



# Children Act 2004

## 2004 CHAPTER 31

### PART 4

#### ADVISORY AND SUPPORT SERVICES FOR FAMILY PROCEEDINGS

##### *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.

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

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- (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.

#### **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

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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, Cross Heading: Transfers.