

**EXPLANATORY MEMORANDUM TO**  
**THE CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT**  
**SERVICE (MEMBERSHIP, COMMITTEE AND PROCEDURE)**  
**REGULATIONS 2005**

**2005 No.433**

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. **Description**

This instrument makes new provisions for the constitution and procedure of the Children and Family Court Advisory and Support Service (CAFCASS) and revokes the Children and Family Court Advisory and Support Service (Membership, Committee and Procedure) Regulations 2000 (S.I. 2000/3374) with effect from 1 April 2005.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Background**

4.1 Paragraphs 2 and 4 of Schedule 2 to the Criminal Justice and Court Services Act 2000 enable the Secretary of State to make regulations to provide for the constitution and procedure of CAFCASS. The Children Act 2004 provides for the transfer of CAFCASS's functions in Wales to the National Assembly and for the minimum number of members of CAFCASS to be reduced from 11 to 10. These provisions are to be brought into force by the Assembly.

4.2 The Department has made changes to CAFCASS's constitution, some of which are consequent upon the planned transfer of CAFCASS's functions in Wales to the National Assembly. The instrument also makes changes to address some of the problems that arose with the previous constitution; in addition, some of the previous provisions were prescriptive and onerous, so the Department has adapted these to give CAFCASS more flexibility to manage its affairs.

5. **Extent**

This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

Not applicable.

## **7. Policy background**

7.1 The main changes and the reasons for them are as follows:

- Following the transfer of CAF/CASS's functions in Wales to the National Assembly, there will no longer be a need for a member to represent Welsh interests. This instrument removes the requirement for a member to be resident in Wales. Regulation 4 reduces the number of members appointed by the Secretary of State from 11 to 10, which is the new statutory minimum once the relevant provisions of the Children Act 2004 are in force.
- Regulation 10 gives a new power to the Secretary of State to suspend members as well as to remove them from office; and regulation 11 gives similar powers to CAF/CASS in respect of its co-opted appointees. The power to suspend was omitted from the old Regulations as an oversight and the new provision rectifies this. The power to suspend will enable the Secretary of State (and CAF/CASS) to undertake investigations and allow the member to make representations before a final decision on removal is made.
- The grounds for the Secretary of State to remove a member from office were specified in the old regulations, namely non-attendance at meetings and where the member was unfit or unable to perform his duties. However, in practice, these proved to be restrictive and a new ground, covering circumstances in which it is not in the interests of CAF/CASS for a member to continue to hold office, has been provided.
- Regulation 19 requires members who have an interest in a matter brought up for consideration at meetings of CAF/CASS to disclose that interest and not to participate in meetings at which that matter is discussed. This is to bring CAF/CASS in line with current practice in other Non-Departmental Public Bodies.
- Regulations 23 and 24 give a representative of the Secretary of State and the Chief Executive (CEO) of CAF/CASS a right to attend all meetings of CAF/CASS and its audit committee. The previous constitution had allowed CAF/CASS to co-opt the CEO and the Secretary of State's representative, but this meant they became members of CAF/CASS, which the Department does not believe is appropriate. The new provision also prohibits them from taking part in the decision making process.
- There was also a provision that allowed employees to be co-opted members of the Board. This has been removed as it is inappropriate

for employees to be members of the Service since there could be possible conflicts of interest.

- The provision requiring CAF/CASS to have a finance committee has been removed since there was some duplication of work between the committee and the audit committee.

CAF/CASS has consented to the changes.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal as the Instrument affects only CAF/CASS members and the operation of CAF/CASS.

## **9. Contact**

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