

Care Quality Commission fee raising powers

Department of Health

RPC rating: **fit for purpose**

Description of proposal

The proposal has the aim of ensuring that the Care Quality Commission (CQC) has sufficient legal powers to charge fees to enable full cost recovery. Without the proposal CQC would face a funding shortfall as a result of reduced “grant in aid” funding from government and from costs associated with the expansion of regulatory activity following the Public Inquiry into Mid-Staffordshire NHS Foundation Trust (the Francis Inquiry).

The CQC responded to the Francis Inquiry by introducing a new comprehensive inspection regime. Legal advice received by the Department suggests that the CQC’s fee raising powers currently only cover inspection costs directly related to assessing compliance with registration requirements. Therefore, the Department believes the current fee raising powers do not provide sufficient legal certainty to enable full cost recovery in future. The proposed change to fee raising powers will ensure the CQC can charge for all aspects of the new inspection regime, such as the introduction of specialist inspection teams supported by clinical experts.

Impacts of proposal

The proposal will result in a range of fees being increased. This will affect health and social care providers in the public and private sectors. The IA presents a detailed breakdown of how the fee increases are expected to affect different types of provider and how the levels will change over time. The most significant increases will predominantly affect public sector providers, including NHS Trusts (£38.3 million each year by 2017/18) and GPs (£33.2 million each year by 2017/18). Using industry estimates for the proportion of providers that are private businesses in the remaining sectors (as well as 6% of GPs), the Department estimates that businesses will be charged an additional £39.1 million each year by 2017/18. As a result of this figure being lower in the first year, this would result in an estimated equivalent annual net cost (EANCB) of £35.2 million.

The Department’s assessment is that only a small proportion of this, £3.0 million in EANCB terms, would be in scope of the business impact target as it relates to an expansion in regulatory activity. The RPC is able to validate this element of the proposal as a qualifying regulatory provision.

Quality of submission

The IA sets out the details of the expected changes in fee levels and when they will take effect. The IA includes information on how the proposal has changed following consultation, for example the preferred option is now a two year transition to full cost recovery rather than the four year transition proposed in the consultation, and explains how these changes are expected to affect the costs to business.

The RPC's previous opinion on the proposal discussed the methodological issue of whether the fee increases should be considered in scope of the business impact target. Those elements of the fee increase intended to meet the increased costs of the 'experts by experience' inspections clearly relates to an expansion of the scope of regulation. However, except for a small proportion of the fee, this relates to a change in scope that took place during the previous parliament. This means the majority of the expansion in the scope of regulation took place prior to the commencement of the business impact target.

Following the previous opinion, the IA now clearly discusses which elements of the fee changes relate to expansions of the inspection regime since May 2015. The CQC has clarified that all the businesses that the relevant fee changes apply to will fit within the independent community healthcare providers section of the modelling. The Department states that this may result in an overestimate of the costs, as some providers in the group may have been subject to new style inspections prior to May 2015, but the increase in fees of £27 million over ten years (£3.0 million in EANCB terms) is the most robust estimate of the costs that will score in the Government's business impact target.

The RPC notes that the majority of the costs will not be reflected in any regulatory account as a result of the timing of the changes, but recognises that this treatment is consistent with the requirements of the Small Business, Enterprise and Employment Act 2015.

While the RPC recognises that there is no intention to revisit the balance of the previous One-in, Two-out account, it notes that it is only the timing of the fee increase that avoided a significant proportion of the additional £30 million annual cost being included in the government account for the previous parliament.

The IA presents a range of potentially significant societal benefits that depend on how providers respond to the increased fees and the marginal health benefit of spending in the NHS compared to other settings. This results in a significant range of potential benefits (£0 - £1,160 million in net present value terms). The RPC notes that these have been provided for illustrative purposes, and that the Department

recognises, due to the assumptions and uncertainty involved, it is not possible to state robustly where in this range the value of the expected benefits will fall.

Small and micro business assessment

The small and micro business assessment has been strengthened following the RPC's previous opinion and is sufficient. The IA now includes further detail on the proportion of affected sectors that are made up of small and micro businesses. Using several different sources, the Department estimates that between 85% and 94% of providers would be considered small or micro businesses. The IA explains that fees are broadly related to the size of the business (for example in relation to the number of premises). The proposal will also not change how the CQC structure their fees, only the overall amount.

Initial departmental assessment

Classification	Qualifying regulatory provision (IN); and fees and charges
Equivalent annual net cost to business (EANCB)	£3.0 million (qualifying) £35.2 million (fees and charges)
Business net present value	-£319 million
Societal net present value	Illustrative range of £0 to £1.16 billion

RPC assessment

Classification	Qualifying regulatory provision (IN); and fees and charges
EANCB – RPC validated ¹	£3.0 million (qualifying) £35.2 million (fees and charges)
Small and micro business assessment	Sufficient



¹ For reporting purposes, the RPC validates EANCB figures to the nearest £100,000.

Opinion: final stage IA
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Michael Gibbons CBE, Chairman

Martin Traynor (Committee member) did not participate in the scrutiny of this case to avoid a potential conflict of interest.