

## EXPLANATORY MEMORANDUM TO

### THE CARE QUALITY COMMISSION (FEES) (REVIEWS AND PERFORMANCE ASSESSMENTS: INTEGRATED CARE SYSTEM) REGULATIONS 2023

2023 No. 603

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

#### 2. Purpose of the instrument

- 2.1 These regulations bring the Care Quality Commission (CQC)'s duty to review and assess Integrated Care Systems (ICSs) within the scope of its fee-raising powers.

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

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

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 Section 31 of the Health and Care Act 2022 commenced on 1 April 2023 and inserts section 46B into the Health and Social Care Act 2008 (2008 Act). Section 46B of the 2008 Act gives CQC a new duty to review and assess ICSs. These regulations bring the new reviews within the scope of CQC's fee raising powers (set out in section 85(1)(b) of the 2008 Act).

#### 7. Policy background

##### *What is being done and why?*

- 7.1 As recommended by the Health and Social Care Committee, the Government amended the Health and Care Act 2022 during its passage through Parliament to introduce reviews of ICSs by the CQC, the independent regulator of health and adult social care in England. The intention is for the reviews to provide the public and the organisations within the ICS with independent assurance of how their ICS is performing and in particular of the effectiveness of joined up working and integration.

## ***Explanations***

### *What did any law do before the changes to be made by this instrument?*

- 7.2 Under Section 85(1)(b) of the 2008 Act, the CQC can (with the consent of the Secretary of State) require English NHS bodies, English local authorities and registered providers (health and adult social care providers registered with CQC) and such other persons as may be set out in regulations to pay a fee in respect of functions specified in regulations.
- 7.3 The only functions that CQC can currently charge for under this section are reviews and performance assessments of providers (under section 46(1) of the 2008 Act). These were brought within CQC's fees-charging powers by the Care Quality Commission (Fees) (Reviews and Performance Assessments) Regulations 2016.

### *Why is it being changed?*

- 7.4 Section 46B of the 2008 Act (inserted by section 31 of the Health and Care Act 2022) gives CQC the new function to review and assess the performance of ICSs. As the CQC is a fees-charging regulator, under HMT's Managing Public Money guidance there is an expectation that it will recover its costs via appropriate fees.
- 7.5 CQC does not currently have the legal power to charge fees for ICS reviews and assessments. These new regulations enable the CQC to charge for this new function.

### *What will it now do?*

- 7.6 This instrument will enable the CQC to charge the fees necessary to undertake cost recovery by including ICS reviews and assessments as a function for which it can charge fees under section 85(1)(b).

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Consolidation is not required.

## **10. Consultation outcome**

- 10.1 Under section 85(6) of the 2008 Act, before making any new regulations under the section, the Secretary of State must consult the CQC and 'such other persons as the Secretary of State thinks appropriate'.
- 10.2 The Secretary of State consulted the CQC on plans to make these regulations. The Chief Executive of the CQC responded, confirming that he agrees with the proposal to bring reviews and assessments of ICSs within CQC's fee raising powers. Consideration was given as to whether other persons should be consulted. As CQC's new duty to review ICSs was within the Health and Care Act and as the principle of cost recovery is a long-held Government policy, the Secretary of State did not consider it appropriate to consult more widely.

## **11. Guidance**

- 11.1 Guidance is not required.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because they are enabling regulations carrying no inherent cost or burden.
- 12.4 Any fees set under section 85(1)(b) of the 2008 Act are subject to consultation (section 85(4)) and to Secretary of State approval (section 85(1)). The CQC routinely publishes an equalities impact assessment to accompany its fees consultations.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 As the instrument is enabling legislation and does not introduce any policy, procedure or duty, no monitoring or review is needed.

## **15. Contact**

- 15.1 Alex Pyle at the Department of Health and Social Care: email: alex.pyle@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Samantha Boyd, Deputy Director for System Delivery, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Helen Whately MP, the Minister of State for Social Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.