EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (REVISION OF NHS CONSTITUTION GUIDING PRINCIPLES) REGULATIONS 2015

2015 No. 1426

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 The NHS Constitution is due to be revised and republished in July 2015 to take account of proposals to amend the Constitution. Those proposals have been subject to public consultation. Some of the proposed changes involve amendments to the guiding principles of the Constitution, which can be revised only by regulations made by the Secretary of State. Accordingly, this instrument revises the guiding principles of the NHS Constitution, to have effect immediately before republication of the NHS Constitution.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The NHS Constitution was established in law by section 1 of the Health Act 2009. It applies only in relation to the health service in England (which is provided for mainly by the National Health Service Act 2006, as amended). Under section 2 of the Health Act 2009 (as amended by the Health and Social Care Act 2012), NHS and other bodies have a duty to have regard to the Constitution. Section 3 of the Health Act 2009 provides for review and revision of the Constitution after 10 years; and section 4 provides for other revisions of the Constitution. In particular, section 4(1) provides that before any revision, the Secretary of State must undertake appropriate consultation; and section 4(4) provides that any revision to the seven guiding principles contained in the NHS Constitution must be made by regulations. This instrument substitutes two of these guiding principles. These principles have been revised once previously, as provided for in the 2013 regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England only

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

7.1 The NHS Constitution was first published in 2009 and provision about the Constitution was made in the Health Act 2009. The Constitution brought together for the first time the principles, values, rights and responsibilities that underpin the NHS. The Constitution is a 'declaratory document', codifying rights contained in existing legislation, drawing them together in one place. It does not, itself, create new rights or replace existing ones.

7.2 The first version of the NHS Constitution was published by the Department of Health on 21st January 2009. Further revised versions were published in 2010, 2012 and 2013.

7.3 Following Sir Robert Francis QC's Inquiry Report into Mid Staffordshire NHS Foundation Trust[1], the principal message for the NHS is that patients and their safety come first. In Hard Truths[2], the Department of Health made a commitment to increasing the impact of the NHS Constitution so that patients and the public understand their rights and responsibilities more fully.

7.4 The Secretary of State for Health held a public consultation to update the NHS Constitution to reflect this, alongside a limited package of other changes, from 11th February to 8th April 2015[3].

8. Consultation outcome

8.1 The consultation on strengthening the NHS Constitution set out proposals to amend the NHS Constitution, which included making changes to Principles 1 and 4. The Department received 240 consultation responses from a wide range of stakeholders including organisations representing patients and staff, members of the public, NHS organisations, charities and non-governmental organisations.

8.2 The Government response, which will be published in July 2015, sets out the Government's response to the comments made within the consultation, and any amendments made as a result.

8.3 Regarding the Principles, the consultation proposed the following changes:

Principle 1: The Department consulted on amending the text of "The service is designed to diagnose, treat and improve both physical and mental health'' to reflect the Government's position in that mental health problems are considered to have equal importance to physical health problems. This will make clear that the health service should secure improvement in both physical and mental health, and in the prevention, diagnosis and treatment of both physical and mental health problems. On that basis, we proposed updating Principle 1 to include a reference to 'equal regard'. This emphasises that a comprehensive health service such as the NHS is one which addresses both physical and health problems with equal regard,

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[1] Mid Staffordshire NHS Foundation Trust Public Inquiry Report, (2013), www.**mid**staffs**publicinquiry**.com
[2] Hard Truths, the Journey to Putting Patients First, 2013), https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response
[3] A consultation to update the NHS Constitution, (2015), https://www.gov.uk/government/consultations/updating-the-nhs-constitution

as per the Health and Social Care Act 2012 amended section 1 of the National Health Service Act 2006. This also reflects the Government commitments set out in the mental health strategy, No Health without Mental Health[4] to a parity of esteem.

Principle 4: The Department consulted on amending the text 'The NHS aspires to put patients at the heart of everything it does' to strengthen the commitment to patients. This is a reflection from Hard Truths, the Government's response to Sir Robert Francis QC's Inquiry Report, and also reflects the commitments from leaders of the health and care system to adhere to the values of the NHS Constitution. On that basis, we suggested amending the text to read 'Patients will be at the heart of everything the NHS does'.

Following the consultation we amended the text further to include 'the patient' instead of 'patients'. This reflects that the patient, as opposed to patients in general, will be at the heart of everything the NHS does, prioritising patients in the NHS Constitution as opposed to groups.

We also consulted on adding the text 'As part of this, the NHS will ensure that in line with the Armed Forces Covenant, those in the Armed Forces Community are not disadvantaged in accessing health services in the area they reside'. This will ensure that the Armed Forces Community are not disadvantaged in accessing health care, and reflects the obligation in the Covenant that the Armed Forces Community should enjoy the same standard of, and access to, healthcare as that received by any other UK citizen in the area they live, as per the Armed Forces Act 2011.

Following the consultation we amended the text to define who the Armed Forces Community applied to, in line with the Armed Forces Covenant. This included the phrase 'armed forces, reservists, their families and veterans', to replace 'the Armed Forces Community.

9. Guidance

9.1 The contents of the NHS Constitution, including all changes, are explained in further detail in the Handbook to the NHS Constitution, due to be published alongside the NHS Constitution

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on public sector costs.

10.3 An impact assessment has not been prepared for this instrument, as its provisions are derived from the Health Act 2009. Impact assessments analysing the potential costs and benefits of publishing the NHS Constitution were published in June 2008[5] and January 2009. This instrument updates the guiding principles

[4] No Health without Mental Health, (2011), https://www.gov.uk/government/publications/the-mental-health-strategy-for-england

[5] Impact Assessment of the NHS Constitution (2008). www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_093416.pdf

of the NHS Constitution.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 This instrument will not be specifically monitored.

13. Contact

Gareth Owen at the Department of Health (Tel: 020 7104 8008 or email: gareth.owen@dh.gsi.gov.uk) can answer any queries regarding the instrument.