taken place which deserve mention.

First, the case of *In re Leeds City Council* (1982) *The Times*, 22nd January changes the law relating to the liability of local authorities when children in their care commit offences and overrules *R. v. Croydon Juvenile Court Justices, ex p. Croydon London Borough Council* [1973] 1 Q.B. 426 discussed on pp. 185-6.

In *In re Leeds City Council*, a local authority, which had in its care under the CYPA 1969 a boy aged 12 whom it allowed to stay with his parents for a weekend during which he attacked and robbed an old woman, was held not to be liable to pay compensation to the victim. The House of Lords decided that s. 55 of the CYPA 1933 had no application to the statutory code governing the reception of children into care but was aimed at providing a summary remedy against juvenile offenders to keep up to the mark the parent or other individual who had the control of the child.

Secondly, the Children Act 1975 (Commencement No. 5) Order 1981 brings into force as from 15th February 1982 the following sections of the 1975 Act: ss. 4-7 (concerning the approval of adoption societies), s. 28(a) and (b) (restrictions on private adoptions), s. 32 (payment of allowances to adopters) and ss. 60-3 (voluntary organisations and parental rights resolutions). It has been possible to deal with these new provisions in the text — see pp. 204, 207-8, 206 and 32-3 respectively.

The bringing into force of the various sections of the Children Act 1975 has necessitated some amendment of the Rules and Regulations governing adoption. As from 15th February 1982, therefore, reference should be made not only to the existing Rules and Regulations, but also to the Adoption (High Court)(Amendment) Rules 1982, the Adoption (County

Court)(Amendment) Rules 1982 and the Adoption Agencies (Amendment) Regulations 1981.

Thirdly, although it has been dealt with in the text, it should be noted that s. 9 of the Law Reform (Miscellaneous Provisions) Act 1949, by virtue of which a child became a ward of court, was repealed and replaced by s. 41 of the Supreme Court Act 1981 on 1st January 1982.

Finally, the 1981 Criminal Justice Bill, presently before Parliament, will, if and when it becomes law, make a number of changes in the sentencing and treatment of young offenders and will thus alter the law as set out in Chapter Six of this book. The main provisions of the Bill are summarised in Appendix J.

January 1982

B.I.S.

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