



Department
of Health

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

Government response to the 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

March 2016

<p>Title: Bringing the Care Quality Commission's comprehensive inspections within scope of its fee raising power</p>
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<p>Document Purpose: Government response to the 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: March 2016</p>
<p>Target audience: NHS Trusts, NHS Foundation Trusts, General Practices, Adult Social Care Providers, Independent Hospital Providers and related stakeholder organisations.</p>
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Government response to the 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

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1. Introduction

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 give the Care Quality Commission (CQC) a power to include in its fee scheme the cost of inspections which look beyond registration requirements.

The consultation explained how 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 with inspections now highlighting good and outstanding aspects of care. The inspections therefore look beyond what is needed for the purposes of assessing registration and are not therefore covered in their entirety in the fee setting power.

The proposal was not about changing the CQC's fee structure or the level of fees that it proposes to charge. Neither was 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 would, however, enable the CQC to move towards a full-cost recovery system for all aspects of its inspections.

When CQC is developing its fee proposals, it engages stakeholders and conducts a public consultation before presenting its proposals to the Secretary of State for Health. Under section 85 of the Health and Social Care Act 2008, the CQC is not able change its fee structure without the agreement of the Secretary of State for Health. This means the CQC is not able to increase its fees without regard to public consideration and the agreement of the Secretary of State, thus providing a check to the powers CQC holds over its fee raising powers.

The consultation was published on GOV.uk and conducted online at consultations.dh.gov.uk where further information about consultation responses is now available. The consultation asked two 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?

Having considered the views expressed during consultation, the Department intends to lay regulations in Parliament to extend the fee raising powers to cover all aspects of the CQC's comprehensive inspections by March 2016. These regulations will come into force on 1 April 2016.

2. Summary of Responses

The Department of Health (the Department) proposed to make regulations which would 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 fees scheme.

What we heard

The Department received 19 responses to the consultation, nearly all from representatives of health and care organisations. The consultation asked for responses to two questions. All respondents answered the first question and most commented on the second question.

Question 1. Do you agree with the proposal to bring the CQC's comprehensive inspections and any rating within its fee raising powers?

The majority of respondents did not support this proposal and cited various reasons and concerns. Respondents understood the proposal would mean higher costs to care providers and that less funding would come from central government to support the CQC. Many cited the CQC's consultation on fee proposals from 2016-17 and beyond, and made the link with the Department's consultation. These responses have been broken down under two broad headings in this document;

- Regulator's value for money; and
- Scope of inspection and fee levels.

Regulator's value for money

Your feedback

There was widespread comment on the proposed increase in the CQC fee levels in 2016-17 set out in its consultation document "CQC Regulatory Fees from 2016 - Consultation". It is not therefore surprising that respondents said that the CQC should become increasingly accountable to providers for its use of resources and the value it provides. A common theme was that the CQC should be more transparent about its costs; stay within budget; seek to make its inspections more efficient; and there should be a downward pressure on cost which could be passed on to providers. One respondent said there should be an independent mechanism for the social care sector to be able to challenge the CQC fee uplifts. Respondents commented that before any steps are taken to increase the CQC's fee raising powers, it is imperative that its model of regulation is independently and rigorously evaluated to determine the benefits to patient and service user outcomes.

Our Response

An effective regulator is vital in providing assurance that all providers of health and adult social care deliver acceptable levels of care. The CQC has made significant progress since 2013 to deliver the plans it has set out for its new inspection methodology and has taken steps in building its capacity and capability to be an effective regulator. The Chief Inspectors of hospitals, adult social care, and general practice have overseen the introduction of new inspection methodologies, which are better informed by data and intelligence. Inspections are therefore more focused and better able to identify both poor care and good practice.

The Department agrees that the CQC should demonstrate that it is becoming more efficient and be seen to be applying downward pressure on its costs wherever possible, rather than relying only on fee increases. Fee increases should not be made without this process being undertaken. The Department acknowledges the CQC's significantly increased workload since 2013 and has provided additional direct funding through grant-in-aid to support this.

The challenge going forward will be for CQC to maintain momentum in improving its regulatory effectiveness, and to develop evaluation systems that will enable it to demonstrate the effectiveness of the approach. This will allow further refinements to the approach in the future, to deliver greater protection for patients and service users from the risks of poor care. Unit costs of inspection should reduce as the inspection method becomes better established.

The CQC recognises the concerns of health and adult social care providers and that more needs to be done to account for its performance and be able to demonstrate value for money in its registration and inspection programmes. This is being addressed as part of business planning for 2016-17, which will include indicators and targets against which its performance will be reported in public to the CQC's Board at regular intervals.

The Department will work with the CQC to evaluate the effectiveness and cost of the new approach. The Department will continue to hold the CQC to account through the business planning process and quarterly and annual accountability reviews of its performance.

Scope of inspection and fee levels

You said

Several respondents thought the proposed regulation would give the CQC an open book to increase the scope and complexity of its inspections which would result in higher costs being passed on to providers. There was also interest in who would have the authority to monitor these increase charging powers. One respondent asked whether the CQC can increase its scope of inspection without any checks in the system since the CQC is an independent body.

Some respondents thought it would have been helpful to know the outcome the CQC future fee level consultation and final plans for its future strategy 2016-2021, before the Department's consultation. Some respondents thought there was not enough information, sufficiently defined in the consultation to decide whether to support the proposal. It appeared from a provider's

perspective to make it possible for the CQC to charge for unlimited activity provided this could broadly be described as part of an inspection process, such as thematic reviews and care in a place reviews.

Our Response

The CQC will remain an executive non-departmental public body accountable to the Secretary of State for discharging its functions, duties and powers efficiently and effectively. The proposed regulation does not change the accountability arrangements that the CQC has with the Department. The Department monitors the CQC's financial and operational performance and risks at a general and strategic level through regular formal accountability meetings. It does not assess the CQC's inspection or monitoring of specific providers.

The CQC Board has a key role in setting the direction for the CQC and in holding the regulator to account and is currently consulting on its strategy for 2016 – 2021 which sets this out in more detail and is available at <http://www.cqc.org.uk/content/2016-2021-strategy-consultation> . This outlines the way in which the CQC intends to carry out its statutory duties over the next five years and recognises the need to reduce costs. In this document the CQC state;

"We believe we can make significant savings over the next five years by improving.... systems and processes, including greater use of new technologies to help us to identify and reduce waste and duplication, and to standardise core activities.... We expect to see a reduction in our expenditure on inspections and registration as we improve our use of intelligence, and our underlying systems and processes."

In the last two years, the CQC has focused much of its resources on developing and implementing its new inspection methodology. Looking ahead it intends to continue improving the underlying processes it uses such as reporting and evidence collection. The CQC also plans to reflect on the information it now has about the quality of care in England in all sectors and uses this to focus on what it wants to achieve from inspections in the future and therefore how its approach might change. These proposals are likely to reduce the frequency with which the CQC inspect services and the size of inspection teams overall. This will help to target resources where risk is greatest and improvement is needed. The CQC's final strategy is due to be published in May 2016 and will link to its business plan for 2016-17.

The Department does not propose to extend the CQC's fee raising powers into new areas such as thematic reviews or beyond those outlined in this consultation document. Without such a power, the CQC is unable to charge a fee for these areas.

There is a legal check on scope and amount that the CQC may raise through fees. Under the 2008 Act, the CQC is responsible for developing, consulting on and setting its registration fees, subject to the approval of Secretary of State. When the CQC is developing its fee proposals, it engages stakeholders and conducts public consultations before presenting its proposals to the

Secretary of State for Health. The Secretary of State will either approve the fees scheme or hold further discussions with the CQC if he is not yet content to approve the scheme.

The CQC is required to set its fee levels for 2016-17 following consultation and agreement by the Secretary of State. The CQC's consultation on its fees to start from April 2016, started in November 2015 and ended in January 2016. The Department's consultation on scope of fees started in December 2015 ending in February 2016. The Department decided to start its consultation later than the CQC's consultation, to ensure providers were first able to consider the CQC's proposals and in the light of that respond to the Department.

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

Your feedback

Most respondents considered this question and all thought there was no reason to extend the fee raising powers into other areas. One respondent thought that the fee charged should be linked to the quality rating that is awarded, but would not be supportive of providers paying for additional inspections fees to perhaps improve its overall rating.

Our response

The Department does not propose to extend CQC's fee raising powers beyond those outlined in the consultation document. This consultation was not about the method of inspection carried out by the CQC, nor was 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 concerned 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. It is for the CQC to determine its methodology and proposals for setting the fee scales for providers. The CQC charges an annual registration fee which is not dependent on the rating a provider receives. There are no plans to change this. Any proposal to change this approach would be subject to consultation.

Impacts and inequalities

This policy proposal impacts all the CQC registered health and adult social care providers. The costs will not impact service users or any group of individuals. This policy will not disproportionately affect any one demographic or social group.

3. Conclusion

Conclusion

The consultation sought views on the proposal that the Department intends to bring performance assessments, and the comprehensive inspections that are carried out in support of these assessments, within the scope of the CQC's fee raising powers. Respondents were not in favour of the CQC increasing its fees in general; had concerns about value for money, and about the potential to increase the scope of inspections.

The Department maintains that 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 money. The Department's view is that there are sufficient safeguards in the current accountability arrangements with the CQC to hold it to account for the efficient and effective use of its resources, which in turn will mean that the CQC only raises fees necessary to cover the cost of its regulatory functions.

Subject to Parliamentary approval, the Government will now introduce a regulation that will give the CQC a power to charge fees for performance assessments and reviews carried out under Section 46 of the Health and Social Care Act 2008. A Statutory Instrument under Section 46 of the Health and Social Care Act 2008 will be laid in Parliament.

Next Steps

The regulations (found at Annex A) will now be laid before Parliament at the earliest possible opportunity. Subject to the will of Parliament, these regulations will come into force on 1 April 2016.

A full Impact Assessment has been produced for this instrument as there is a small impact on the private sector or civil society organisations. It has been produced in relation to the relevant provisions of the Act and a copy is available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS or at www.legislation.gov.uk

Annex A: Statutory Instrument

STATUTORY INSTRUMENTS

2016 No.

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

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

<i>Made</i>	- - - -	2016
<i>Laid before Parliament</i>		2016
<i>Coming into force</i>	- -	1st April 2016

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 85(1)(b) and 161(3)(a) of the Health and Social Care Act 2008(b).

In accordance with section 85(6) of that Act the Secretary of State has consulted the Commission(c) and such other persons as the Secretary of State considers appropriate.

Citation and commencement

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) the functions of the Commission under section 46(1)(d) (reviews and performance assessments) of that Act are prescribed.

Signed by the authority of the Secretary of State for Health

Address
Date

Name
Parliamentary Under Secretary of State
Department

-
- (a) Section 161(3) has been amended by section 294(4) of the Health and Social Care Act 2012 (c.7).
(b) 2008 (c.14) ("the Act") - see section 97 of the Act for the definition of "prescribed" and "regulations".
(c) The reference to "the Commission" is a reference to the Care Quality Commission - see section 1(1) of the Act which made provision for the establishment of the Commission.
(d) Section 46 was substituted by section 91(1) and (2) of the Care Act 2014 (c.23).

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 under Part 1 of the 2008 Act as are prescribed.

These regulations prescribe the Commission’s functions under section 46(1) of the 2008 Act for the purposes of section 85(1)(b) of that Act.

A full impact assessment of the effect that the instrument will have on the private sector and civil society organisations has been made. A copy of this impact assessment is available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS (www.gov.uk/government/organisations/department-of-health) and is published alongside this instrument and its Explanatory Memorandum at www.legislation.gov.uk.