

**EXPLANATORY MEMORANDUM TO**  
**THE CARE QUALITY COMMISSION (REVIEWS AND PERFORMANCE**  
**ASSESSMENTS) (AMENDMENT) REGULATIONS 2017**

**2017 No. 914**

**1. Introduction**

- 1.1 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. The Care Quality Commission (Reviews and Performance Assessments) Regulations 2014 (“the 2014 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 This instrument amends the Schedule in regulation 2 of the 2014 Regulations and updates existing cross references to revoked Regulations to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Since the CQC began its new approach to inspections and publishing ratings for NHS Hospitals, GPs, social care providers and independent hospitals in 2014, it has been working to apply its new approach to inspections to other provider sectors. These are sectors where the Department of Health and the CQC believe that a rating will add value, assist the public in making choices about which services to use or provide assurance of the quality of services.
- 4.2 The Department of Health published the independent report ‘The Review of the Regulation of Cosmetic Regulations’ in April 2013, which included recommendations to improve inspection of cosmetic surgery providers by the CQC. In his written answer to a Parliamentary Question in March 2017 (House of Commons PQ 66854) the Minister of State for Health stated the Government’s intention to extend performance ratings to this sector by October 2017.

- 4.3 In a separate written answer to a Parliamentary Question in May 2017 (House of Commons PQ 71539) the Parliamentary under Secretary of State for Public Health and Innovation stated the Government's intention to bring forward regulations to extend performance ratings to private abortion clinics.
- 4.4 Regulation 2 and the Schedule of the 2014 Regulations prescribes both the service providers (which are registered with the CQC) and the regulated activities carried out by those providers which are to be subject to performance assessment reviews. These Regulations extend the registered service providers and regulated activities in respect of which the CQC must conduct and publish performance assessments, which is set out in the Schedule.
- 4.5 The Department of Health consulted on these proposals, but has not given effect in these regulations to all the proposals which were consulted. This is because the consultation may have failed to engage all providers who could have been brought within scope of the rating regime had it done so. The Department of Health's present intention is that all providers of regulated activities should eventually be brought within ratings (with the exception of a small number of services which are already rated by other agencies, where patient choice is restricted or where it considers it is not feasible to rate sectors because of operational constraints). The Department of Health is consulting on the introduction of further regulations to encompass these additional areas and enable the rating of more complex service types that might emerge in the future.

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

- 5.1 The extent of this instrument is England.
- 5.2 The territorial application of this instrument is England.

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

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Section 46 of the Health and Social Care Act 2008 (as amended by the Care Act 2014) places a duty on the CQC to carry out reviews, and assess and publish a report of its assessment, of the performance of such regulated activities and registered service providers as are prescribed. The assessment must be by reference to indicators of quality devised by the CQC and is provided by the CQC in the form of a rating of performance. By regulation 20A of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936) a service provider who has received a rating of its performance must display its most recent rating on its website and at its premises.
- 7.2 When ratings were introduced in 2014 by means of the 2014 Regulations the focus was on ensuring that the CQC provided ratings for those sectors where a rating would have the most benefit. This was limited to NHS Trusts and NHS Foundation Trusts, GP practices, adult social care providers and independent hospitals. As at 31 December 2016, the CQC had given ratings to more than 26,000 locations and providers. In April 2017 the CQC published its 'Review of CQC's impact on quality

and improvement in health and social care'. Across all sectors significant proportions of providers with poor ratings demonstrated an improvement in rating upon inspection. The CQC will continue to explore whether the public and commissioners use the CQC evidence and ratings when making decisions about care, what influences this and what effect it has

- 7.3 The Government would now like to see performance assessments and the publication of ratings applied to some other regulated activities which currently are only within scope if they are carried out by the providers referred to in paragraph 7.2. These are the regulated activities of:
- Surgery which is cosmetic surgery requiring intravenous sedation, general anaesthesia or the insertion of an implant
  - Transport (and treatment of disease disorder and injury and surgical procedures carried out in connection with that activity)
  - Treatment of disease disorder or injury to the extent that it is dialysis treatment
  - Surgery which is refractive eye surgery
  - Accommodation for persons who require treatment for substance misuse and treatment for disease disorder and injury and diagnostic and screening procedures to the extent that it is provided in connection with the diagnosis and treatment of drug or alcohol misuse
  - Termination of pregnancy
- 7.4 We estimate that less than 1,000 additional providers might be subject to ratings as a result of the policy. Rating of these sectors will support individual choice and / or help commissioners when deciding from whom to contract services.
- 7.5 There was national media interest when the consultation on these changes was launched in August 2016, with most attention falling on the proposals of inspecting cosmetic surgery and termination of pregnancy services.
- 7.6 The final report of the Review of the Regulation of Cosmetic Interventions led by Professor Sir Bruce Keogh, published in April 2013 recommended that 'Providers should be required to notify the public on their websites of any CQC inspection concerns or notices.' Extending ratings of providers to this sector combined with the requirement to display the rating is consistent with this recommendation and will provide fuller information on the safety and quality of services provided.
- 7.7 However, the Regulations will restrict rating to cosmetic surgery procedures requiring intravenous sedation, general anaesthesia or the insertion of an implant. Other regulated activities falling under the heading of 'cosmetic surgery' are considered to be of relatively lower risk and are subject to a lesser frequency of inspection than other providers in this sector. This would not support a rating regime that reflected a sufficiently current state of quality for this group of providers.
- 7.8 Transport services provided other than by an NHS Ambulance Trust may provide many of the same services, although they do not receive 999 calls. They provide a higher proportion of non-urgent and non-specialist services and patient transport services between places for care and treatment. Ratings will support individual choice where available in their locality and also help commissioners when deciding from whom to contract services.

- 7.9 Dialysis units which operate outside of hospitals, and are run by independent sector organisations will be brought within the ratings regime. For individuals using the services of an independent dialysis unit, whether through choice or due to links with their local acute trust, ratings will improve awareness of the quality and safety of services which often care for people for a significant period of time.
- 7.10 Refractive eye surgery is the process of improving vision through surgery and is carried out to the eye to correct refractive error. Laser eye surgery is the most common form for refractive eye surgery but the surgery can also take other forms such as full lens replacement. Refractive eye surgery is most commonly accessed privately, through independent sector providers and high street opticians. In a limited number of cases, where correction of sight by glasses or lenses is not possible, patients can be referred for surgery through the NHS. Rating of this sector will support individual choice.
- 7.11 Substance misuse treatment for people with drug and alcohol misuse problems is offered by different types of providers, in both the NHS and independent sector. Ratings of all providers who provide treatment in this sector will provide clearer information on the quality of services for individuals seeking help with drug or alcohol misuse problems and for commissioners of services.
- 7.12 The NHS provides termination of pregnancies, but individuals may prefer to go to an independent provider. Access to clear information about the quality of those services will be of considerable help in making an informed choice.

## **8. Consultation outcome**

- 8.1 The Department of Health undertook a consultation from 22 August to 14 October 2016 seeking views on proposed changes to CQC performance assessment regulations to include ratings for the additional sectors of cosmetic surgery providers, independent community health service providers, independent ambulance services, independent dialysis units, refractive eye surgery providers, substance misuse centres and termination of pregnancy services.
- 8.2 It received 140 responses from a range of organisations including NHS trusts, Royal Colleges, regulators, charity and voluntary sector organisations, clinicians and individual members of the public. The majority of the responses were supportive of these proposals. However, the Department of Health has concerns about the diversity of services provided by organisations in independent community health sector and the need for more information to clarify which providers were included in this sector. Therefore, the Department of Health has deferred the bringing into rating of this sector until it has consulted on a further set of regulations that would bring all providers into rating with a small number of exceptions.
- 8.3 Further information can be found in the Department of Health's response to the consultation at [www.gov.uk](http://www.gov.uk).

## **9. Guidance**

- 9.1 The CQC will publish guidance for consultation on how it will rate, inspect and monitor providers falling within the scope of this and subsequent regulations following the coming into force of the second set of regulations.

## **10. Impact**

- 10.1 The Department of Health expects there to be minimal impact on the business, charities or voluntary bodies brought into ratings by these regulations, above and beyond the requirements already in place under the 2008 Act. The principal impact will be associated with Regulation 20A of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 under which providers must ensure that their rating(s) are displayed conspicuously and legibly at each location delivering a regulated service and on their website (if they have one). The main costs associated with the proposal are the costs to providers of displaying their ratings. 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 of Health will work with the CQC to ensure that the impact of performance assessments is more fully understood.
- 10.2 There will be some additional costs to the CQC arising from the implementation of the regulations, but this will not be significant and will be absorbed into the current fees structure, with no transfer of costs to providers.
- 10.3 Finally, the Department of Health has considered the impacts on patients and service users and on commissioners. In all cases, improved information about performance is expected to improve choice and transparency for these groups.
- 10.4 An Impact Assessment is published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people) CQC has developed a ratings display toolkit to help providers meet the requirement to display their ratings on their premises and online.
- 11.3 The proposed requirement would apply equally to providers of all sizes, and no exemptions are proposed for small and micro businesses as doing so would undermine the objective of the policy, which is to maximise public awareness of ratings and ensure that information on the CQC ratings is as easily accessible and available to the public as possible. See Paragraph 60 of the Impact Assessment.

## **12. Monitoring & review**

- 12.1 The Department of Health 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 2014 Regulations commit the Department of Health 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**

- 13.1 Any queries regarding this instrument should be referred to Paul Stonebrook at the Department of Health. Telephone: 0207 210 4936 or email: [paul.stonebrook@dh.gsi.gov.uk](mailto:paul.stonebrook@dh.gsi.gov.uk).