

EXPLANATORY MEMORANDUM TO
THE CARE QUALITY COMMISSION (FEES) (REVIEWS AND PERFORMANCE
ASSESSMENTS) REGULATIONS 2016

2016 No. 249

1. Introduction

- 1.1 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 The Care Quality Commission (Fees) (Reviews and Performance Assessments) Regulations 2016 are made in order to enable the Care Quality Commission to charge a fee for the reviews it is required to conduct and the assessment of performance it is required to make and publish under section 46 of the Health and Social Care Act 2008.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Health and Social Care Act 2008 (“the 2008 Act”) provides for the establishment of the Care Quality Commission (the Commission) as the regulator of providers of health and adult social care services in England.
- 4.2 Section 91 of the Care Act 2014 introduced a new section 46 to the 2008 Act. It requires the Commission to conduct reviews of such regulated activities and service providers as are prescribed in regulations, to assess the performance of service providers following each such review and to publish a report of that assessment.
- 4.3 The Care Quality Commission (Reviews and Performance Assessment Regulations) 2014 (S.I. 2014/1788) prescribe certain service providers and regulated activities for the purpose of section 46.
- 4.4 Section 85(1)(a) of the 2008 Act permits the Commission, with the consent of the Secretary of State, to make and publish provision requiring a fee to be paid in respect of, amongst other things, the grant or subsistence of registration as a service provider or manager under Chapter 2 of the Act.
- 4.5 Section 85(1)(b) allows it, with the consent of the Secretary of State, to make and publish provision requiring a fee to be paid by English NHS bodies, English local authorities, persons registered under Chapter 2 of the 2008 Act and such other persons

as may be prescribed, in respect of the exercise by the Commission of such of its functions referred to in under Part 1 of the 2008 Act as are prescribed.

- 4.6 These regulations prescribe the Commission's functions of the conduct of reviews and the assessment of performance under section 46(1) of the 2008 Act for the purposes of section 85(1)(b) of that Act, and therefore allows the Commission to charge a fee for performance reviews and assessments.

5. Extent and Territorial Application

- 5.1 The entire instrument extends only to England.
5.2 The entire instrument applies only to England.

6. European Convention on Human Rights

- 6.1 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 The Care Quality Commission is the regulator of providers of health and adult social care services in England. The 2008 Act provides the Care Quality Commission with a power to charge fees for the registration of health and adult social care providers of regulated activities. For the purposes of registration, inspections must assess whether providers are compliant with registration requirements. In 2014, performance assessment reviews were introduced by the Care Quality Commission in response to the Francis Inquiry into Mid-Staffordshire NHS Foundation Trust.
- 7.2 The Care Quality Commission's performance assessment reviews are made following a comprehensive inspection which assesses the quality and safety of care above and beyond whether a provider is complying with the registration requirements, and highlights good and outstanding aspects of care. Because the inspections look beyond what is needed for the purposes of assessing compliance with registration requirements they are not covered in their entirety in the fee setting power in section 85(1)(a).

Consolidation

- 7.3 None.

8. Consultation outcome

- 8.1 The consultation "Bringing the Care Quality Commission's comprehensive inspections within scope of its fee raising powers" ran from 21 December 2015 to 1 February 2016. It set out proposals to introduce regulations that will provide for the Commission to include in its fee scheme the cost of inspections which look beyond registration requirements. The Department received 19 responses, nearly all were from representatives of health and care organisations.
- 8.2 Respondents were not in favour of the Commission increasing its fees in general; had concerns about value for money, and the potential to increase the scope of inspections. Like all public bodies with fee-setting powers, the Commission is required by government policy to set fees that, over time, cover the costs of the

services it provides. Recovery of costs by a public body must be based on the true economic costs of the service, and the body should promote the principles of control of costs and the efficient and effective use of public money. There are sufficient safeguards in the current accountability arrangements with the Commission to hold it to account for the efficient and effective use of its resources, which in turn will mean that it only raises fees necessary to cover the cost of its regulatory functions.

- 8.3 An impact assessment has been prepared for this instrument as it has an impact on business, charities or voluntary bodies.

9. Guidance

- 9.1 The Commission is responsible for consulting on and publishing its fee scheme for future years. The Department of Health will not therefore issue guidance.

10. Impact

- 10.1 The fee impact on business, charities or voluntary bodies is estimated at £320 million over the next ten years.
- 10.2 The fee impact on the public sector is estimated at £580 million over the next ten years. Whilst this regulation gives the Commission the power to charge a fee over all aspects of its inspection process, it does not prescribe any particular trajectory for changes to fees, or the move towards full cost recovery. It is for the Commission to determine the level of future fees.
- 10.3 Compared to the Commission's annual cost base in 2015-16 of approximately £250 million, additional fee income of just over £110 million per annum would be required to achieve full cost recovery. Factoring in some assumptions about the trajectory towards full cost recovering, this figure equates to a total net present cost of approximately £900m over the next ten years, of which £320m would fall on business, charities or voluntary bodies.
- 10.4 It is likely that these fee increases to reach full cost recovery are more than the additional cost of this regulation on its own. This is because it is likely that even in the absence of this regulation, the Commission will still make some increases in its fee level to move towards full cost recovery in the areas where it already has the power to do so.
- 10.5 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that the Commission will keep its fee levels under review to ensure that it will never recover more than the full cost of its regulation on each sector. The Commission will also look at delivering efficiency savings to reduce its costs and therefore its fee levels.
- 11.3 A Small and Micro Business Assessment has been included within the final impact assessment. No further mitigating actions are proposed as small businesses who provide regulated activities as set out in the 2008 Act, are already required to register with the Commission and pay an annual registration fee.

12. Monitoring & review

- 12.1 A review of this regulation is not appropriate. The regulation is not in scope of the duty to review as it concerns fees even though part of it counts towards the Business Impact Target. Small businesses which provide a regulated activity as set out in the 2008 Act and associated regulations, are already required to register with the Commission and pay an annual registration fee. The Commission charges differing fees based on factors such as the number of locations and turnover of the provider. The Commission consults on changes to the level of the fees required to recover the cost of its regulative activity. It will keep its costs under review to minimise the burden on small business. Any change to fee levels have to be agreed by the Secretary of State for Health before implementation.
- 12.2 The Regulation will enable the Commission to recover the costs of its assessment of performance under section 46(1) of the 2008 Act. The Department will work with the Commission to ensure these functions are reflected in its future strategy for 2016-2021 and in its business planning.

13. Contact

- 13.1 Alex Joiner at the Department of Health: Telephone: 0113 254 5440: or email: alex.joiner@dh.gsi.gov.uk can answer any queries regarding the instrument.