

EXPLANATORY MEMORANDUM TO
THE CARE QUALITY COMMISSION (ADDITIONAL FUNCTIONS)
(AMENDMENT) REGULATIONS 2023

2023 No. 1163

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend the Care Quality Commission (Additional Functions) Regulations 2011 to provide the Care Quality Commission (the CQC) with an additional statutory function to provide training, guidance and support to certain bodies and individuals in relation to the raising of concerns and suggestions for improvements. The bodies and individuals in question are bodies exercising functions connected with the provision of NHS care or the carrying on of regulated activities connected with the provision of health care, and individuals employed (or formerly employed) by those bodies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The CQC regulates all health and social care services in England. It was established by the Health and Social Care Act 2008. Section 59(1) of the Health and Social Care Act 2008 enables the Secretary of State to make regulations to provide for the CQC to have additional functions in relation to matters such as the provision of NHS care or adult social services or the carrying on of regulated activities.
- 6.2 This instrument makes provision for the CQC to have an additional statutory function to provide training, guidance and support to bodies (“relevant bodies”) exercising functions connected with the provision of NHS care or the carrying on of regulated activities connected with the provision of health care, and to individuals employed (or

formerly employed) by those bodies, in connection with concerns, or suggestions for improvements, in relation to the exercise of those functions.

- 6.3 The term “bodies” is defined as bodies of persons corporate or unincorporated, which would include a wide range of bodies, with or without legal personality and both public and private.

7. Policy background

What is being done and why?

- 7.1 In the context of healthcare, Freedom to Speak Up is about encouraging a positive culture where workers feel they can speak up about anything that gets in the way of providing good care and their voices will be heard and their ideas and concerns acted upon. The National Guardian’s Office (NGO), which sits within the CQC, leads, trains and supports a network of Freedom to Speak up Guardians in England and provides support and challenge to the healthcare system in England on speaking up. The NGO also conducts speak up reviews to identify learning and support improvement of the speaking up culture of the healthcare sector.
- 7.2 Freedom to Speak Up Guardians support workers to speak up when they feel that they are unable to in other ways. There are over 1,000 Freedom to Speak Up Guardians in the NHS and independent sector organisations, national bodies and elsewhere.
- 7.3 The NGO and the role of the Freedom to Speak Up Guardian were created in response to recommendations made in Sir Robert Francis QC’s report “Freedom to Speak Up” (2015). These recommendations were made as Sir Robert found that NHS culture did not always encourage or support workers to speak up, and that patients and workers suffered as a result.
- 7.4 This instrument formalises the role of the NGO by conferring on the CQC an additional statutory function of providing training, guidance and support to relevant bodies, and individuals employed (or formerly employed) by them as mentioned above, namely in connection with concerns, or suggestions for improvements, in relation to the exercise of functions connected with the provision of NHS care or the carrying on of regulated activities connected with the provision of health care.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 This instrument has not been subject to a public consultation, however the Department of Health and Social Care has, throughout its development, engaged with the CQC, and the NGO. In accordance with section 59 of the Health and Social Care Act 2008, the Secretary of State has consulted NHS England before making this instrument.

11. Guidance

- 11.1 The Department of Health and Social Care does not intend to provide guidance on this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or community bodies is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for the Department of Health and Social Care to periodically review the instrument, as necessary, to ensure that it is still appropriate and effective.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Tim Power at the Department of Health and Social Care Telephone: 0207 972 5543 or email: Tim.Power@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Adam McMordie, Deputy Director for Quality, Patient Safety and Maternity, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Maria Caulfield, Parliamentary Under Secretary of State for Mental Health and Women's Health Strategy at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.