

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (QUALITY ACCOUNTS)
AMENDMENT REGULATIONS 2012

2012 No. 3081

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

2. Purpose of the instrument

2.1. These regulations amend the National Health Service (Quality Accounts) Regulations 2010 (“the 2010 Regulations”) to provide that where NHS trusts and NHS foundation trusts are under a duty to publish annual reports- quality accounts- on the quality of the NHS services they provide they must include a range of additional prescribed information in those quality accounts.

2.2. These regulations also make a number of amendments to the 2010 Regulations which are consequential on changes made by the Health and Social Care Act 2012.

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

3.1 None.

4. Legislative Context

4.1 The Health Act 2009 (under sections 8, 9 and 10 of which these regulations are made) implemented those parts of the NHS Next Stage Review (see section 7 of this memorandum, below) that required primary legislation, including provisions about mandatory annual reporting by NHS healthcare providers on the quality of their services. The Review concluded that from April 2010 all healthcare providers working for or on behalf of the NHS should be placed under a legal requirement to publish an annual Quality Account. Sections 8 and 9 of the Health Act 2009 therefore place that duty on all such providers.

4.2 This duty is to publish information about the quality of services provided or sub-contracted for the period 1 April to 31 March each year as prescribed in 2010 Regulations.

4.3 The Health and Social Care Act 2012 (“the 2012 Act”) made a wide range of amendments to, amongst other statutes, the National Health Service Act 2006, the Local Government and Public Involvement in Health Act 2007 and the Health Act 2009, some of which necessitated consequential changes to the 2010 Regulations, and these are provided for in these regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Quality Accounts were introduced by Chapter 2 of the Health Act 2009, and the 2010 Regulations made thereunder, to strengthen provider board-level accountability for quality and place quality reporting on an equal footing with financial reporting.

7.2 The overall objectives of Government policy in relation to Quality Accounts are to allow:

- i. the public to hold providers to account for the quality of NHS healthcare services they provide and to demand action from providers where they believe that providers are falling short on quality;
- ii. patients, and their carers, to make better informed choices;
- iii. commissioners and providers to agree priorities for improvement;
- iv. NHS Trust Boards and their non-NHS equivalents to ensure that they place quality at the heart of their planning and delivery processes; and
- v. clinical teams to benchmark and compare their performance.

7.3 Quality Accounts are published each June on the NHS Choices website and cover the previous financial year's data. Since this type of quality reporting was new to the NHS, we have allowed, prior to these regulations being made, significant local flexibility as to their content in order to identify best practice and make subsequent improvements to the policy. Prior to these regulations being made, Quality Accounts had to include:

- a statement from the Board (or equivalent) summarising the quality of NHS services provided;
- the organisation's priorities for quality improvement for the coming financial year;
- a series of statements from the Board to give assurance that the provider is fully engaged in the quality agenda. These include statements on:

participation in clinical audits and clinical research, data quality, any Commissioning for Quality and Innovation (CQUIN) goals set by the commissioner and Care Quality Commission registration status; and

- a review of the quality of the services provided by the organisation.

- 7.4 There were no mandatory requirements to report on a common set of quality indicators. The evaluation of Quality Accounts to date and reports written by external organisations¹ have highlighted that Quality Accounts are an effective tool for raising the profile of quality improvement and engaging boards, but also that it is difficult to draw national comparisons across the data, because there are no specific mandatory quality indicators. This means that Quality Accounts cannot be used to easily show how a provider rates against other similar providers or the national average.
- 7.5 The considerable local flexibility in the content of Quality Accounts has fostered strong local ownership as Quality Accounts are developed, allowing them to reflect local priorities and local circumstances. Some providers have chosen to incorporate comparative information in their Quality Accounts as a means of setting their performance in context. Without such comparative information, readers of Quality Accounts may struggle to understand whether a particular number represents good or poor performance.
- 7.6 These regulations amend the 2010 Regulations to introduce requirements on NHS trusts and NHS foundation trusts to report on quality indicators applicable to the service which they provide and to compare the quality indicators applicable to them with those of other trusts. These regulations also place requirement on providers to have regard to guidance issued by the Secretary of State in relation to quality accounts, which will set out further detail regarding the presentation of quality indicators and where data to populate them can be located.
- 7.7 These regulations also make amendments to the 2010 Regulations which are consequential on provision made in the Health and Social Care Act 2012. In particular, as Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs) are abolished by the 2012 Act, the requirement on providers of NHS services who are under a duty to publish quality accounts to provide those accounts in draft to a relevant SHA or PCT is replaced with a requirement to provide those accounts in draft to the NHS Commissioning Board or a relevant clinical commissioning group. The similar requirement to provide the accounts in draft to an appropriate local involvement network is replaced with a requirement instead to provide them to an appropriate Local Healthwatch organisation (given that the 2012 Act amends the 2007 Act to provide that the bodies, with whom local authorities must make contractual arrangements for a range of matters including the involvement of people in the commissioning, provision and scrutiny of health and social services, are Local Healthwatch organisations).

¹ For example: *How do quality accounts measure up? Findings from the first year*, The King's Fund (January 2011); and *Accounting for quality: an analysis of the impact of quality accounts in the NHS*, Health Mandate (September 2010).

8. Consultation outcome

8.1 A formal consultation has not been undertaken for these new arrangements. However, stakeholders have been engaged in the design and testing of the quality indicators which NHS trusts and NHS foundation trust are to be obliged to include in their Quality Accounts.

9. Guidance

9.1 The Department alerted NHS providers to the likely new arrangements in February 2012², which enables them to have made significant preparations in advance of drawing up their 2012-13 Quality Account for publication in June 2013. A further letter will be sent to providers confirming new arrangements and providing guidance to support providers in preparing their Quality Accounts. This guidance will assist providers in locating data to populate each of the indicators and offer guidance regarding the presentation of the indicators.

10. Impact

10.1 The impact on the public sector is an improvement in the quality of NHS healthcare, and of provider boards' accountability to the public whom they serve.

10.2 An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The 2010 Regulations do not apply to providers who are small businesses whose annual contract value is less than £130,000 and who employ 50 or fewer full time equivalent employees.

12. Monitoring & review

12.1 Quality Accounts policy will continue to be designed with stakeholders and will continue to be tested against the experiences of frontline practitioners and patients and the public. This process has worked successfully for previous proposals.

13. Contact

Karen Noakes at the Department of Health Tel: 020 7972 5358 or email: Karen.Noakes@dh.gsi.gov.uk can answer any queries regarding the instrument.

² "Dear Colleague Letter"

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_13272