

**EXPLANATORY MEMORANDUM TO THE  
DATA PROTECTION (SUBJECT ACCESS MODIFICATION) (SOCIAL WORK)  
(AMENDMENT) ORDER 2005**

**2005 No. 467**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
  - 2.1 The Order will enable Children and Family Court Advisory and Support Service (CAFCASS) to be able refuse Subject Access requests, if it considers that the release of the data processed in their roles provided for by the order would be likely to cause serious physical or mental harm either to the data subject or to a third party.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative background**
  - 4.1 The existing Data Protection (Subject Access Modification) (Social Work) Order 2000 lists those organisations undertaking social work who can refuse a Subject Access request. When Subject Access requests are made the organisation may refuse to comply with the request, if it considers that the release of this data would be likely to cause serious physical or mental harm either to the data subject or to a third party (e.g. a CAFCASS officer). Although CAFCASS is covered in the existing Social Work Order, this only extends to one of several roles they now play, that of **Children's Guardian**. CAFCASS is seeking for this exemption to be extended to cover two additional roles: **Children and Family Reporter and Guardian ad Litem, and the functions of the Service under sections 12(1) and (2) and 13(1), (2) and (4) of the Criminal Justice and Court Services Act 2000.**
    - *Children and Family Reporter*: in this capacity the officer reports to the court in private law proceedings e.g. when the local authority takes an action to court such as in private disputes over contract and residence.
    - *Guardian ad litem* in this capacity the officer reports to the court in private law proceedings (as above) when it appears to the court that it is in the best interests of the child to be made party to the proceedings.
    - *Functions under the 2000 Act*: these confer on the Service the general functions of, where there are court proceedings in which the welfare of children is or may be in question: safeguarding and promoting the welfare of children; giving advice to any court about any application made to it in such proceedings; making provision for children to be represented in such proceedings; and providing advice, information and other support for the children and their families.

4.2 The Data Protection (Subject Access Modification) (Social Work) Order 2000: S. I No 415 paragraph 5(1) states:

“Personal data to which this order applies by virtue of paragraph 1 of the schedule are exempt from the obligations in section 7(1)(b) to (d) of the Data Protection Act in any case to the extent to the application of those provisions would be likely to prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused”.

(2) In Paragraph (1) of the schedule states, the “carrying out of the social work” shall be construed as including....  
“the exercise of the functions of any body mentioned in paragraph 1(e) of the Schedule or any person mentioned in paragraph 1(p) or(q) of the schedule..... “

Currently only one role of CAFCASS officers, i.e. “Personal data processed by any Children’s Guardian appointed under section 41 of the Children Act 1989...” is covered.

4.3 Paragraph two of the Schedule applies to personal data processed by a court and consisting of information supplied in report or other evidence given to the court by a local authority ... or other person the course in the course of proceedings to which certain rules of procedure apply where, in accordance with a provision of any of those rule, the information may be withheld by the court in part from the data subject”.

This paragraph has been extended to include information supplied to the court by officer of CAFCASS and information supplied by any one of the persons mentioned in that paragraph to a court in proceedings to which the Family Proceedings Rules 1991 apply.

4.4 This Order will not affect the majority of requests made under the section 7 of the Data Protection Act. However, it is being made to accommodate those situations where there are reasons to believe that disclosure would be likely to cause serious physical or mental harm to the data subject or other persons, and that in these circumstances, CAFCASS should be able to rely on the exemption.

4.5 This Order was amended in 2002 by the Statuary Instrument 2002/3220.

## **5. Extent**

5.1 The Statutory Instrument applies to all of the United Kingdom.

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

6.1 The Governments view is that, the Data Protection (Subject Access Modification) (Social Work) (Amendment) Order 2005 is compatible with the European Convention on Human Rights.

## **7. Policy background**

7.1 This paragraph is being extended to cover the data processed by officer of CAFFCASS when acting in the additional capacities. CAFCASS officers assume the role of Children’s Guardian in public law cases and in adoption cases where they act as Children & Family Reporters or Children’s Guardians (private law cases). However although the legal

framework provided for by the Criminal Justice and Court Services Act 2000, under which CAF/CASS officers operate is in some respects different, the duties undertaken and the data processed in the course of their duties are broadly very similar.

- 7.2 All CAF/CASS officers broadly share the same social work qualifications, and they undertake social work tasks. For example, they all have to make assessments about attachment issues and the ability of parents to meet the needs of children. They are involved in undertaking risk assessment in relation to the welfare of children. This applies both to public law and private law cases. Thus, all CAF/CASS officers are involved in the “carrying out of social work”.
- 7.3 In the last few years it has become increasingly apparent, that there is a requirement for CAF/CASS to be able to rely on the social work exemption to refuse disclosure, when dealing with cases where disclosure of the data would be likely to cause serious physical or mental harm to the data subject or other persons. Without the benefit of the amendments to The Data Protection (Subject Access Modification) (Social Work) Order 2000, CAF/CASS officers have difficulty refusing disclosure: as a result, the health and safety of CAF/CASS staff, children and other members of public is being put at risk.
- 7.8 The Order will come into force on 7th March 2005.

## **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.

## **9. Contact**

Rajee Balasubramaniam or Sonali Parekh, in Information Rights Division, Department for Constitutional Affairs can answer any queries relating to the Instrument. Tel 020 7210 8038, email [rajee.balasubramaniam@dca.gsi.gov.uk](mailto:rajee.balasubramaniam@dca.gsi.gov.uk)