

Title: CQC Section 19 Loophole (preventing non-compliant locations evading enforcement action) IA No: 6105 Lead department or agency: Department Health Other departments or agencies:	Impact Assessment (IA)		
	Date: 05/04/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries:			

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
N/A	N/A	N/A	No
			NA

What is the problem under consideration? Why is government intervention necessary?
Care Quality Commission registered providers are required to comply with a set of registration requirements. As part of their enforcement action CQC may remove a location from a provider's registration due to non-compliance with these requirements. Currently, a provider can apply to deregister that location voluntarily, so it can close down the service without it looking as though CQC has had to do it because the care is substandard. This is a loophole that providers with multiple service locations can exploit to avoid a record of poor care. (Single location providers cannot do this as the loophole does not apply to overall provider registration).

What are the policy objectives and the intended effects?
The objective is to close this loophole and prevent providers (who have more than one service location) evading enforcement action from CQC and to ensure there is a record of where services have been closed due to non-compliance.

The intended effects are increased transparency about provider compliance with CQC requirements and a level playing field for providers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Technical legislative amendment to close the loop hole - preferred option to address the issue identified above, please see evidence base for more details.
Option 2: Do nothing

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Date: Earl Howe
15 April 2013

Summary: Analysis & Evidence

Policy Option 1

Description: Technical legislative amendment to close the loop hole

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

No significant costs are expected. It has not been possible to monetise the costs of this change but they are not expected to be significant.

Other key non-monetised costs by 'main affected groups'

Providers who would have evaded enforcement action will now incur; the associated costs of a record of poor care and negative publicity from CQC enforcement action, and the associated marginal administration costs of facilitating CQC process of varying a provider's registration rather than the voluntary removal of a location from registration (expected to be low).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

It is not possible to monetise any of the identified benefits

Other key non-monetised benefits by 'main affected groups'

Deregistration of a location due to non-compliance will become public information and service users will be more informed about a provider's service. This should aid service user choice and provider competition, and quality of care may be improved. Closing this loophole will also ensure providers with multiple locations face the same process as those with only one location; this will ensure a level playing field for providers.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

To what extent non-compliant providers are actually exploiting this loop hole is unknown, so the extent to which the above costs and benefits will be realised is also unknown.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Evidence Base

Policy Background

1. The Care Quality Commission (CQC) was established under the Health and Social Care Act 2008 as the independent regulator of health and adult social care, with the role of providing assurance of essential levels of safety and quality of care or treatment. CQC took over this role from the Healthcare Commission, the Commission for Social Care Inspection and the Mental Health Act Commission on 1 April 2009.
2. Under the Health and Social Care Act 2008, all providers of regulated health or adult social care activities are required to register with the Care Quality Commission. In order to be registered, providers have to meet and continue to meet a set of registration requirements of safety and quality that are set in regulations. The regulated activities and the registration requirements are set out in The Care Quality Commission (Registration) Regulations 2009 and The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010. The regulations also establish some offences and procedural arrangements.
3. The registration requirements set the essential levels of safety and quality of care that people should be able to expect, and are built around the main risks inherent in the provision of health and adult social care services.
4. Failure to comply with the requirements is an offence. CQC has a wide range of enforcement powers that it can use where a provider is not compliant. These include issuing a warning notice that requires improvement within a specified time, prosecution, and the power to cancel or vary a provider's registration which remove its ability to provide regulated activities.
5. **The evidence base of this impact assessment is structured as follows:**

Section A: Definition of the underlying problem and rationale for government intervention

Section B: Policy objectives and intended effects

Section C: Description of the options

Section D: Costs and benefits assessment of the options (including specific impacts)

Section E: Summary and conclusion

A: Definition of the underlying problem and rationale for government intervention

6. Providers of regulated activities (health and social care) are required by law to register with CQC and to comply with registration requirements. Some providers may carry out regulated activities at more than one location; a provider's registration includes a list of registered locations. Legally a provider, and each location at which they carry out regulated activities, must be registered with CQC.
7. Provider non-compliance with registration requirements is addressed through an escalation of enforcement action. Once non-compliance cannot be improved, or is sufficiently severe, CQC may decide to cancel or vary the conditions of a provider's registration. Where, for a provider with multiple locations, non-compliance is restricted to a specific service location rather than the provider overall, CQC may vary the conditions of a provider's registration to prevent the provision of regulated activities from (deregister) the relevant location(s). To do this, CQC would first serve notice on a provider that a location is going to be deregistered due to non-compliance.
8. Due to the current drafting of the legislation, it is possible that in response to the threat of this action a provider can apply to deregister the relevant location voluntarily.
9. Regardless of why the location is deregistered, the main effect is the same; the location can no longer provide regulated activities. However, if a provider applies for a location to be deregistered voluntarily it avoids the record and negative publicity of having CQC close it down due to substandard care. The non-compliant provider can evade enforcement action.

10. This is an unintended loophole. This was exploited by Castlebeck in the case of Winterbourne View. Castlebeck provided regulated activities from a number of locations including Winterbourne View hospital. Appalling abuse was discovered at Winterbourne View. CQC proposed to vary the conditions of Castlebeck's registration to remove Winterbourne View as a registered location. However, Castlebeck were able to voluntarily apply for the Winterbourne View location to be removed from its list of registered locations and thus avoided formal enforcement action.
11. As a result, there may be a lack of transparency in the market about providers and the quality of their services. CQC only takes action to remove a location from a provider's registration in the most serious cases of non-compliance. Given the extent of non-compliance in these cases it is especially important that there is a public record that a provider has provided unacceptably poor care. It needs to be clear where provider services have closed due to non-compliance with quality and safety requirements to ensure the service users, their relatives and commissioners are informed about a provider's record of compliance.
12. In addition, this loophole only applies to providers with multiple locations. A providers overall registration is not subject to this same loophole and therefore single location providers (where provider and location registration is one in the same) cannot exploit it. This means there is an uneven playing field between single location providers, who do get the record of CQC deregistration, and multiple location providers, who can currently avoid it.

Section B: Policy objectives and intended effects

13. The policy objective is to close this loophole and prevent providers (who have more than one service location) evading enforcement action from CQC and to ensure there is a record of where services have been closed due to non-compliance.
14. The intended effects of this are increased transparency about provider compliance with CQC requirements and a level playing field for single location and multiple location providers.

Section C: Description of the options

Option 1 – Amend the legislation to remove the loophole

15. The technical amendment to the primary legislation is required to close this loophole. This amendment would ensure providers could not apply for voluntary deregistration of a location once CQC had served notice of deregistration due to non-compliance.

Option 2 – Do nothing

16. The loophole and above described issues would remain.

Section D: Costs and benefits assessment of the options (including specific impacts)

17. As per guidance, the below considers the marginal impacts of Option 1 compared to the baseline of the Option 2, Do nothing.

Option 1 Amend the legislation to remove the loophole.

18. This option would mean providers with multiple locations would not be able to avoid CQC deregistration of a location by voluntarily applying for it themselves.

Costs

19. There will be a small impact on providers who have not met the legal registration requirements and would have evaded enforcement action will no longer be able to do so. It is not known how many providers have been able to exploit this loophole.
20. Based on data from CQC, over the last year around 830 locations, of around 580 providers (public and private sector) were non-compliant when they became inactive. It is not possible to tell which of these locations CQC would have deregistered, whether providers have exploited the loophole, or if they have closed for business reasons. Most are expected to fall into the latter as CQC deregistration is a strong enforcement tool used for severe or long run non-compliance; it is not the standard tool to tackle non-compliance. However, these numbers could represent a maximum upper bound of the number of locations and providers affected.
21. These providers face a record of CQC deregistration and poor care and may face negative publicity associated with this. It is not possible to know what the impact of this would be.
22. They may also incur some administration costs if facilitating a CQC process of deregistration and enforcement action is more costly than a voluntary exit; however, these marginal costs are expected to be low.
23. Facilitating the CQC deregistration process as part of enforcement action rather than through a voluntary request to vary registration by providers may be marginally more costly in terms of time and resources. When a provider voluntarily deregisters a location they apply to CQC in writing and CQC then grants the application and change the provider's registration. When CQC deregister a location as part of enforcement action, CQC serves a notice and then issues a decision, against either of which a provider may make representations and appeal. The main source of cost difference between the two processes would be a provider appealing against enforcement action rather than voluntarily closing down a location. It may be expected that many of the affected providers would appeal against enforcement action as they would have tried to evade it. However, they were also willing to voluntarily close down the service location. This may suggest that the cost of appealing against enforcement action (legal costs and increased publicity) may not be worth while for them. Therefore, given this, and the small number of providers likely to be affected, the marginal costs due to the different processes are expected to be low
24. To note a provider does not need to wait for deregistration to voluntarily cease providing services. If a provider felt they were unable to provide quality care they could cease provision before they were formally deregistered. Therefore closing the loophole does not mean poor services are provided for longer.

Benefits

25. CQC only takes action to remove a location from a provider's registration in the most serious cases of non-compliance. Given the extent of non-compliance in these cases it is especially important that there is a public record that a provider has provided unacceptably poor care. By closing the previously described loophole non-compliant providers can no longer evade enforcement action and formal CQC deregistration of a location. This will mean it is clear where provider services have closed due to non-compliance with quality and safety requirements. This will improve transparency in the market and ensure service users and the public are informed about a provider's compliance with regulation. This should aid service user choice and provider competition, and quality of care may be improved. It is not possible to quantify this benefit.
26. In addition, this amendment will ensure providers with multiple locations face the same consequence of the regulation as single location providers. This will ensure a level playing field for providers.

Value for Money

27. It has not been possible to quantify the likely costs and benefits of this technical amendment. However, the above qualitative analysis describes why it is necessary to make the amendment and why the costs are expected to be low. Given this we expect this amendment to yield value for money.
28. The above assessment has been approved as low cost regulation by the Regulatory Policy Committee (RPC) via Regulatory Triage Assessment (RTA) and Fast Track process.

One-In-Two-Out

29. It has been agreed with the RPC that this policy is out of scope of the One-in Two-out policy on new regulation.
30. From the RPC approval on the RTA of this policy... "The RTA says that this is out of scope of One-in, Two-out on the basis that "*the only costs would fall on those companies that have broken the law - i.e. non-compliant ones*". This appears to be a reasonable assessment. As the proposal appears to have no direct impacts on (compliant) business, it is out of scope of current One-in, Two-out Methodology (paragraph 2.9.8 i of the Better Regulation Framework Manual)".

Specific Impact tests

31. As described above the proposed amendment is a technical change to close a loophole and the impacts are expected to be small. As such no significant impacts in any of the specific impact test are expected.
32. Specific impact tests: Equality, Competition, Small firms, Legal Aid/ Justice Impact, Sustainable Development, Health Impact and Rural Proofing

Section E: Summary and conclusion

33. The proposed policy is a technical amendment that prevents providers who are breaking the law potentially avoiding enforcement action. It does not change the extent or scope of regulation providers' face, and any costs are expected to be negligible.