

Contents

1	Introduction, some definitions and abbreviations	1
1	Statutory background	1
2	Scots law and devolution	1
3	Limitations to the powers of the Scottish Parliament	2
4	Influence in Scotland of other jurisdictions' practice	3
5	The United Nations Convention on the Rights of the Child (UNCRC)	3
6	The Promise	5
7	Scottish criminal and civil law and private law	5
8	Private and public law	6
9	Local authority	6
10	Corporate parents	6
11	Conventions and Acts of Parliament	7
12	Regulations, etc	17
13	Court rules	23
14	Guidance	24
15	Standards	26
16	Other abbreviations	27
2	General principles and children's rights and capacity	28
1	Definition of "child"	28
2	Principles to be applied	29
3	Child's views and the UNCRC	32
4	Child's views and The Promise	33
5	Child's consent in permanence proceedings	33
6	Corporate parents	33
7	Criminal, civil and medical, including capacity of children and young people	33
8	Legal capacity and medical intervention for children aged 16 and 17	36
9	Mental health legislation review	38

3	Scottish courts and the criminal system	39
1	Court reforms	39
2	The court system	39
3	Human rights	40
4	Civil courts	40
5	The Scottish criminal system	43
6	Legislative changes	44
7	Criminal courts	45
4	Parentage and parental responsibilities and rights	47
1	Parental responsibilities and rights	47
2	Duty to maintain (provide financial support)	48
3	Child support on divorce or separation	49
4	Parentage: legal mother and father	49
5	Automatic responsibilities and rights (PRRs): mother	49
6	Automatic responsibilities and rights (PRRs): father	49
7	Presumption of paternity	50
8	Establishing paternity in court	50
9	Establishing paternity for children's hearings	51
10	How fathers can acquire responsibilities and rights (PRRs)	51
11	Acquiring responsibilities and rights: Section 11 applications and orders	52
12	Interdicts and enforcement	55
13	PRRs for children "looked after" by the local authority	55
14	PRRs and the children's hearing system	56
15	Section 62 referrals	57
16	Acquiring PRRs in surrogacy	58
17	Application by two people	58
18	Application by one applicant	59
19	Motherhood: where there are two women with a biological claim to motherhood	60
20	Fatherhood	60
21	2nd legal parent	61
22	Deceased donor	61

5	Rights of siblings	62
1	Sibling and sibling like relationship	62
2	Placement of siblings	63
3	Maximum number of children in a foster placement	63
4	Independent Care Review 2020 – The Promise	63
5	Promotion of contact between looked after children and siblings	64
6	Taking account of the child’s views in maintaining sibling relationships	64
7	Duty to consider contact when making a compulsory supervision order	65
8	Participation rights of brothers and sisters in children’s hearings	66
9	Case law clarifying the rights of siblings in children’s hearings	67
10	Seeking a contact order through the courts	67
11	Views of siblings in adoption	68
6	The Disclosure system for criminal record checks, the PVG Scheme and vetting and barring	69
1	Disclosure Scotland	69
2	Different levels of Disclosure checks	69
3	Code of Practice	71
4	To whom the Code applies	71
5	Purpose of the Code	72
6	Obligations under the Code	72
7	Protection of Vulnerable Groups: PVG Scheme	72
8	Continuous monitoring of Scheme members	74
9	Regulated Work assessment	74
10	Disclosure (Scotland) Act 2020	75
11	Criminal record checks in fostering	75
12	Criminal records checks in adoption	76
7	The 2010 Act and the Care Inspectorate	77
1	Legislation	77
2	The 2001 and the 2010 Acts: the Care Inspectorate	77
3	The Care Inspectorate	78
4	Care services	78
5	Health and Social Care Standards 2018	79

6	The Scottish Social Services Council	80
7	New Codes of Practice	81
8	Private care arrangements	83
1	Arrangements at home	83
2	Carers' responsibilities in respect of a child	83
3	Leaving children unattended	83
4	Arrangements with family	84
5	Childminding	84
6	Maximum number of children receiving care	85
7	Nanny	85
8	Day care	85
9	Child care agencies	86
10	Private fostering	87
9	Orders and national guidance for child protection	88
1	Child protection	88
2	Guidance	88
3	Child assessment orders (CAOs)	89
4	Child protection orders (CPOs)	90
5	Exclusion orders (EOs)	94
10	Fostering and kinship care	97
1	Types of fostering	97
2	Public fostering	98
3	Private fostering	101
4	Kinship care	103
5	Placing a looked after child with kinship carers	105
6	Non-looked after children	106
7	Child's views	107
8	Effect of the kinship care order	107
9	Support for kinship carers	108
10	Eligibility for support	109
11	National guidance	110

11	The children's hearing system	111
1	The system	111
2	Ethos of the system	111
3	Development of the system	112
4	Permanence considerations	113
5	Patterns of referral	114
6	Significant people in the hearing system	114
7	Process on referral	121
8	Hearings, pre-hearings and emergency hearings	125
9	Appeals	133
10	Reviews	135
12	Permanence orders	137
1	Introduction	137
2	Parts of the permanence order	138
3	Mandatory provision	138
4	Ancillary provisions	138
5	Authority for adoption	140
6	Pre-court procedures	140
7	Adoption or fostering panels	141
8	Procedural timescales	142
9	Child subject to a compulsory supervision order	142
10	Court report	142
11	Court procedures for permanence orders and permanence orders with authority to adopt	143
12	Curator ad litem	144
13	Reporting officer	144
14	Legal threshold test for granting a permanence order	145
15	Additional threshold test for granting a permanence order with authority to adopt	146
16	Dispensing with parental consent	146
17	Opposition to application by parents	147
18	Disputed permanence order	148
19	Disputed permanence order with authority to adopt	148

20	Revocation of compulsory supervision order	148
21	Right of appeal	148
22	Children's hearings and permanence orders	149
23	Compulsory supervision order during court process	149
24	Effects of permanence orders and permanence orders with authority to adopt	149
25	Section 11 applications	150
26	Variation, amendment and revocation of permanence orders and permanence orders with authority to adopt	150
27	Variation, amendment or revocation of order	151
13	Adoption	153
1	General information	153
2	Effect of adoption	153
3	Who may be adopted?	153
4	Who may adopt?	154
5	Consent by parents	154
6	Legislation and regulations	155
7	Principles to be applied	155
8	Routes to adoption	156
9	Adoption agencies	156
10	Inspections	157
11	Types of adoption	157
12	Pre-court procedures: non-agency adoptions	158
13	Pre-court procedures: agency adoptions	159
14	Court procedures	161
15	Court forms	161
16	Time requirements	162
17	Preliminary hearing	162
18	Fixing of proof hearing	162
19	Reporting officer	163
20	Curator ad litem	163
21	Dispensing with parental consent	165
22	Consideration of revocation of compulsory supervision order	165

23	Rights of appeal	165
24	Effects of an adoption order	165
25	Support services	166
26	Local authority's duty to support child and parents	166
27	Support for those affected by adoption	167
28	Accessing adoption records – child	167
29	Accessing adoption records – others	168
30	Exemptions – data protection	168
14	Foreign adoptions	169
1	Intercountry adoption	169
2	Background	170
3	Types of countries from which children are adopted	171
4	Special restrictions on countries	172
5	Intercountry adoption processes: pre-court	172
6	Intercountry adoption processes: court	174
7	Residence period required before adoption can be granted in Scotland	175
8	Entry clearance and acquiring British citizenship	175
9	Registration of foreign adoptions	176
10	Arrangements for Scottish children to be adopted overseas	176
15	General local authority duties to children	178
1	Local authority	178
2	General welfare duty	178
3	Wellbeing duties and GIRFEC	179
4	GIRFEC	179
5	Adoption Services Plans	179
6	Children's Services Planning – Part 3 2014 Act	180
7	Duty to co-ordinate	180
8	Planning and preparation	180
9	Enforcement	180
10	Duty to publish	181
11	Children "in need"	181
12	Disabled children and children affected by disability	182

13	Definition of disability	182
14	Child with disability	183
15	Duty of local authority to assess	183
16	Assessment of carer	183
17	Self-directed support	184
18	Day care for children in need	184
19	Local authority duty to consult representative parents	184
20	Early learning and child care	185
21	Children at risk of being looked after	185
16	Local authority responsibilities for “looked after” children	186
1	“Looked after” children	186
2	Who are looked after children?	186
3	Duties of the local authority	188
4	Review of child’s case: child cared for by parents or persons with parental responsibilities and parental rights	190
5	Review of the child’s case: child placed with kinship carer, foster carer or in a residential establishment	190
6	Provision of accommodation	191
7	Short breaks	191
8	Continuing care and after care for previously looked after children	192
	Further reading	194
	Books and publications	194
	Useful websites	196
	Specific online resources	198