

**EXPLANATORY MEMORANDUM TO**  
**THE CARE QUALITY COMMISSION (REVIEWS AND PERFORMANCE**  
**ASSESSMENTS) REGULATIONS 2014**

**2014 No. 1788**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 Section 46 of the Health and Social Care Act 2008 (“the 2008 Act”) as amended by section 91(2) of the Care Act 2014 imposes a duty on the Care Quality Commission (“the CQC”) to conduct performance assessment reviews of the carrying on of such registered service providers and such regulated activities as may be prescribed and to publish reports of such assessments. These regulations made under that power prescribe both the registered service providers and regulated activities of which the CQC must conduct and publish performance assessments.
  - 2.2 Regulation 2 prescribes both the service providers (which are registered with CQC) and the regulated activities carried out by those service providers which are to be subject to such performance assessment reviews. No performance assessments are required to be carried out in relation to prescribed regulated activities provided in prisons.
  - 2.3 Regulation 3 requires the Secretary of State to review the operation and effect of these Regulations and publish a report before Parliament no later than five years after the regulations come into force and in every ensuing five year period. Following the review, it will fall to the Secretary of State to consider whether the Regulations should remain as they are, be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The 2008 Act established the CQC and gave it functions to regulate health and social care services in England through registration, review and investigation functions. The review functions included the carrying out of periodic reviews of health care provided by or commissioned by English NHS providers and the provision of adult social services provided or commissioned by English local authorities.
  - 4.2 The Health and Social Care Act 2012 (“the 2012 Act”) removed the duty for CQC to review English NHS providers. However, this repeal has only been commenced insofar as it relates to Primary Care Trusts (PCTs) which were themselves abolished by the 2012 Act. In relation to other sectors this repeal

was not commenced pending a review by the Nuffield Trust commissioned by the Secretary of State as to whether aggregate ratings of providers' performance should be used in health and social care (see paragraph 6.2 below). In the light of this review and the Government's response, the Government amended CCQ's performance assessment responsibilities in section 91(2) of the Care Act 2014.

- 4.3 This amends section 46 of the 2008 Act by placing a duty on CQC to carry out such assessments of any regulated activity and registered service provider as to be prescribed in regulations. Accordingly, CQC's duty to undertake periodic reviews relates only to the provision of such regulated activities by such providers as may be prescribed and not the commissioning of such services.
- 4.4 Any performance review of health or social care commissioning would be undertaken under CQC's powers of special review under section 48 (as amended by section 91 of the Care Act 2014.)
- 4.5 The purpose of defining the scope of performance assessments through the regulations is to focus such reviews on those providers where reports of their performance will be of the greatest benefit to service users and commissioners. In addition, defining the scope of the new performance assessment system through regulations enables increased flexibility for CQC to focus its assessments on those providers and services which are of the most interest or concern.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

The Minister of State for Care Services has made the following statement regarding Human Rights:

“In my view, the provisions of the Care Quality Commission (Reviews and Performance Assessments) Regulations 2014 are compatible with the Convention rights.”

## **7. Policy background**

- 7.1 The Government has amended, through the Care Act 2014, both the scope of periodic performance assessments to be undertaken by CQC and the method by which such reviews are to be devised. These changes are part of a wider policy objective to give CQC greater independence from Government and encourage greater engagement and ownership of regulation by the health and social care system.
- 7.2 While a significant amount of information is available on organisations providing health and adult social care in England, there is currently no aggregate 'performance rating' to summarise and compare the performance of organisations or the services provided. The Secretary of State for Health commissioned the Nuffield Trust, to review whether aggregate performance

ratings of providers should be used in health and social care, and if so how best this might be done. The Nuffield Report, *Performance rating providers for quality: a policy worth pursuing?*<sup>1</sup> published 22<sup>nd</sup> March 2013, set out advice on an aggregate performance rating for GP practices, hospitals, care homes and domiciliary care providers based on information that matters to patients and service users.

- 7.3 In response to the report the Secretary of State<sup>2</sup> committed to legislate to give the CQC the power to devise a system of performance ratings for health and social care providers. This removed the Secretary of State's power to direct, devise and approve both the quality standards and methodology to be adopted in such reviews, as there was a perceived concern from stakeholders as to the extent of ministerial involvement in the setting of these standards. Instead, it would be for CQC to devise the quality standards and methodology in consultation with the Secretary of State and those key stakeholders that CQC considered appropriate.
- 7.4 The scope of performance assessments is now to be set through regulations. This allows the Secretary of State the flexibility to focus CQC's duty to undertake performance ratings on those services and providers where it would have the greatest benefit in informing patients, the public and commissioners. This may change over time. The flexibility to set the scope of performance ratings through regulations also means that any additional workload required to deliver them can be matched to CQC's resource capacity and the CQC's new model for inspecting and regulating service providers.
- 7.5 By virtue of Regulation 1, these Regulations come into force on 1<sup>st</sup> October 2014. This means that CQC will be under a duty to undertake performance ratings of those registered services providers and those regulated activities which such providers carry on as prescribed by Regulation 2 and the Schedule to these Regulations.
- 7.6 CQC is required to undertake consultation with the Secretary of State and such other persons as CQC considers appropriate in relation to the indicators of quality against which registered service providers are to be assessed and the method by which it is to undertake performance assessments.<sup>3</sup> By virtue of section 46(11) of the 2008 Act as amended by section 91(2) of the Care Act 2014<sup>4</sup>, consultation undertaken by CQC before commencement of this section is as effective as consultation undertaken after that commencement for the purposes of such consultation. CQC has indicated through its consultation documents<sup>5</sup> that it will be ready to start assessing providers as of 1<sup>st</sup> October 2014.

---

<sup>1</sup> <http://www.nuffieldtrust.org.uk/publications/rating-providers-quality>

<sup>2</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/170701/Patients\\_First\\_and\\_Foremost.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170701/Patients_First_and_Foremost.pdf) - page 17 paragraph 14

<sup>3</sup> Section 46(7) of 2008 Act as inserted by section 91(2) of the Care Act 2014.

<sup>4</sup> Section 91(1) and (2) is commenced for the purposes of making regulations as of 7<sup>th</sup> July 2014 and for all remaining person as of 1<sup>st</sup> October 2014: see Article 2(b) and 4 of S.I. 2014/1714.

<sup>5</sup>

[http://www.cqc.org.uk/sites/default/files/documents/cqc\\_newstartresponse\\_2013\\_14\\_tagged\\_sent\\_to\\_web.pdf](http://www.cqc.org.uk/sites/default/files/documents/cqc_newstartresponse_2013_14_tagged_sent_to_web.pdf)

- 7.7 Regulation 2 prescribes both the service providers registered with the CQC and the regulated activities carried out by such service providers which are to be subject to performance assessment reviews; save for those provided in prisons. The providers are set out in the first column of the Schedule and the regulated activities they provide which are to be subject to performance review in the corresponding entries in the second column.
- 7.8 This focuses the scope of performance ratings on all social care providers who have to be registered with CQC to provide residential accommodation with nursing care or personal care and those providers required to be registered who provide nursing care or personal care in a person's home.
- 7.9 In relation to healthcare, all hospital services which are required to be registered with CQC are to be subject to performance assessment except fertility services licensed and regulated by the Human Fertilisation and Embryology Agency (HFEA). Accordingly, all hospital services (including acute, community, mental health and ambulance services) provided by NHS Trusts, NHS Foundation Trusts and independent hospitals, including Independent Sector Treatment Centres and hospices, are to be assessed. In addition, all those regulated activities provided by NHS primary medical services (e.g. GP practices) are also to be assessed.
- 7.10 The reason for not including human fertility services in the scope of performance ratings at this time is that CQC only regulates a small part of the activity of these providers with the majority overseen by the HFEA. CQC would therefore be basing its rating on the small part of the activity which it regulates in this sector. Further work is required with the HFEA to determine how a rating for human fertility service providers could work.
- 7.11 Regulation 2 excludes the prescribed regulated activities provided by the prescribed service providers from the scope of reviews where they are provided in prisons. A performance rating might be helpful to the commissioners of these services, but only if it can be uniformly awarded to all providers in the sector and at present, not all prison healthcare is regulated by CQC. Further work is required to determine how a rating for prison healthcare could work.
- 7.12 The nature of the enabling powers in section 91(2) of the Care Act 2014 are such that any providers not prescribed are not within the scope of performance assessment reviews. The Department of Health will keep the scope of performance assessment under review, taking into consideration advice from CQC and other stakeholders as to whether other provider types are suitable for inclusion in the scope of performance assessments. By virtue of Regulation 3, the Secretary of State is required to undertake a review and publish a report as to the extent to which the scope of performance assessments as set by these Regulations is achieving the intended objectives.

## **8. Consultation outcome**

8.1 The Secretary of State is not required to undertake a consultation in relation to these regulations.

8.2 As CQC has indicated (see paragraph 6.6 above), it is already preparing to undertake performance reviews of NHS Hospitals, GPs, Social Care and Independent Hospitals from October 2014 and has also published for consultation its methodologies for assessing and rating providers, we do not believe additional consultation is required

## **9. Guidance**

9.1 In accordance with its duty under section 46 of the 2008 Act (as amended by the Care Act 2014) CQC has published guidance for consultation on how it will rate, inspect and monitor providers. This consultation closed on 4<sup>th</sup> June 2014 and following analysis of the comments received, final guidance will be published in September 2014.

9.2 Copies of the draft guidance are available on CQC's website <http://www.cqc.org.uk/public/get-involved/consultations/consultation-how-we-regulate-inspect-and-rate-services#Handbooks> and can also be made available on request

## **10. Impact**

10.1 The Department of Health published a partial impact assessment on the performance assessment and review legislation for the passage of the Care Act 2014 through Parliament. This impact assessment is attached for information, but concluded that there would be no direct impact on businesses above and beyond the requirements already in place under the 2008 Act. The potential indirect impacts, such as the effect on provider reputation, were considered but not quantified as it was recognised that these impacts could be both positive and negative. The Department will work with CQC to ensure that the impact of performance assessments is fully understood..

10.2 The IA took the view that, as the performance assessments and reviews are an end product of CQC's regulation and inspection processes, the implementation would be an operational matter for the CQC, and the costs borne as part of CQC's overall regulation and inspection methodology. The CQC's development of its new approach to inspection began in mid 2013 and incorporated the proposals, made by the Secretary of State, that CQC should publish performance ratings of providers (announced in March 2013 in response to recommendations made by the Nuffield Trust in its report "*Rating Providers for Quality: A Policy Worth Pursuing*."<sup>6</sup>). CQC is currently refining its methodologies and costs for regulation and inspection, including ratings (in social care and General Practice as well as hospitals).

10.3 Finally, the IA also identified impacts on patients and service users and on commissioners. In both cases, improved information about performance was expected to improve choice and transparency for these groups. As

---

<sup>6</sup> <http://www.nuffieldtrust.org.uk/publications/rating-providers-quality>

discussed above, these assumptions will be tested via a formal evaluation of ratings in due course.

**11. Regulating small business**

11.1 The regulations will apply to small businesses.

**12. Monitoring & review**

12.1 The Department will keep the regulations under review in order to keep them up-to-date and relevant, to take account of changes in delivery of care and to ensure that the burden on business is justified and proportionate. The regulations commit the Department to carry out a review every five year period, and set out the conclusions of the review in a report. The first report must be published before 1st October 2019.

**13. Contact**

Giles Crompton-Howe at the Department of Health, tel: 0113 254 5715 or email: [giles.crompton-howe@dh.gsi.gov.uk](mailto:giles.crompton-howe@dh.gsi.gov.uk) who will be able to answer any questions about the instrument.