Department of Health

Consultation on the regulations for Healthwatch England Membership

NHS

DH INFORMATION READER BOX

Policy	Clinical	Estates
HR/Workforce	Commissioning Development	IM&T
Management	Provider Development	Finance
Planning/Performance	Improvement and Efficiency	Social Care/Partnership Working

Document purpose	Consultation/Discussion
Gateway reference	17159
Title	Consultation on the regulations for Healthwatch England Membership
Author	DH/People, Communities and Local Government/Healthwatch
Publication date	**26 January 2012**
Target audience	Local Authority CEs
Circulation List	Communications Leads, Voluntary Organisations/NDPBs, LINks members
Description	This is the consultation document for the 6 week consultation being conducted regarding the membership of Healthwatch England. The responses will be collated, and the Department's response will be published in early summer.
Cross-reference	n/a
Superseded docs	n/a
Action required	n/a
Timing	**Responses are invited to the consultation by 2 March 2012**
Contact details	Helen Jones Healthwatch LG05 Wellington House 133-155 Waterloo Road SE1 8UG 739624530
For recipient's use	

Contents

Introduction

The purpose of this document is to gather the views of the public regarding aspects of the membership of Healthwatch England. Your views will influence the development of the policy on membership, which will be governed by regulations to be made under powers conferred by the Health and Social Care Bill, which is currently before Parliament.

Healthwatch England Explained

- Healthwatch England will be a national body that enables the collective views of the people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services to be heard.
- It is intended that Healthwatch England will be a statutory committee of the Care Quality Commission (CQC) and it is intended that the Chair of Healthwatch England will be a member of the CQC Board.
- It is intended that Healthwatch England will have its own identity within the CQC, and will have support from the CQC's expertise and infrastructure.
- Healthwatch England is intended to be established in October 2012.

We need your views

The fundamental purpose of Healthwatch England is to be a national body that enables the collective views of the people who use health and social care services to influence national policy, advice and guidance. This document sets out the policy aims of Healthwatch England, and seeks to gather your views about aspects of the membership of Healthwatch England.

About Healthwatch England: the policy

The White Paper *Equity and excellence: Liberating the NHS* (July 2010) and the Department's response *Equity and excellence: legislative framework and next steps* (December 2010) set out the Government's intention to "put patients and the public first" by establishing Healthwatch England as the national champion to strengthen the collective voice of patients and the public.

The Health and Social Care Bill 2011 therefore proposes that Healthwatch will be the new consumer champion for both health and social care. The Bill is currently undergoing parliamentary scrutiny and debate, and, if it receives royal assent, will become an Act of Parliament. The reference to functions exercisable by Healthwatch England below is therefore subject to the passage of the Bill through Parliament.

Once established, as proposed, in October 2012, Healthwatch England will have three main functions:

1. It will provide leadership, guidance and support by way of advice and assistance to local Healthwatch organisations; this will help to create greater consistency across local Healthwatch organisations, for example through the sharing of best practice.
2. It will be able to escalate concerns about health and social care services raised by local Healthwatch, users of services, and members of the public to CQC. CQC will be required to respond in writing to advice provided by Healthwatch England.
3. It will be able to provide information and advice (which could include recommendations and reports) to the Secretary of State, NHS Commissioning Board, Monitor and the English local authorities. The recipients of Healthwatch England's advice will be required in law to respond to Healthwatch England in writing.
4. In addition, the Secretary of State for Health will be required to consult Healthwatch England on the mandate to the NHS Commissioning Board.

Key Healthwatch England Issues

From engagement with stakeholders, the following key issues arise in relation to Healthwatch England. This section provides further information on:

1. **Independence of Healthwatch England**
2. **Location of Healthwatch England within CQC**
3. **Relationship between the Chair of Healthwatch England and CQC**

1. Independence of Healthwatch England

Like all public bodies CQC has a corporate governance framework, which Healthwatch England will be required to comply with, but it will have operational independence from CQC. CQC and the Department will ensure that Healthwatch England will receive sufficient resources to deliver its work programme.

Healthwatch England will set its own strategic priorities, based on feedback from local Healthwatch organisations and others, such as national voluntary organisations and local community groups. Healthwatch England will have editorial independence, i.e. in acting as the national champion, Healthwatch England will collate and formulate a national view, and present it either verbally or in writing. It will produce and publish its own reports, independent of the CQC (even where they are commenting on the same issues or responding to the same consultations).

Healthwatch England must present an annual report to Parliament on the way it has exercised functions during the year. This will be a distinct report by, and the responsibility of, Healthwatch England. The Healthwatch England annual report will be published, sent directly to local Healthwatch organisations, and will thus be available for the public to access.

2. Location of Healthwatch England within CQC

Healthwatch England will be key to enabling the collective views and experiences of people who use services to influence national policy, advice and guidance. Establishing Healthwatch England as a committee of CQC will help strengthen links between patient/public views and regulation, and better enable CQC to address failings in the quality and safety of care by enriching the evidence used to regulate services. This information – alongside other data that it gathers – will also inform the CQC's risk management systems at a local level and the CQC's national work such as special reviews.

Though Healthwatch England will have its own identity within the CQC, it will be able to benefit from the efficiencies that are created if support and infrastructure are provided by CQC. For example, provision of CQC resources to support Healthwatch England's corporate infrastructure in areas such as HR and facilities management, finance and IT will enable Healthwatch England to focus on its core functions without having to concern itself with the administrative and operational responsibilities of an organisation.

CQC will also be able to offer Healthwatch England valuable expertise in data management, gathering and use of intelligence, analysis, and an evidence base of information about services across the country. Whatever arrangements are made for sharing policy knowledge or pooling intelligence, Healthwatch England will retain the ability to reach its own conclusions and publish its own findings and advice.

People who use services are at the heart of CQC's work, and their views and experiences are already integral to the delivery of regulatory functions. For instance, regulatory methodologies and tools are developed with input from people who use services, the Acting Together programme involves people who use services, i.e. "experts by experience", in inspections of care services, and the Speak Out Network brings in views from "hard to reach" groups across the country. Healthwatch England therefore will add value in acting as the national champion.

3. Relationship between the Chair of Healthwatch England and CQC

It is intended that the Chair of Healthwatch England will be a member of the CQC Board. In carrying out their primary function in relation to the work of the committee in representing the views and experiences of patients, service users, carers and the public, they will need to exercise independence of judgement and will report to the Secretary of State. As a member of the CQC Board, the Chair of Healthwatch England will report to the CQC Chair, and observe the corporate behaviours of a CQC Board member, but s/he will exercise independence in the operation of Healthwatch England, which will be governed by a formal arrangement between CQC and Healthwatch England.

As a member of the CQC board, the Chair of Healthwatch England will play a full role in developing and directing the CQC, and will add an extra dimension to CQC's work. It will be necessary for the Chair of Healthwatch England and the Chair of CQC to build a constructive and collaborative relationship, so they can deliver their responsibilities effectively.

Though the Chair of Healthwatch England will sit on the CQC Board, it is envisaged that Healthwatch England will not have a majority of members who are also CQC Board members or staff.

Consultation on The Membership of Healthwatch England

This consultation aims to give stakeholders and the public the chance to contribute to the development of the membership regulations for Healthwatch England.

Listed below are the key issues for consideration in relation to the membership of Healthwatch England, as the Department has heard from stakeholders. These issues are:

1. **The number of the members**
2. **Suitability for membership**
3. **The process for appointing members**
4. **The period of time a member should be appointed**

The consultation therefore seeks to ask questions on these areas to inform the regulations.

1. The number of members in Healthwatch England

The creation of Healthwatch England as a committee within CQC is unique, in the way that it envisages a need for a collaborative relationship between Healthwatch England and CQC, but with Healthwatch England retaining operational independence. Given that Healthwatch England is intended to be a strategic organisation, with focus on its core responsibilities, it is necessary to establish the suitable minimum number of members required in order for it to function effectively. It is equally important that the committee is not so large that it is unable to successfully conduct its business. If additional expertise or opinion is required by Healthwatch England, in order to achieve its work programme, Healthwatch England will be able to set up advisory or reference groups.

The guiding principle for the size of membership can be drawn from existing practices from the boards of arms length bodies, as set out below.

Current working practices:
Monitor Board: 5 members in total (Chair and 4 Non-executive Directors (NEDs))

CQC Board: 7 members in total (Chair and 6 members)

NICE: 14 members in total (Chair, 10 NEDS and 3 Executive Directors)

In addition, the Which? Council provides an example of the board membership of an independent organisation; it comprises of 12 elected and 6 co-opted members (currently 15 in total including the Chair, 2 deputy chairs and 12 members).

The Department's recommendation for the regulations is that: excluding the Chair, a minimum of 6 members and maximum of 12 members should enable Healthwatch England to function efficiently, and achieve its strategic objectives.

2. Suitability for membership

Healthwatch England will have an important role in acting as the national consumer voice for patients and the public. To carry out its functions effectively, Healthwatch England should comprise of members with sufficient skills and experience to allow Healthwatch England to deliver its work programme.

The Department's position is that it should be the responsibility of the Chair of Healthwatch England, working collaboratively with CQC (and other stakeholders), to determine the criteria, for example in relation to skills and expertise, for a person to be a member of the Healthwatch England committee. The Department therefore does not intend to detail such criteria in the regulations.

However, the Department is of the view that there may be some individuals who should automatically be disqualified because of the negative impact there could otherwise be on the credibility and reputation of Healthwatch England to the public, for example:

- people who have received a prison sentence or suspended sentence of 3 months or more in the last 5 years;
- people who are the subject of a bankruptcy restrictions order or interim order;
- anyone who has been dismissed by an NHS body or local authority within the past five years, other than by reason of redundancy;
- in certain circumstances, those who have had an earlier term of appointment terminated;
- anyone who is under a disqualification order under the Company Directors Disqualification Act 1986; and
- anyone who has been removed from trusteeship of a charity.
- anyone who fails to comply with the Healthwatch England Code of Conduct and Conflict of Interests.

The Department therefore recommends that these conditions for disqualification be set out in the regulations.

3. The process for appointing members

It is important that Healthwatch England has a membership that is representative of the range of interests. This will encompass patients, service users, carers and the public from a range of organisations including; local Healthwatch, voluntary and community-based groups, including those organisations that work with hard-to-reach groups. In addition, as a public body, we would expect Healthwatch England to comply with the public sector equality duty (under the Equality Act 2010), and to act according to the standard of conduct stated in the Nolan principles will apply to it (see Annex B).

Some stakeholders have expressed the strong wish for an election process for the appointment of local Healthwatch representatives. In particular, some stakeholders have suggested that members elected from local healthwatch organisations have a majority in Healthwatch England.

It has been suggested that elections could take place at the local level, potentially led by local Healthwatch, to create an elected body of nominees. The Department recommends that a number, though not all, of the nominees would then be appointed to Healthwatch England, in order to ensure that Healthwatch England stays of an appropriate size (as discussed in issue one). It is important to note that this option would not be available for the initial membership of Healthwatch England, as local Healthwatch will not be established until April 2013.

It is important to appoint members with the specific skills and expertise, who will be able to ensure that Healthwatch England can fulfill its functions of providing advice and assistance for local Healthwatch organisations, and using the information from local Healthwatch on the views of patients and service users, to influence the national agenda. For example, members would be appointed on the basis of a strong background in public and patient involvement. We would expect the Chair of Healthwatch England to ensure representation of diverse views and experiences, and to ensure that members possess the expertise needed to influence and engage other organisations.

The Department's position is that the Chair of Healthwatch England, in working collaboratively with CQC, will determine the detail and design of the appointment process for appointment of members to the Healthwatch England committee. This process will be conducted in accordance with the code of practice on public appointments. It is intended that the Chair of Healthwatch England will have the main responsibility for appointing members to the committee.

4. The period of time for which a member should be appointed

In order to ensure that Healthwatch England is representative and diverse, it would be helpful to refresh the committee at an appropriate time.

The guiding principle for the tenure of membership can be drawn from existing practices from the boards of CQC. They currently recommend a maximum tenure of 4 years.

The Department invites views about whether it is appropriate to have a maximum tenure for the members of Healthwatch England, and if so, whether 4 years is appropriate.

Have your Say

The Government proposes in the Health and Social Care Bill the establishment of a national consumer champion for people, Healthwatch England, and the role of the committee is pivotal to the underlying policy. The Government wants to hear your views on the questions posed about membership of Healthwatch England in this document to help inform the regulations.

Deadline for comments

This is a 6-week consultation, running from Thursday, 26th January 2012 to Friday, 2nd March 2012. In order for them to be considered, all comments must be received by Friday, 2nd March 2012. Your comments may be shared with colleagues in the Department of Health and/or be published in a summary of responses. Unless you specifically indicate otherwise in your response, we will assume that you consent to this and that your consent overrides any confidentiality notice generated by your organisation's email system.

The 6-week consultation period (which is shorter than the full 12-week period set out in Cabinet Office guidance) is because the proposed start date for Healthwatch England is October 2012. The purpose of establishing Healthwatch England in October is to enable it to be operational to provide leadership and support to local Healthwatch ahead of their start date in April 2013. Therefore, the regulations on membership of the Healthwatch England committee need to be laid in Parliament in a timely way to ensure that arrangements to set up Healthwatch England can be made in readiness for the October start date.

Consultation Timeline	
Thursday 26th Jan	Consultation Document Published and Engagement activities e.g. small stakeholder groups
Friday 2nd March	Consultation Ends: Responses must be returned the Department of Health by this date
Beginning of Summer	Response to the Consultation published.

How to respond

This document asks for your views on various questions surrounding the issue of membership of the Healthwatch England committee.

Please send your consultation responses to:
Email Healthwatch@dh.gov.uk

– OR – hard copies to:

Healthwatch Team
People, Communities and Local Government
Department of Health
Wellington House
135–155 Waterloo Road
London SE1 6LH

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information (FOI) Act 2000, the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOI Act, there is a statutory Code of Practice with which public authorities must comply, and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to use why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in the majority of cases, this will mean that your personal data will not be disclosed to third parties.

Criteria for consultation

This consultation follows the 'Government Code of Practice', in particular we aim to:

- formally consult at a stage where there is scope to influence the policy outcome;
- be clear about the consultation's process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees' 'buy-in' to the process;
- analyse responses carefully and give clear feedback to participants following the consultation;
- ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

The full text of the code of practice is on the Better Regulation website at: http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html

After the consultation

Once the period is complete, the Department of Health will consider the comments it has received, and the response will be published at the beginning of the summer.

The public engagement process will help inform Ministers of the public opinion, enabling them to make their final decision on the contents of the regulations.

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Consultations website at http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm

Further Information

You can also find further information about Healthwatch can be found at the DH website at http://healthandcare.dh.gov.uk/ and about the Health and Social Care Bill at www.parliament.uk

There is also further information available in the associated Impact Assessment (ref. no. 6033).

Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please:

contact Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

e-mail consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Consultation questions

ISSUE ONE: Number of members
The size of Healthwatch England needs to be considered for the purposes of ensuring that it can operate effectively.
1. The Department's recommendation is to have a minimum membership of 6, **do you agree? If not, what would be your view? (please provide examples of best practice where possible)**
2. The Department's recommendation is to have a maximum membership of 12, **do you agree? If not, what would be your view? (please provide examples of best practice where possible)**

ISSUE TWO: Suitability for membership
3. The Department's position is that the setting of any criteria on the skills and expertise that are required for a person to be a member of Healthwatch England should be a matter for the Chair of Healthwatch England, working collaboratively with CQC (and other stakeholders), **do you agree? If not, what would be your view?**
4. However, the Department's recommendation is that the following individuals should be automatically disqualified: • People who have received a prison sentence or suspended sentence of 3 months or more in the last 5 years; • People who are the subject of a bankruptcy restrictions order or interim order; • Anyone who has been dismissed by an NHS body or local authority within the past five years, other than by reason of redundancy; • In certain circumstances, those who have had an earlier term of appointment terminated; • Anyone who is under a disqualification order under the Company Directors Disqualification Act 1986; • Anyone who has been removed from trusteeship of a charity. • Anyone who fails to comply with the Healthwatch England Code of Conduct and Conflict of Interests. **Do you agree with setting these conditions? If not, what would be your view?**

ISSUE THREE: The process for appointing members
5. The Department's position is that members will be appointed to Healthwatch England according to a transparent appointment criteria **– do you agree? If not, what would be your view?**
6. An alternative may be for nominees for Healthwatch England to be elected at local level, potentially led by local Healthwatch, a certain number of whom would be appointed according to a transparent appointment criteria **– do you agree? If not, what would be your view? (please provide examples of best practice where possible)** *(please note this would not be a possible option until the establishment of local Healthwatch in April 2013)*

ISSUE FOUR – Tenure of Membership
7. The Department's position is that the maximum tenure of a member should be 4 years, **do you agree? If not, what would be your view? (please provide examples of best practice where possible)**

Annex A – Response Form

Number of members

1. The Department's recommendation is to have a minimum membership of 6, **Do you agree? If not, what would be your view? (please provide examples of best practice where possible)**

2. The Department's recommendation is to have a maximum membership of 12 **Do you agree? If not, what would be your view? (please provide examples of best practice where possible)**

Suitability for membership

3. The Department's position is that the setting of any criteria on the skills and expertise that are required for a person to be a member of Healthwatch England should be a matter for the Chair of Healthwatch England, working collaboratively with CQC (and other stakeholders), **do you agree? If not, what would be your view?**

4. The Department's recommendation is that some individuals may be automatically disqualified for reasons such as:

- People who have received a prison sentence or suspended sentence of 3 months or more in the last 5 years;
- People who are the subject of a bankruptcy restrictions order or interim order;
- Anyone who has been dismissed by an NHS body or local authority within the past five years, other than by reason of redundancy;
- In certain circumstances, those who have had an earlier term of appointment terminated;
- Anyone who is under a disqualification order under the Company Directors Disqualification Act 1986;
- Anyone who has been removed from trusteeship of a charity.
- Anyone who fails to comply with the Healthwatch England Code of Conduct and Conflict of Interests.

Do you agree with these conditions? If not, what would be your view?

Process for appointing members

5. The Department's position is that members will be appointed to Healthwatch England according to a transparent appointment criteria **– do you agree? If not, what would be your view?**

6. An alternative may be for nominees for Healthwatch England to be elected at local level, potentially led by local Healthwatch, a certain number of whom would be appointed according to a transparent appointment criteria **– do you agree? If not, what would be your view? (please provide examples of best practice where possible)** *(please note this would not be a possible option until the establishment of local Healthwatch in April 2013)*

7. The Department's position is that the maximum tenure of a member should be 4 years, **do you agree? If not, what would be your view? (please provide examples of best practice where possible)**

Annex B

The Nolan Principles

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office should promote and support these principles by leadership and example.

408834 1p Jan 2012
Produced by COI for the Department of Health

www.dh.gov.uk/publications