

Registration under the Health and Social Care Act 2008

How CQC registers partnerships as service providers

Guidance for providers

January 2019

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Summary

When two or more individuals provide a regulated activity without setting up an organisation to do so (such as a company) they must register with CQC with the legal entity of a 'partnership'. When a partner joins or leaves a partnership, the partnership can usually continue its registration as the same legal entity, after submitting an appropriate application.

Partnerships registered after 4 Feb 2013 will have the partners' names added as a condition of registration. Partnerships registered prior to 4 Feb 2013 do not have partners' names as a condition of registration, but this will be added when they next apply to make changes to their registration.

This guidance explains the legal background to the registration of partnerships, how we assess their fitness, and the type of application that is required when the membership of a partnership changes.

Partnerships and registration

1. What is a partnership?

There are different kinds of partnerships registered with CQC, the most common being 'ordinary' partnerships and limited liability partnerships (LLPs). CQC registers LLPs as organisations because they are corporate bodies similar to companies. This guidance does not apply to LLPs.

Ordinary partnerships are sometimes referred to as 'firms' or 'unincorporated bodies of persons'.

In the context of the Health and Social Care Act 2008 (HSCA 08) and its regulations, an ordinary partnership is made up of two or more individuals that carry on regulated activity together.

Ordinary partnerships can have legal agreements that set out which partner(s) are responsible for certain activities and decisions. They can also be much more loosely set up under informal verbal arrangements.

Under the Health and Social Care Act 2008, partners must always be individuals. 'Complex' partnerships made up of individuals, organisations and/or other partnerships have to

register with CQC as organisations.

Unless otherwise set out in a partnership agreement, all of the partners in a partnership are jointly liable for meeting legal requirements, and are also liable for the relevant actions (or inaction) of all the other partners.

2. Does a partnership need to have a partnership name?

Yes. We ask partnerships to supply a partnership name when they apply for registration.

This is because the partnership as a whole is the registered person under the HSCA 08, rather than the individual members, and formal notices and documents from CQC are sent to the partnership collectively.

Partnerships can call themselves anything they choose. Many choose an easily recognisable name that describes the service; for example, 'The Mount Pleasant Health Centre Partnership'; 'Dr Smith and Partners', or 'The Church House Care Home Partnership'.

The public can search for a partnership's name when browsing our website to look for useful information and contact details.

Applications for registration by partnerships

3. How does a new partnership apply for registration?

Partnerships applying to register for the first time need to use specific forms that gather information about the partnership as a whole, and about the individuals who are the members of the partnership.

These forms are available to download from our website – click on the appropriate link below:

- Application form for [primary medical services partnerships](#).
- Application form for [all other types of partnership](#).

4. How does CQC assess the fitness of new partnerships applying to

In summary, the law requires CQC to be confident that:

- Each of the partners is of good character; is physically and mentally fit to carry on the regulated activity; and can supply all the information about themselves that the law requires.
-

register?

- The qualifications, skills and experience of all the partners, taken together, and how they will be used to carry on the regulated activity, confirms that the partnership as a whole is fit to carry on the regulated activity.

See Regulation 4 of the [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) (the 'Activities Regulations').

Partnerships are required to have a registered manager for each regulated activity they carry on (normally one for each location where it will be provided). When CQC assesses the overall fitness of the service being proposed, we also take into account the knowledge, skills, qualifications and experience of any managers applying for registration under the partnership.

Individual partners can sometimes be registered as manager for a regulated activity, but this role is important and distinctive. Registered managers are individually and personally responsible, together with the partnership as a whole, for the management, quality and safety of the carrying on of the regulated activity across the partnership. Partners who are also registered as managers need to have the experience, skills, qualifications and time to carry out this task.

The application form asks the partnership to name a 'main contact partner'. This will be the person that we send emails and other correspondence to. The law says that we must send formal notices and other documents to 'a partner' for them to be legally valid. The main contact partner is in no way a 'senior' partner and can be any member of the partnership. The partnership can change the main contact partner at any time, but it is vital to let CQC know about any changes so that the partnership can open and respond to correspondence addressed to the main partner at all times, including when the named person is away for any reason.

We will always interview at least one of the partners. We may need to interview other partners if we need information about the quality and safety of the service and how it will be carried on, which only they can supply. The application form asks how each partner will contribute the way the service will comply with relevant requirements.

We will always interview proposed managers. However, if a partnership is proposing to take over an existing service and employ any registered manager(s) in their existing roles, we will probably not need to interview them. These managers will need to submit an application to 'continue' their registration under a

new provider.

5. What if CQC has concerns about the fitness of any members of a partnership?

If we decide that one or more partners is not of good character; is not physically and mentally fit to carry on the regulated activity; or can not supply all the information about themselves that the law requires, the law does not allow us to register the partnership as a provider.

Where this is likely to happen, a notice of proposal to refuse the partnership is likely to be served and the partnership will have the option of making representations against our proposal. In some cases, it may be possible for the partnership to withdraw the application if it chooses to do so.

The partnership could re-apply to register with an amended list of partners, or do this at the same time as submitting representations and appeals. We are unable to advise applicants about the best course of action to take as the circumstances will be different for each partnership.

Please see the [step by step guide to registering as a new provider](#) on our website.

6. How does CQC register a new partnership?

We assess the partnership and its proposals for the service. If we judge it to be 'fit' to carry on the relevant regulated activity(s), we register it as a service provider subject to three standard routine conditions. We may also decide to register a provider subject to other non-routine conditions if needed.

The standard routine conditions relate to:

- Managers (as required by law in relation to partnerships).
- The locations at which, or from where, regulated activities will be carried on (as applied to all providers).
- The members of the partnership (the 'partnership condition') – only for partnerships registered after 4 February 2013.

You can use the checkbox in the application form to show that you agree 'in writing' to the location and partnership conditions.

If you are applying to carry on the regulated activity of 'accommodation for persons who require nursing or personal care', you will also be asked to agree to a condition of registration about the number of places in each relevant location.

If you ticked the CHS (care home without nursing) rather than CHN (care home with nursing) service type, you will also be

asked to agree to a condition that nursing care will not be carried on at relevant locations.

If you use the checkboxes on your application form to show that you agree to these conditions (where appropriate), it will reduce the number of legal notices we have to send you and speed up the registration process considerably.

Partnership conditions, and how they can be varied to add or remove partners

7. Why does CQC set a condition of registration about the membership of a partnership?

Any partnership that registers for the first time after 4 February 2013 or registered prior to that date and subsequently applies to add or remove a partner, will have a routine condition of registration in relation to the membership of the partnership. This means that it can continue as the same registered legal entity when it adds or removes partners. To do this, the partnership can vary the condition of registration in relation to the membership of the partnership by applying to add or remove a partner.

This process enables us to assess the fitness of any proposed new partners, and the impact of proposed membership changes on the continuing fitness of the partnership as a whole.

CQC will not use routine partnership conditions to inappropriately control the membership of a partnership. We will normally only vary these conditions under registration procedures, after receiving an application submitted by a partnership.

We will not normally follow enforcement procedures to impose a varied condition about the membership of a partnership. Please see [section 9](#) about how we deal with concerns about proposed or actual members of a partnership, and [section 11](#) for how we assess the impact on a partnership when key members depart.

8. How can a partnership vary its partnership condition?

Under the [Registration Regulations](#), you must firstly notify us about your plans to add or remove partners (see Regulation 15(1)(d)). You must then formally apply to do so by submitting an application to vary the routine condition of registration about the membership of your partnership.

There are separate application forms and processes for applying to:

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- Add proposed new partners, and
 - Remove existing partners.

Adding a new partner: you must firstly submit a Regulation 15 change notification to CQC that you intend to add a partner(s) to the partnership using the [form](#) on our website. You must then fill in and submit the appropriate application form(s) in the normal way.

Please remember that proposed new partners must not formally join the partnership or take an active role in it until the appropriate application has been submitted and approved.

Removing a partner: You must firstly submit a Regulation 15 change notification to CQC that you intend to remove a partner(s) from the partnership using the form on our website. Then fill in and submit the appropriate application form(s) in the normal way.

9. How does CQC assess an application to vary a partnership condition by adding a new partner?

We assess information about the fitness of the proposed new member(s) submitted in the application form to add a new partner(s) (see schedule 3 to the [Activities Regulations](#)). If we have any concerns, we invite them to a 'fit person interview'.

Our assessors consider the importance of the qualifications, skills, experience and role of the proposed new partner in relation to the overall fitness of the partnership and its continuing compliance. If these are important to the partnership's continuing compliance, the assessor will invite the proposed new partner to a fit person interview.

CQC will re-evaluate the overall fitness of the partnership as a whole, as well as the fitness of the proposed new partner(s).

It would be technically possible for a partnership of individually fit partners with substantial relevant experience, qualifications and skills to be unfit to carry on regulated activity because of the way in which it proposed to use, or not use, those attributes.

If we judge the proposed new partner(s) AND the continuing partnership to be fit, we will issue a Notice of Decision to vary the membership condition as appropriate. We will also send a new certificate of registration to the partnership.

The amended partnership condition takes effect immediately and, technically, the partnership will be in breach of the condition until the new partner(s) actually joins the partnership. However, CQC will not treat this as an offence because the partnership will have a 'reasonable excuse' for not complying (see Section 33 of the Act).

CQC will expect the approved new partner(s) to formally join the partnership within 28 days, or within another reasonable timeframe that is agreed with the partnership.

If the approved partner(s) has not joined the partnership within 28 days, or other timeframe agreed with us, the partnership must inform CQC and appropriate steps will need to be taken to remove the partner's name from the condition.

10. What if CQC decided that only some proposed new partners were not fit in a multiple application to add partners?

CQC can only deal with an application as a whole.

In these circumstances, we would serve a Notice of Proposal to refuse to vary the partnership condition. The notice would include a statement of reasons to set out why we proposed to refuse the application, with reference to relevant evidence.

Providers can choose to withdraw an application if they know we are going to refuse it. They must do this before we have served a Notice of Proposal. Alternatively, providers can follow the standard processes to make representations against our proposal to refuse the application to vary, or to appeal against a decision to refuse it.

Partnerships can submit a separate application for each proposed partner, or submit a fresh multiple application that does not include the proposed partner we are concerned about. They can do this at the same time that they make representations or appeals if they wish.

CQC is unable to advise applicants about which course of action they should take in these circumstances.

11. How does CQC assess applications to vary a partnership condition by removing a partner?

We will normally process and agree valid applications to vary a partnership's membership condition as a matter of course, unless there are highly unusual and exceptional circumstances.

Partners sometimes have to leave a partnership suddenly. If this happens before an application has been submitted and approved, these partnerships are technically in breach of their partnership condition of registration. Where this happens, CQC will normally accept that there is a 'reasonable excuse' for the 'breach' (see HSCA 08 Section 33), as long as an application is submitted within 28 days.

When we approve an application we will send the partnership a Notice of Decision and a new Certificate of Registration.

The new partnership condition takes immediate effect. The

relevant partners must formally leave the partnership within 28 days, or within another reasonable timeframe that CQC agrees with the partnership.

If the relevant partner(s) has not left the partnership within 28 days the partnership must inform CQC. In these circumstances the partner's name(s) will usually be restored to the condition, and a fresh application would need to be made if necessary. CQC will assess the impact of the departure of the relevant partner(s) upon the partnership. The application form to vary the partnership condition asks the partnership to self-assess this, and to state how it will cover the leaving partner's role(s) and contribution(s) to its fitness and continuing compliance.

CQC will consider this self assessment and any other relevant evidence we hold. If we have concerns, we will follow relevant inspection and enforcement procedures as needed.

See section 14 below in relation to notifications and applications that will leave only one 'member' of the 'partnership'.

12. What if a partnership wants to add and remove partners at the same time?

There are separate forms for applying to add and remove partners from the partnership condition. You must fill in and submit both forms by attaching them to the same email or by posting them in the same envelope.

Although the final impact upon the partnership of partners leaving and joining is assessed at the same time, for technical reasons we have to formally process the 'add members' application first and then the 'remove members'.

This means that you will receive separate formal legal notices in relation to the two applications. We will send you a notice or notices showing a partnership condition with both the leaving and joining partners, and then a notice or notices showing the final membership of the partnership.

You will only receive one new certificate of registration, showing the final membership.

PLEASE NOTE: at least one original partner must remain as a member when applications to add and remove partners are submitted together.

13. What if a partner leaves a partnership that doesn't

Where a partnership was registered as a service provider before the introduction of partnership conditions, it previously could not use the variation of partnership condition approach to continue as the same legal entity.

have a partnership condition?

However, from 21 January 2019 partnerships registered prior to 4 Feb 2013 may now submit applications to add or remove partners, and the partnership condition will be applied to their registration at that point. This means that their registration can continue, their history is not lost, and managers do not need to reapply for registration.

14. What if notifications or applications tell CQC that a partnership will be left with only one 'partner'?

If we receive notifications that suggest that changes to a 'partnership' would result in there being only one 'member', we would contact the partnership to advise about the options and the appropriate registration processes.

An application that would leave a 'partnership' with only one member is not valid, and we would return it.

Where only one 'partner' would remain, the remaining partner must apply for registration as a new provider by either:

- Submitting an application to register as an individual provider.
- Creating a valid organisation (such as a company), alone or with others, that will apply for registration, or
- Joining with other individuals to create a new partnership that will apply for registration.

The existing partnership would have to submit a notification that it intended to stop carrying on regulated activity, and then submit an application to cancel its registration. The replacement provider would have to submit an appropriate application.

In these circumstances, the partnership's managers would also have to submit an appropriate application – possibly to 'continue' their registration under the replacement provider's registration.

Wherever possible, partnerships should apply to add proposed new partners and receive a successful proposal **before** they submit applications to remove partners. This means they can avoid the risk of a period of not meeting partnership and fitness requirements.

Links to information

[The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#)

[The Care Quality Commission \(Registration\) Regulations 2009](#)

[Application form finder pages on CQC's website](#)
