

## Index

abortion	best interests
confidentiality, 440-1	CRC, 64
consent, 267	ECHR, 64
override of young persons' refusal of	international law, 64
treatment, 424	young persons, 352-4
parental consent, 429	biological identity. See identity
relationships and sex education (RSE), 577	birth certificates, 180-6
right to life, 284	birth control. See fertility
young persons' autonomy, 356	birth registration, 180-6
young persons' decision-making, 436-9	'British values,' 319, 321-2, 324, 325-6
abuse. See bullying; child abuse; child	bullying
protection	anti-bullying measures in schools, 555-8
accommodated children. See looked-after	behaviour and discipline in schools,
children	553, 554
accountability. See state responsibility	compulsory school attendance, 546, 550
adolescents. See young persons	exclusion from school, 565
adoption	failing schools, 573
'non-consensual' adoptions, 240-4	leaving home, 372-3
balance of rights and welfare considerations,	relationships and sex education (RSE), 576
237–40	
change of children's names, 189	care, children in. See looked-after children
DNA testing, 174–5	child abduction
kinship care and adoption, 244-6	international. See international child
post-adoption contact, 246-50	abduction
right to knowledge of origins, 157-8	child abuse
alternative dispute resolution. See also arbitra-	abused children in family proceedings,
tion; mediation	496–7
failure of, 272	domestic abuse and, 213-19
use of, 263, 459,	ECHR, 59
460-4	family support for children in need, 595-7
anti-bullying measures in schools. See bullying	protection from harmful treatment,
anti-terrorism measures. See terrorism pre-	584, 586
vention and investigation measures	section 47 enquiries, 597–8
assisted reproduction, identity and,	child arrangements orders
162–9	application after DNA testing, 172-3
autonomy	Article 8 ECHR, 223
adolescents. See young persons	change of children's names, 189, 190
paternalism and, 19-22	enforcement of, 206, 219-23



722 Index

child arrangements orders (cont.) parental role and, 6-8 international child abduction, 399 paternalism and. See paternalism law reform, 208 possession of rights, 11, 15-17 right to effective participation, 494 civil sanctions. See sanctions right to leave home, 398-400, 402, 404 competence. See also consent; decision-making use of, 154-5, 225 adolescents. See young persons welfare-based approach, 156, 209 conflict between recognition and overriding child poverty of 442-3 to instruct solicitors, 475-8, 483-4 best interests principle, 515 young persons. See young persons child protection, 606 children's well-being, 521-2 compulsory protection. See child protection CRC, 52 confidentiality ECHR, 117-18 abortion, 440-1 extent of, 526-30 child protection, 618-19 fatherhood and, 170-1 children's competence to instruct own human rights and, 523-6 solicitors, 478 problem of, 520-1 competence and, 359 welfare reform, 530-6 contraception, 436 child protection. See also child abuse; corporal CRC duty of, 85 punishment ECHR, 359, 360 balance between child protection and HRA, 359 protection of family from compulsory mediation, 462 state intervention, 615-16 respect for, 267 balance between section 17 and section 47 right to effective participation, 487 young persons' health and medical Children Act 1989 interventions, 599-600 child protection proceedings, 605-8 treatment, 440-2 duty of protection under section 17 Children consent. See also competence; decision-making Act 1989, 595-7 adolescents. See young persons effectiveness of, 620 judicial. See judicial decision-making emergency protection orders, 600-4 young persons. See young persons enquiries under section 47 Children Act consultation. See also right to effective 1989, 597-8 participation establishment of past significant harm, corporal punishment, 132 CRC, 102 establishment of potential future significant healthcare, 265-7, 270 harm, 613-15 looked-after children, 654-6 family support for children in need, 595-7 parental responsibility, 122 human rights, and, 587-91 right to effective participation, 454-7 looked-after children, 644-8 rights-based approach, 265 contraception, 434-6 police protection, 604-5 proof threshold criteria for compulsory Convention on the Rights of the Child protection measures, 608-10 best interests principle and, 64 recognition of children's views, 616-20 classification of Convention rights, right to protection from harmful 45 - 7treatment, 583 effectiveness of, 55-7 state responsibility, 583 enforcement and implementation, 49-50 inconsistencies within, 47-9 children in care. See looked-after children children's liberation, 2-6, 7-8, 27 individual communications, 53-5 children's rights reporting mechanism, 51-2 awareness and scepticism of, 2-3 right to effective participation, 446-50 children as rights-holders, 11-15 spectrum of rights, 41-2



723 Index

corporal punishment right to education, 305, 315, 319-21, 325-6, balance between children's rights and 331, 334-5, 554, 562, 563, 564, 565-6, 567, 576 parental authority, 141 EU. See European Union current law as to, 133-6 example of limitation of children's human European Convention on Human Rights and rights, as, 141 Fundamental Freedoms future reform, 133-6 best interests principle and, 64 children's own applications, 71-5 international law protection from, 126-9 historical background to, 57-8 introduction to, 124-6 incorporation of. See Human Rights Act 1998 national law, in, 129-33 Prosecution Guidance on Child Abuse, international law as interpretive tool for, 61-2 Council of Europe (CofE), children's rights, parental disputes, 70-1 and, 75-7 positive obligations, 63-4 CRC. See Convention on the Rights of the recognition of children's rights, 68 Child right to education, 307-12 criminal sanctions. See sanctions right to effective participation, 450-2 state responsibility and, 69-70 decision-making. See also competence; consent widening of scope of, 59-61 adolescents. See young persons European Union (EU), children's rights health-related. See health and, 77-9 judicial. See judicial decision-making exclusion from school. See school exclusions parents. See parental responsibility public authorities. See state responsibility fairness, school exclusions, 566-9 young persons. See young persons faith-based independent schools. See right to deprivation of liberty education looked-after children, 648-54 family home. See right to leave home young persons, 363-9 family law. See family relationships family life dispute resolution. See alternative dispute resolution; arbitration; mediation adoption. See adoption balance between child protection and ECHR and parental disputes, 70-1 protection of family from compulsory reform of law of parental disputes, 206-9 state intervention, 615-16 DNA tests, 171-80 balance of rights and welfare domestic law. See national law considerations, 251 child arrangements orders. See child ECHR. See European Convention on Human arrangements orders Rights and Fundamental Freedoms child's right to family life, 201-4 education. See right to education children's upbringing outside parental emancipation. See right to leave home relationships, 225-7 emergency protection. See child protection domestic child abuse, 213-19 equality human rights and, 223-5 age limits, 378 identity and, 156-7 child protection, 606 importance and impact of, 250-1 CRC, 104-5 looked-after children, 632-6 ECHR, 60 misuse of rights in children's cases, fatherhood and, 170 human rights and, 44, 94 no presumption in favour of birth parents, parents, 208 parental relationship and child welfare in principle of, 41 public-sector duty of, 104-5 relation, 231-4



**724** Index

family life (cont.) common law principles, 260-3 presumption of parental involvement, 209-13 competence to consent, 265-7 'prima facie right' to upbringing by birth competence to refuse life-saving treatment, parents, 228-31 417 - 21reform of law of parental disputes, 206-9 consent to medical treatment, 411 right to family contact, 204-6 decision-making principles, 411 right to respect for family life, 199-201 difficulty in making objective decisions, Family Procedure Rules, independent 299-300 instruction, 474-5 doctor/parent partnership, 270-2 fertility. See fertility family proceedings 'due weight' to children's views, 489-91 introduction to health rights, 256-7 abused children, 496-7 judicial consent to medical treatment, 431-4 arbitration, 460 life-sustaining treatment for babies and children's involvement generally, 457-8 young children, 268-70 children's wishes and feelings as organ and tissue donation, 288-93 determinative, 497-501 overriding of refusal to be treated, 421-5 children's centrality in, 485-9 parental choice, 278-82 competence to instruct solicitors, 475-8, 483-4 parental consent to medical treatment, entitlement to separate representation, 468-71 425-31 independent instruction under rule 16.6 parental consent to non-therapeutic Family Procedure Rules, 474-5 treatment, 286-7 influencing and indoctrination of children's parental culture and permanent alteration of views, 493-4 children's bodies, 293-9 mediation, 460-4 parents' denial of children's right to life, 282-6 no automatic separate representation, 467-8 refusal of medical treatment, 417 parental hostility and alienation, 495-6 right to be consulted, 265-7 private law system, arbitrariness of, 459-60 rights-based approach, 263-5 religious indoctrination and, 494-5 withdrawal of treatment, best interests right to instruct solicitors, 484-5 considerations as to, 272-7 separate representation in international young persons. See young persons abduction cases, 471-4 home. See right to leave home separate representation procedure, 466-7 home education. See right to education understanding of child's views, 493 HRA. See Human Rights Act 1998 welfare reports, 464-6 human rights. See also Convention on the family relationships. See family law Rights of the Child fatherhood. See parental responsibility child protection and, 587-91 CoE. See Council of Europe feelings. See views and feelings fertility CRC. See Convention on the Rights of the abortion. See abortion assisted reproduction, 162-9 ECHR. See European Convention on contraception, 434-6 Human Rights and Fundamental future. See regulatory reform Freedoms equality and, 44, 94 harmful treatment. See child protection establishment of children's rights, 38-41 EU. See European Union adolescents. See young persons health and. See health identity and, 159-62 alternative treatments, 278-82 assisted reproduction, 162-9 impact and effectiveness of, 79-80 birth control. See fertility introduction to, 34-5 moral rights and, 18-19 children's healthcare principles generally,

257-60

national law and. See national law



> 725 Index

> > paternalism restrained by rights considerations, 23-7 right to education and, 306-7 rights theories, 35-7 state responsibility. See state responsibility United Nations human rights framework, 37-8 Human Rights Act 1998 (HRA) decision-making competence of young persons, 358-63 future of, 109-10 incorporation of ECHR, 85-6 interpretation of, 86-9 recognition of children's welfare rights, 91-2, 109 recognition of parents' welfare rights, 91-2 welfare principle generally, 89-91 welfare principle reconciled with HRA, 94-9

separate representation in litigation, 471 international children's rights. See children's rights; human rights international human rights. See human rights international law best interests principle, 64 dualism and, 84, 137-8 duty to comply with, 103-4 Human Rights Act 1998 and, 87-9, 680 interaction with national law See national law as interpretive tool, 61-2, 680 protection from physical punishment, 126-9, 137-8 recognition of children's rights, 680 and right to effective participation,

identity

birth registration and certification, 180-6 child's right to, 144-5 DNA tests, 171-80 fatherhood and, 169-71 human rights and, 159-62 importance of right to identity, 194-5 known fathers and lesbian parents, 186-8 names and, 188-94 national law, in, 150-6 parenthood and, 145-50 relationship between biological identity, legal identity and family life, 156-7 right to knowledge of origins, 157-9 independent participation. See right to effective participation influence. See undue influence influencing and indoctrination of children's views, 493-4 international child abduction best interests principle and, 67 change of children's names, 192 Child Abduction Warning Notices (CAWN), 384 child arrangements orders, 399 collecting evidence from children, 487 competence to participate in litigation, 477 CRC, 144, 192, 202 EU law, 78-9 leaving home, 374-5 right to family life, 202 runaway children, 384-5

judicial decision-making, judicial consent, need for new approach to, 431-4

law reform. See regulatory reform leaving home. See right to leave home legal identity. See identity lesbian parents. See same-sex partners liberation. See children's liberation local authorities children in care. See looked-after children looked-after children accommodated children, 628-32 children suing local authorities, 658-61 children's difficulties in making complaints, 656-8 consultations with children, 654-6 deprivation of liberty within secure accommodation, 648-54 effectiveness of care system, 668 failures in care, 658 family relationships, 632-6 local authorities' accountability for implementation of care plans, 661-7 overview of care system, 627-8 parental responsibility, 624-7 planning for permanence in care arrangements, 637-43 protection from exploitation and abuse, 644 - 8

manipulation. See undue influence medical treatment. See health



**726** Index

minority status, reform of, 344-9 moral rights, human rights and, 18-19 names, identity and, 188-94 national law. See also Human Rights Act 1998; state responsibility children's commissioners, 105-8 children's rights legislation, 100-3 children's rights policy, 103-5HRA. See Human Rights Act 1998 international law and 84-5 introduction to, 83-4 recognition of children's rights, 99-100, 108-9 recognition of children's welfare rights, 109 reform. See regulatory reform origins, right to knowledge of. See identity parental responsibility. See also family life; parental rights adolescents. See young persons adoption. See adoption children 'divorcing' their parents, 398 children's rights and the parental role, 6-8 corporal punishment. See corporal punishment education. See right to education family privacy, respect for, 116-18 health and. See health identity and. See identity introduction to, 112-13 limits of, 121-2 looked-after children, 624-7 no presumption in favour of birth parents,

parental hostility and alienation, 495–6 presumption of parental involvement,

parental disputes, ECHR and, 70-1

parental authority, nature and scope of,

parental consent, need for new approach to,

oresumption of parental involvement, 209–13

right to education and. See right to education rights within the family, recognition of, 113–16

young persons. See young persons parental rights. See parental responsibility parenthood. See parental responsibility participation. See right to effective participation paternalism children's 'autonomy' and, 19-22 children's rights and, 19 restraint by children's welfare and rights considerations, 23-7 young persons and, 27-9 paternity. See parental responsibility paternity testing. See DNA testing peer abuse. See bullying penalties. See sanctions permanent exclusion from school. See school exclusions plural values. See right to education police protection, 604-5 poor children. See child poverty poverty. See child poverty powers of search, schools' powers generally, procedural fairness. See fairness protection from harm. See child protection public authorities decision-making. See state responsibility

reform. See regulatory reform refusal competence for, 417-21 overriding of, 421-5 right of, 417 registration, birth registration, 180-6 regulatory reform 'fragmented' child concept, 675-7 current authors' approach to, 673 enhancement of children's rights, 679-81 fragmentated approach to children's rights, 672 fragmentated approach to promotion of children's rights, 672-3 negative perceptions of 'youth' and exclusion from public life, 677-9 parental responsibility and, 673-5 rights scepticism and, 681-4 ways towards further progression of, 684 relationships and sex education (RSE), 574-8 religion collective worship in schools, 327-30

faith-based independent schools, 321-2

religious education and observance in

religious indoctrination, 494-5

schools, 327-30

2.27 - 8



> 727 Index

> > representation. See family proceedings Guidelines of the Committee of Ministers of residential care. See looked-after children the Council of Europe on Child-Friendly right to education Justice, 452 anti-bullying. See bullying independent participation in litigation, anti-terrorism regulation and, 318-23 474 balance of parents' rights and children's introduction to, 445-6 public law proceedings, 480-3 rights, 335-6 challenges for schools as to, 578-9 right to consultation, 454-7 civil remedies against non-attendence at separate representation. See family school, 550-3 proceedings right to identity. See identity collective worship in schools, 327-30 compulsory school, arguments for, 545-6 right to know and be brought up by parents. See parental responsibility criminal sanctions against non-attendence, 546-50 right to knowledge of origins. See identity ECHR, 307-12 right to leave home equality and, 305, 315, 319-21, 325-6, 331, 16 and under, 374-5, 382-3 334-5, 554, 562, 563, 564, 565-6, 567, 16 to 18, 376-7, 386-9 age limits, 374 exclusion from school. See school exclusions application for court leave, 400-2 faith-based independent schools, 321-2 child arrangements order under section 8 home education, 323-6 Children Act 1989, 398-400 human rights and, 306-7 children 'divorcing' their parents, 398 introduction to, 540-2 children's right to parental money, 404-5 parental choice and plural values, 303-5, effect of section 8 orders, 402-3 effectiveness of law as to, 406 parental responsibility and, 579 homelessness provision, 392-5 pluralism in education, 316-18 housing assistance, 391-2 powers of search, 558-60 introduction to, 372-4 recognition of children's rights, 322-3, liberalisation as to 16-18-year-olds, 377-9 542 - 5parental override of, 379-82 recognition of children's rights, barriers parents power to force child or young person to, 579 to return home, 382-3 relationships and sex education (RSE), runaway children, 384-5 574-8 state assistance with financial support, religious education and observance, 327-30 389-91 sanctions powers, 546-50, 558-60 supported accommodation, 396-8 school administration, 573-4 right to protection. See child protection school uniform policies, 330-5 right to respect for private and family life. schools' powers and duties generally, 553-4 See family life unregistered schools, 323-6 RSE. See relationships and sex education use of force, 558-60 runaway children, 384-5 right to effective participation. See also consultation; family proceedings same-sex partners, known fathers and lesbian Article 12 CRC, 446-50 parents, 186-8 Article 6 ECHR, 450 sanctions Article 8 ECHR, 450-2 civil remedies against non-attendence at ECECR, 452-3 school, 550-3 education and. See right to education

effectiveness of protective measures, 501-2

family proceedings, 457-8

criminal sanctions against school

schools' powers generally, 558-60

non-attendence, 546-50



728 Index

school exclusions terrorism prevention and investigation alternative provision after permanent measures, right to education and, 318-23 exclusion, 569-73 theoretical perspectives exclusion powers generally, 560-3 adolescents and paternalism, 27-9 grounds for permanent exclusion, 564-6 author's conclusions as to, 30-1 impact of permanent exclusion, 569-73 children and the state, 29-30 children as rights-holders, 11-15 prevention measures, 563-4 procedural fairness in permanent exclusion, children's 'autonomy' and the role of 566-9 paternalism, 19-22 children's liberation, 2-6 schools. See right to education children's rights and the parental role, 6-8 searches. See powers of search secure accommodation. See looked-after children's rights and the role of paternalism, 19 children separate representation. See family proceedings international human rights and children's sex education in schools. See relationships and moral rights, 18-19 sex education introduction to, 1-2 social identity. See identity rights awareness and rights scepticism, 2-3 social welfare paternalism restrained by welfare undue influence considerations, 23-7 family proceedings, 493-4 welfare reform as to poor children's rights, religious indoctrination, 494-5 530-6 United Nations Convention on the Rights of the Child. See Convention on the Rights of competence to instruct, 475-8, 483-4 the Child right to instruct, 484-5 unregistered schools. See right to education state care. See looked-after children use of force, right to education, 558-60 state responsibility. See also accountability accountability gaps as to public authorities, views and feelings, 493-4 'age and understanding', 489, 491-3, 574, 617 Article 3 CRC as to public authority 'due weight' to, 489-91 decisions, 513-16 children's centrality in family proceedings, barriers to ensuring visibility of children's 485-9 rights and interests, 537 as determinative, 497-501 child protection, 583 influencing and indoctrination of, 493-4 children in care. See looked-after children parental hostility and alienation, 495-6 decisions of public authorities, 511-13 religious indoctrination of, 494-5 ECHR and, 69-70 introduction to, 506-7 way ahead. See regulatory reform welfare. See social welfare national law as to public authority decisions, welfare reports, 464-6 wishes. See views and feelings neglect of children's rights and interests, 536-7 poor children's rights in international law, voung persons for, 523-6 'divorcing' from parents, 398 poor children's well-being, 521-2 abortion. See abortion poverty in UK, 526-30 autonomy law generally, 339-40, 369-70 problem of child poverty, 520-1 best interests, 352-4 theoretical perspectives, 29-30 capacity for decision-making, 340-4 welfare reform as to poor children's rights, competence to consent (16 and under), 530-6 411-16 support. See right of support competence to consent (over 16), 416-17



729 Index

competence to refuse life-saving treatment, 417–21 confidentiality as to medical treatment, 440–2 conflict between recognition and overriding of competence, 442–3 consent to medical treatment, right to, 411 contraception, 434–6 decision-making generally, 409–11 deprivation of liberty, 363–9 HRA and enhancement of competence, 358–63

judicial consent, need for new approach to, 431–4
leaving home. *See* right to leave home limitations of autonomy, 354–8
limits to parental authority, 349–52
minority status, reform of, 344–9
overriding of young person's refusal to be treated, 421–5
parental consent, need for new approach to, 425–31
paternalism and, 27–9
refuse medical treatment, right to, 417