



# Children Act 2004

## 2004 CHAPTER 31

### PART 4

#### ADVISORY AND SUPPORT SERVICES FOR FAMILY PROCEEDINGS

##### *CAFCASS functions in Wales*

### **35 Functions of the Assembly relating to family proceedings**

- (1) In respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question, it is a function of the Assembly to—
  - (a) safeguard and promote the welfare of the children;
  - (b) give advice to any court about any application made to it in such proceedings;
  - (c) make provision for the children to be represented in such proceedings;
  - (d) provide information, advice and other support for the children and their families.
- (2) The Assembly must also make provision for the performance of the functions conferred on Welsh family proceedings officers by virtue of any enactment (whether or not they are exercisable for the purposes of subsection (1)).
- (3) In subsection (1), “family proceedings” has the meaning given by section 12 of the Criminal Justice and Court Services Act 2000 (c. 43).
- (4) In this Part, “Welsh family proceedings officer” means—
  - (a) any member of the staff of the Assembly appointed to exercise the functions of a Welsh family proceedings officer; and
  - (b) any other individual exercising functions of a Welsh family proceedings officer by virtue of section 36(2) or (4).

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*Changes to legislation: There are currently no known outstanding effects  
for the Children Act 2004, Part 4. (See end of Document for details)*

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### **36 Ancillary powers of the Assembly**

- (1) The Assembly may make arrangements with organisations under which the organisations perform the functions of the Assembly under section 35 on its behalf.
- (2) Arrangements under subsection (1) may provide for the organisations to designate individuals who may perform functions of Welsh family proceedings officers.
- (3) The Assembly may only make an arrangement under subsection (1) if it is of the opinion—
  - (a) that the functions in question will be performed efficiently and to the required standard; and
  - (b) that the arrangement represents good value for money.
- (4) The Assembly may make arrangements with individuals under which they may perform functions of Welsh family proceedings officers.
- (5) The Assembly may make arrangements with an organisation or individual under which staff of the Assembly engaged in the exercise of its functions under section 35 may work for the organisation or individual.
- (6) The Assembly may make arrangements with an organisation or individual under which any services provided by the Assembly's staff to the Assembly in the exercise of its functions under section 35 are also made available to the organisation or individual.
- (7) The Assembly may charge for anything done under arrangements under subsection (5) and (6).
- (8) In this section, references to organisations include public bodies and private or voluntary organisations.

### **37 Welsh family proceedings officers**

- (1) The Assembly may authorise a Welsh family proceedings officer of a description prescribed in regulations made by the Secretary of State—
  - (a) to conduct litigation in relation to any proceedings in any court,
  - (b) to exercise a right of audience in any proceedings in any court,in the exercise of his functions.
- (2) A Welsh family proceedings officer exercising a right to conduct litigation by virtue of subsection (1)(a) who would otherwise have such a right by virtue of [F<sup>1</sup>the fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to that activity] is to be treated as having acquired that right solely by virtue of this section.
- (3) A Welsh family proceedings officer exercising a right of audience by virtue of subsection (1)(b) who would otherwise have such a right by virtue of [F<sup>2</sup>the fact that he is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to that activity] is to be treated as having acquired that right solely by virtue of this section.
- (4) A Welsh family proceedings officer may, subject to rules of court, be cross-examined in any proceedings to the same extent as any witness.

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- (5) But a Welsh family proceedings officer may not be cross-examined merely because he is exercising a right to conduct litigation or a right of audience granted in accordance with this section.
- (6) In this section, “right to conduct litigation” and “right of audience” have the same meanings as in section 119 of the Courts and Legal Services Act 1990.

#### Textual Amendments

- F1** Words in s. 37(2) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 211, [Sch. 21 para. 149\(a\)](#) (with ss. 29, 192, 193); S.I. 2009/3250, [art. 2](#) (with art. 9)
- F2** Words in s. 37(3) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 211, [Sch. 21 para. 149\(b\)](#) (with ss. 29, 192, 193); S.I. 2009/3250, [art. 2](#) (with art. 9)

### 38 Inspections

**F3** .....

#### Textual Amendments

- F3** S. 38 repealed (30.6.2008) by [Education and Inspections Act 2006 \(c. 40\)](#), ss. 156, 184, 188, [Sch. 18 Pt. 5](#); S.I. 2008/1429, [art. 3\(2\)](#), Sch. Pt. 2

### 39 Protection of children

- (1) The Protection of Children Act 1999 (c. 14) (“the 1999 Act”) shall have effect as if the Assembly, in performing its functions under sections 35 and 36, were a child care organisation within the meaning of that Act.
- (2) Arrangements which the Assembly makes with an organisation under section 36(1) must provide that, before selecting an individual to be employed under the arrangements in a child care position, the organisation—
  - (a) must ascertain whether the individual is included in any of the lists mentioned in section 7(1) of the 1999 Act, and
  - (b) if he is included in any of those lists, must not select him for that employment.
- (3) Such arrangements must provide that, if at any time the organisation has power to refer an individual who is or has been employed in a child care position under the arrangements to the Secretary of State under section 2 of the 1999 Act (inclusion in list on reference following disciplinary actions etc), the organisation must so refer him.
- (4) In this section, “child care position” and “employment” have the same meanings as in the 1999 Act.

### 40 Advisory and support services for family proceedings: supplementary

Schedule 3 (which makes supplementary and consequential provision relating to this Part, including provision relating to functions of Welsh family proceedings officers) has effect.

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#### **41 Sharing of information**

- (1) The Assembly and the Children and Family Court Advisory and Support Service may provide any information to each other for the purposes of their respective functions under this Part and Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43).
- (2) A Welsh family proceedings officer and an officer of the Service (within the meaning given by section 11(3) of that Act) may provide any information to each other for the purposes of any of their respective functions.

#### *Transfers*

#### **42 Transfer of property from CAFCASS to Assembly**

- (1) For the purposes of the exercise of functions conferred on the Assembly by or under this Part, the Assembly and the Secretary of State may jointly by order make one or more schemes for the transfer to the Assembly of property, rights and liabilities of the Children and Family Court Advisory and Support Service (in this section, “CAFCASS”).
- (2) The reference in subsection (1) to rights and liabilities does not include rights and liabilities under a contract of employment.
- (3) A scheme under this section may—
  - (a) specify the property, rights and liabilities to be transferred by the scheme; or
  - (b) provide for the determination, in accordance with the scheme, of the property, rights and liabilities to be transferred by the scheme.
- (4) A scheme under this section may include provision for the creation of rights, or the imposition of liabilities, in relation to property transferred by the scheme.
- (5) A scheme under this section has effect in relation to any property, rights and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.
- (6) A right of pre-emption or reverter or other similar right does not operate or become exercisable as a result of any transfer under a scheme under this section; and in the case of such a transfer, any such right has effect as if the Assembly were the same person in law as CAFCASS and as if the transfer had not taken place.
- (7) The Assembly is to pay such compensation as is just to any person in respect of any right which would, apart from subsections (5) and (6), have operated in favour of, or become exercisable by, that person but which, in consequence of the operation of those subsections, cannot subsequently operate in his favour or become exercisable by him.
- (8) A scheme under this section may provide for the determination of any disputes as to whether and, if so, how much compensation is payable under subsection (7).
- (9) Subsections (5) to (8) apply in relation to the creation of rights in relation to property as they apply in relation to a transfer of property.
- (10) A certificate issued by the Secretary of State and the Assembly jointly that any property, rights or liabilities have or have not been transferred by a scheme under this section is conclusive evidence as to whether they have or have not been so transferred.

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#### **43 Transfer of staff from CAFCASS to Assembly**

- (1) For the purpose of the exercise of functions conferred on the Assembly by or under this Part, the Assembly and the Secretary of State may jointly by order make one or more schemes for the transfer of employees of CAFCASS to the Assembly.
- (2) A scheme under this section may apply—
  - (a) to any description of employees of CAFCASS;
  - (b) to any individual employee of CAFCASS.
- (3) A contract of employment of an employee transferred under a scheme under this section—
  - (a) is not terminated by the transfer; and
  - (b) has effect from the date of the transfer under the scheme as if originally made between the employee and the Assembly.
- (4) Where an employee is so transferred—
  - (a) all the rights, powers, duties and liabilities of CAFCASS under or in connection with the contract of employment are by virtue of this subsection transferred to the Assembly on the date of the transfer under the scheme; and
  - (b) anything done before that date by or in relation to CAFCASS in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the Assembly.

This subsection does not prejudice the generality of subsection (3).
- (5) But if the employee informs the Assembly or CAFCASS that he objects to the transfer—
  - (a) subsections (3) and (4) do not apply; and
  - (b) his contract of employment is terminated immediately before the date of transfer but the employee is not to be treated, for any reason, as having been dismissed by CAFCASS.
- (6) This section does not prejudice any right of an employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.
- (7) A scheme may be made under this section only if any requirements about consultation prescribed in regulations made by the Secretary of State and the Assembly jointly have been complied with in relation to each of the employees of CAFCASS to be transferred under the scheme.
- (8) In this section “CAFCASS” has the same meaning as in section 42.

**Changes to legislation:**

There are currently no known outstanding effects for the Children Act 2004, Part 4.