



Department
of Health

Bringing the Care Quality Commission's comprehensive inspections within scope of its fee raising power

A consultation on introducing regulations to allow the Care Quality Commission to include in its fee scheme the cost of inspections which look beyond registration requirements

<p>Title: Bringing the Care Quality Commission's comprehensive inspections within scope of its fee raising power</p>
<p>Author: Strategy & External Relations Directorate CQC Sponsorship, Quality Regulation and Investigations Cost Centre: 17160</p>
<p>Document Purpose: Consultation on proposed new regulation to bring the Care Quality Commission's comprehensive inspections and any associated rating within the scope of its fee raising power.</p>
<p>Publication date: December 2015</p>
<p>Target audience: NHS Trusts, NHS Foundation Trusts, General Practices, Adult Social Care Providers, Independent Hospital Providers and related stakeholder organisations.</p>
<p>Contact details: alex.joiner@dh.gsi.gov.uk Scope of Care Quality Commission Fee Raising Power Regulations Consultation c/o Alex Joiner Room 2E11 Quarry House Quarry Hill Leeds West Yorkshire LS2 7UE</p>

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright

Published to gov.uk, in PDF format only.

www.gov.uk/dh

Bringing the Care Quality Commission's comprehensive inspections within scope of its fee raising power

A consultation on introducing regulations to allow the Care Quality Commission to include in its fee scheme the cost of inspections which look beyond registration requirements

Prepared by the Department of Health

Contents

Executive summary	5
1. Introduction	6
2. New model of comprehensive inspection.....	7
3. Government policy to fully recover cost of regulation.....	10
4. What Section 85 of the Health and Social Care Act 2008 allows.....	11
5. Proposal to give the CQC a power to charge a fee for performance assessment under Section 46	12
6. Consultation questions	13
7. Draft statutory instrument	14
8. Consultation response form	16

Executive summary

The Health and Social Care Act 2008 provides the Care Quality Commission (CQC) 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, new comprehensive inspections were introduced by the CQC in response to the Francis Inquiry into Mid-Staffordshire NHS Foundation Trust.

The CQC's new comprehensive inspections consider the quality and safety of care above and beyond whether a provider is complying with the registration requirements and inspections now highlight good and outstanding aspects of care. The inspections therefore look beyond what is needed for the purposes of assessing registration and are not covered in their entirety in the fee setting power. The Department is proposing to introduce regulations that will provide for the CQC's fees to include all aspects of its comprehensive inspections. We propose to do this by bringing the CQC's comprehensive inspections and any associated rating within the scope of its fee setting power.

This proposal is not about changing the CQC's fee structure or the level of fees that it proposes to charge. Neither is it about extending the remit of the CQC's activity or the scope of reviews of performance assessments to additional providers or services. The proposal will, however, enable the CQC to move towards a full-cost recovery system for all aspects of its inspections.

1. Introduction

The Department of Health proposes to make regulations which will bring all aspects of the CQC's comprehensive inspections within scope of its fee raising powers. This would be done through a regulation under section 85(1) of the Health and Social Care Act 2008 (the 2008 Act) that enables the CQC to include reviews and performance assessments within its fee scheme.

The CQC's current fee setting powers are set out in section 85(1)(a) of the 2008 Act and extend to:

- an application for registration;
- the grant or subsistence of such registration; and
- an application to vary the terms of registration.

This fee setting power relates to registration and therefore inspection against the registration requirements. The CQC's new comprehensive inspections consider the quality and safety of care above and beyond whether a provider is complying with the registration requirements and inspections now highlight good and outstanding aspects of care. The inspections therefore look beyond what is needed for the purposes of assessing registration and are not covered in their entirety in the fee setting power.

This consultation seeks views on the proposal that the Department intends to bring performance assessments, and the comprehensive inspections that are carried out within the scope of the CQC's fee raising powers.

The consultation is not about the method of inspection carried out by the CQC, nor is it about whether the CQC has the legal powers to carry out such inspections. Similarly, it is not about changing the CQC's fee structure or the level of fees it might propose in future years. Rather it concerns the single proposal to give the CQC a power to raise fees for all aspects of its inspections, thus allowing the CQC to move to a position where it is able to recover its inspection costs through fees.

2. New model of comprehensive inspection

The CQC is the independent regulator of health and adult social care providers in England and has a key responsibility in the overall assurance of safety and quality of health and adult social care services. Under the Health and Social Care Act 2008 all providers of regulated activities, including NHS and independent providers, have to register with the CQC and meet a set of fundamental standards setting out requirements of safety and quality.

Following the publication of the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry in March 2013, the CQC embarked on a major programme of change to what it does and how it does it.

The CQC put in place a new inspection methodology led by Chief Inspectors of Hospitals, Adult Social Care and General Practice. Inspections are now carried out by specialist inspection teams which are supported by clinical and other experts and people who have experience of the service that are being inspected – ‘experts by experience’.

As well as providing a judgement on compliance with registration requirements, the CQC inspection also considers the quality of care over and above compliance with the registration requirements. In most cases this results in a series of ratings about the quality of care. Inspections consider whether services are safe, caring, effective, responsive and well-led. Most providers are given a rating against each of these domains – running from inadequate to requires improvement, good and outstanding. These ratings are then aggregated to a single overall rating at both a location and provider level.

The CQC’s new approach to regulation and inspection has been set out in a series of handbooks for the various sectors that it regulates. These handbooks describe how the CQC registers providers, carries out inspections, publishes ratings and how it takes enforcement action.¹

The new inspections provide a clearer and fuller assessment of the quality and safety of care that is of value to patients and service users, the public and commissioners as well as to providers themselves.

By the end of November 2015, 100 acute NHS trusts have been inspected and rated since January 2014, when the CQC began rating this sector. Since October 2014, some 9,350 adult social care services and around 2,150 GP practices have been rated.

¹ The CQC provider handbooks are available at <http://www.cqc.org.uk/content/provider-handbooks>

Feedback on the new approach has been largely positive. Many stakeholders have welcomed the new approach the CQC is taking to regulate services.

In July 2015, the National Audit Office published a report on the CQC² and noted that 'Over the last two years the Commission has made substantial progress to change its regulatory model. It is developing a more intelligence-driven approach to regulation, relying more on data to target intervention. The Commission has designed a coherent model that sets out, in principle, connections between resources, activities, outputs and outcomes.'

In October 2015, the CQC published its State of Care Report 2014-15³ and reported that:

- 83% of all providers agree that the new inspections helped them to monitor the quality of care they provide;
- 73% of all providers said that a CQC inspection had helped to identify areas of improvement and 72% said that the inspection reports were useful; and
- 68% of all providers said that they thought that outcomes for people who use services were improved as a result of CQC inspection activity.

The CQC's new approach to regulation costs more than the model it replaced. The CQC will continue to use its costing, performance and evaluation evidence to ensure that it makes the best use of its resources, and provides value for money.

The CQC is required to consult on proposed changes to its fee charges, and its final scheme is subject to the consent of the Secretary of State for Health. It launched a consultation on proposals for its 2016-17 fee structure on 2 November 2015⁴. The CQC is not currently recovering all of its inspection costs through fees. In 2015-16, its overall resource to regulate providers is £224.4 million, while its fee income is expected to be £113.5m. The CQC has set out two options to achieve a full cost recovery position in either two or four years. It is difficult for the CQC to determine where its cost associated with registration and assessing compliance stop and where those related to providing a more rounded and comprehensive judgement of the quality of care start. This is because the inspection process and decisions on what rating to award are not easily separated into individual components.

Without the proposed regulation set out in this consultation, it would not be possible for CQC to recover all of its costs through fees.

² NAO Report – CQC : Capacity and capability to regulate the quality and safety of health and adult social care (appendix 1) <http://www.nao.org.uk/report/capacity-and-capability-to-regulate-the-quality-and-safety-of-health-and-adult-social-care/>

³ CQC State of Care Report 2014-15 <http://www.cqc.org.uk/content/state-care-report-launched-today>

⁴ <http://www.cqc.org.uk/content/health-and-social-care-fees-consultation>

Following the CQC consultation on its fee proposals, the CQC Board will make a recommendation to the Secretary of State who will consider along with the outcome of this consultation on scope of fees, in making his decision. The new fee scheme will come into effect on 1 April 2016, subject to that decision.

3. Government policy to fully recover costs of regulation

The CQC's budget is made up of a combination of grant-in-aid from the Government and income from fees paid by registered providers. Like all public bodies with fee-setting powers, the CQC 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 money⁵.

The CQC is currently consulting on proposals for fees that will move it to full cost recovery for those elements where, as required by HMT guidance (Managing Public Money). The aim is to be able to recover all its costs through fees except those elements which are not deemed as recoverable.

The proposed regulation change in this consultation does not alter the separate proposals in the CQC's consultation which concern changes to the actual level of fees charged.

⁵ Managing Public Money, chapter 6, available at <https://www.gov.uk/government/publications/managing-public-money>

4. What Section 85 of the Health and Social Care Act 2008 allows

The CQC's powers to charge fees are set out in section 85 of The Health and Social Care Act 2008 (the 2008 Act). The powers extend only to its registration functions under the 2008 Act.

Section 85 of the 2008 Act gives the CQC the power, with the consent of the Secretary of State, to charge a fee for the registration of providers. Section 85(1)(a) states that the CQC has power to charge for:

- an application for registration;
- the grant or subsistence of such registration; and
- an application to vary the terms of registration.

In addition, Section 85 contains a regulation making power which allows the Secretary of State for Health to give the CQC a power to include in its fee scheme any function under Part 1 of the 2008 Act.

The current power for CQC to charge fees relates to registration and is therefore limited to inspection against the registration requirements. The proposed regulation will allow the CQC to charge for all aspects of the new model of inspection.

5. Proposal to give the CQC a power to charge a fee for performance assessment under Section 46

Section 46 of the 2008 Act gives the CQC a power to carry out reviews and performance assessments of providers and services that are set out in regulations. However, since such inspections look beyond compliance with registration requirements, some components of the CQC's comprehensive inspections such as the rating element are not covered by the current fee raising power.

The Department proposes to make regulations so the CQC can charge for all aspects of the comprehensive inspections. We would do this through a regulation that enables the CQC to charge a fee for reviews and performance assessments under section 46 of the 2008 Act. A draft Statutory Instrument to implement this change is provided in Chapter 7.

This proposal will not extend the remit of the CQC's activity or the scope of reviews of performance assessments to additional providers or services. It will allow the CQC to reach a full-cost recovery system for such reviews by enabling it to charge for all aspects of its performance assessments including those that consider whether the quality of care is above that required by the fundamental standards.

6. Consultation questions

Q1. Do you agree with the proposal to bring the CQC's comprehensive inspections and any rating within its fee raising powers?

Q2. Do you think there are any other areas that the CQC should consider is within its fee raising powers?

A response form is provided in Chapter 8.

The closing date for the consultation is midnight Monday, 1 February 2016. The proposals in this consultation document apply to England only.

To respond to this consultation, you can:

Answer the questions on line at <https://consultations.dh.gov.uk/cqc-sponsorship/scope-of-cqc-fees>

Email your response to QRMailbox@dh.gsi.gov.uk

It would be helpful if responses were sent in Word format, rather than in pdf format.

Post your responses to:

Scope of CQC Fees Consultation

c/o Alex Joiner

Department of Health

Room 2E11

Quarry House

LEEDS

LS2 7UE

7. Draft Statutory Instrument

STATUTORY INSTRUMENTS

2016 No.

NATIONAL HEALTH SERVICE ENGLAND

PUBLIC HEALTH, ENGLAND

Care Quality Commission (Fees) (Reviews and Performance
Assessments) Regulations 2016

Made - - - -	2016
Laid before Parliament	2016
Coming into force - -	2016

The Secretary of State, having consulted the Commission and such other persons as the Secretary (a)of State thinks appropriate, makes these Regulations in exercise of the powers conferred by sections 85(1)(b) and 161(3)(b) of the Health and Social Care Act 2008(c).

Citation, commencement and interpretation

1. These Regulations may be cited as the Care Quality Commission (Fees) (Reviews and Performance Assessments) Regulations 2016 and come into force on 1st April 2016.

Prescribed functions

2. For the purpose of section 85(1)(b) of the Health and Social Care Act 2008 (fees)(d), the functions of the Commission under section 46(1) (reviews and performance assessments) of that Act are prescribed(e) functions.

Signed by the authority of the Secretary of State for Health

	Name
Address	Parliamentary Under Secretary of State
Date	Department

(a) See section 85(6) of the Health and Social Care Act 2008 for the requirement to consult.

(b) Section 161(3) has been amended by section 294(4) of the Health and Social Care Act 2012 (c.).

(c) 2008 (c.14).

(d) Section 46 was substituted by section 91(1) and (2) of the Care Act 2014 (c.23.).

(e) See section 97 of the Health and Social Care Act 2008 for the definition of “prescribed”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 85(1)(b) of the Health and Social Care Act 2008 (“the 2008 Act”) permits the Care Quality Commission, 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.

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) of that Act.

[A full impact assessment of the effect that the instrument will have on the costs of business and the voluntary sector is available from]

8. Consultation response form



Department
of Health

Bringing the Care Quality Commission's comprehensive inspections within scope of its fee raising power

A consultation on introducing regulations to allow the Care Quality Commission to include in its fee scheme the cost of inspections which look beyond registration requirements

Consultation on proposed new regulation to bring the Care Quality Commission's comprehensive inspections and any associated rating within the scope of its fee raising power.

Q1 Do you agree with the proposal to bring the CQC's comprehensive inspections and any rating within its fee raising powers?

Q2 Do you think there are any other areas that the CQC should consider is within its fee raising powers?