

To: Business Committee
From: Edwina Hart MBE AM
Minister for Social Justice and Regeneration

EXPLANATORY MEMORANDUM

SOCIAL CARE, ENGLAND AND WALES

THE CAFCASS (STAFF, PROPERTY, RIGHTS AND LIABILITIES TRANSFER SCHEME) ORDER 2005

Summary

This Order is made jointly with the Secretary of State for Education and Skills and covers arrangements for the transfer of staff currently employed by the Children and Family Court Advisory and Support Service (CAFCASS) in Wales to the employment of the National Assembly for Wales, provides for the effect of staff transfer schemes under the Children Act 2004 and makes provision for the transfer to the Assembly of any property in Wales belonging to CAFCASS and all rights and liabilities to which CAFCASS is entitled or subject to, with effect from 1 April 2005.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the CAFCASS (Staff, Property, Rights and Liabilities Transfer Scheme) Order 2005, in accordance with Standing Order 25 section 3.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The powers enabling this Instrument to be made are contained in sections 42, 43 and 66(1) of the Children Act 2004 and is made jointly with the Secretary of State for Education and Skills. These powers have been conferred jointly on the Secretary of State and the National Assembly for Wales.

Effect

4. This Order makes a scheme to transfer certain persons from the employment of CAFCASS to the employment of the National Assembly for Wales as provided for by Section 43 of the Children Act 2004. The Order also makes provision for the transfer to the Assembly of any property, rights and liabilities in Wales to which CAFCASS is entitled or subject to, at the time of coming into force of the Order such as leasehold and freehold properties, furniture and ICT equipment

Target Implementation

5. It is intended that the proposed Instrument be made on 15 March 2005 and come into force on 1 April 2005. If the intended making and coming into force dates are not achieved, then staff, property, rights and liabilities will not be transferred to the Assembly.

Financial Implications

6. The Department for Education and Skills (DfES) will transfer to the Assembly an amount equivalent to CAFCASS Cymru's budget, plus an amount for central support services currently provided by CAFCASS HQ. We are continuing to negotiate the exact amount.
7. The Assembly Government is committed to covering any reasonable costs that arise as a result of diseconomies of scale from 2005-06 and up to £1.5 million has been put aside for such expenditure. I have written to the First Minister about the issue for further funding. It is crucial that the service in Wales does not suffer as a result of devolution and, indeed, is actually improved.

Regulatory Appraisal

8. As these Regulations fall outside the definition of Assembly General subordinate legislation, in section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Consultation

With Stakeholders

9. No formal consultation has been undertaken on the Instrument. However, staff have been consulted throughout, through a series of regular meetings. Meetings have also been held with other stakeholders, for example the Judiciary. The reaction has been generally positive, with staff and other stakeholders viewing the transfer as an opportunity to develop a more child-focused service in tune with the specific needs of Wales.

With Subject Committee

10. The proposed Instrument had been notified to the Health and Social Services Committee on the list of forthcoming legislation (Item No: HSS 61(04)) put to the Committee on 24 November 2004. The H&SS Committee identified this Instrument along with the other related Instruments (The Children Act (Commencement No.2) (Wales) Order 2005 and The Children Act 2004 (Amendment of Miscellaneous Regulations) (Wales) Regulations 2005) for scrutiny at its meeting on 12 January 2005. The H&SS Committee did not in the event scrutinise the legislation due to the change in portfolio.
11. It then became necessary for the Social Justice and Regeneration Committee to scrutinise these Instruments as the transfer of responsibility for CAFCASS came to my portfolio in January. The Committee scrutinised these Instruments at its meeting on 23 February 2005 (SJR-03-05 (p.3) Annex 1, 2 & 3).
12. The Social Justice and Regeneration Committee made 4 key points:
 - the need for the devolved service to be adequately resourced;
 - the need for the service to be child-centred;
 - the need for a clear, single line of Ministerial responsibility for the service but with suitable read-across to other children and young people portfolios; and

- the importance of accessible contact venues throughout Wales for children to see estranged parents.

Recommended Procedure

13. Subject to the views of the Business Committee, I recommend that this Instrument proceed to Plenary under the Standard Procedure, so that Assembly Members are given every opportunity to examine and discuss the proposed Instrument.

Compliance

14. I confirm that the proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998, section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community Law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

15. I confirm that this Memorandum has been cleared with the Office of the Counsel General and the Assembly Compliance Officer.

16. Drafting Lawyer: Therese Gray, ext 6813.

17. Head of Division: John Bader, ext 6901.

18. Drafting Policy Official: Andrew McLaughlin, ext 1715

EDWINA HART AM

FEBRUARY 2005

MINISTER FOR SOCIAL JUSTICE AND REGENERATION