

# Contents

- Introduction v
- Legal entitlements ix
- Authors and contributor xiii
- Table of cases xxi
- Table of statutes xxix
- Table of statutory instruments xxxix
- Table of international and European legislation xlvii
- 1 Understanding disabled children's lives 1**
  - Introduction 4
  - Underpinning principles 5
  - Consulting disabled children and young people and their families 13
  - Disabled children and their families: numbers, characteristics and circumstances 15
  - Living with disability: parents' and children's experience 22
  - The early years 32
  - Getting an education 34
  - Transition to adulthood 38
  - Children who live away from home 44
  - Services for disabled children and their families 49
  - Conclusion 52
- 2 Legal fundamentals 55**
  - Introduction 56
  - The common law and judicial review 57
  - International human rights conventions 60
  - The hierarchy of domestic law 69
  - Powers and duties 72
  - Key local structures/processes 73
  - 'Parental responsibility' 76
  - Routes to redress 77
- 3 Children's services 79**
  - Introduction 81

Key changes under the Children and Families Act 2014	83
Statutory scheme: disabled children as ‘children in need’	84
Social work service/key workers	88
Duty to assess	92
Duty to provide services	100
Care plans: the ‘how, who, what and when’	127
Duty to accommodate disabled children	136
Duties towards ‘looked-after’ disabled children	139
Duties towards disabled children ‘leaving care’	142
Charging for children’s services	143
Safeguarding and child protection	144
Transition to adult social care	147

#### **4 Education 149**

Introduction	151
The human right to education	156
Duty to participate to 18	159
The SEN and disability scheme 0–25	161
Implementation and transfer to the new system	167
The local offer	174
Duties on schools	176
SEN support – early years, schools, colleges	182
Education, health and care needs assessments	183
Education, health and care plans	189
Reviews	197
Re-assessments	200
Personal budgets	201
Direct payments for SEN provision	203
Children and young people in custody	204
Residential and out-of-authority placements	205
Education otherwise than at school	206
Duties to children who are without education (EA 1996 s19)	208
School admissions	212
Exclusions from school and colleges	212
School and college transport	216
Appeals to the tribunal	219
Other enforcement methods	221
Decision-making for young people	222
Further advice and support	222

#### **5 Health 223**

Introduction	225
Changes to the NHS	231
Children and families’ views to inform health services	235

	Co-operation between health bodies and local authorities	236
	The 'local offer' and health	238
	Health services – fundamental duties	239
	The responsibilities of GPs and other primary health services	240
	Duty to assess healthcare needs	242
	Education, health and care plans	244
	Health action plans	245
	Children's health services – the Children's NSF	247
	Disabled children's health services and the NSF	250
	NHS therapy services	252
	NHS equipment provision	254
	Wheelchair provision	256
	Short breaks	258
	Continence services	259
	Continuing care	260
	Continuing care and direct payments/personal budgets	264
	Child and Adolescent Mental Health Services (CAMHS)	266
	Consent to treatment	274
	Transition from child to adult services	280
<b>6</b>	<b>Housing</b>	<b>283</b>
	Introduction	286
	Responsibilities of housing authorities and duties to co-operate	288
	Families with disabled children becoming 'homeless'	290
	Families with disabled children who need to move to suitable housing	292
	Benefit reform and disabled children	299
	Discretionary housing payments and meeting the costs of moving	301
	Disabled facilities grants	302
<b>7</b>	<b>Decision-making: the legal framework</b>	<b>315</b>
	Introduction	318
	An overview of the legal framework for decision-making	319
	Mental Capacity Act 2005	327
	Capacity under the MCA 2005	330
	The Court of Protection and the appointment of deputies	342
	Specific issues for children and young people	344
<b>8</b>	<b>Carers</b>	<b>349</b>
	Introduction	352
	Parent carers	353

Support services 356  
Young carers 360  
Parent carers as disabled children 'transition' to adulthood 371

## **9 Equality and non-discrimination 373**

Introduction 375  
Legal framework 376  
Equality Act 2010 377  
The definition of disability 379  
Discrimination – 'prohibited conduct' 383  
Reasonable adjustments 388  
Discrimination because of association or perception 389  
Harassment and victimisation 391  
Services and public functions 392  
Education 398  
Advancement of equality 407  
Enforcement 413  
Article 14 ECHR – the human right to non-discrimination 418

## **10 Transition to adulthood 423**

Introduction 425  
Social care 431  
Healthcare responsibilities 450  
Mental capacity 455  
Housing 455  
Higher education – disabled student allowances 461

## **11 Remedies 463**

Introduction 466  
Complaints procedures 467  
Ombudsmen 475  
Disagreement resolution arrangements 478  
Mediation 479  
Tribunal 481  
Judicial review 488  
County court claims 494  
Availability of legal aid 495  
Other sources of advice and support 497  
Information, Advice and Support Services 498

## **APPENDICES**

### **A Legislation 501**

### **B International conventions 579**