EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (REVISION OF NHS CONSTITUTION-PRINCIPLES) REGULATIONS 2013

2013 No. 317

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 for 1 April 2013 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 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 at the same time as 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 Act, 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 (which have until now remained unchanged) must be made by regulations. This instrument substitutes four of the guiding principles: the other three remain unchanged.

5. Territorial Extent and Application

5.1 This instrument applies to England

6. European Convention on Human Rights

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 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 that published by the Department of Health on 21st January 2009. A revised version was published in 2010, and a further revised version was published on 8 March 2012.

7.3 On 4 July 2012, the Secretary of State for Health published the first Report on the Effect of the NHS Constitution,[1] pursuant to section 6 of the Health Act 2009, which analysed its practical impact over the three years since its launch. Following the publication of the report, the Secretary of State for Health asked the NHS Future Forum (a group of leading medical professionals, patient champions, staff and charity representatives) to make recommendations on how to strengthen the NHS Constitution.

7.4 The NHS Forum provided advice to the Secretary of State on 31 October after meeting many organisations, patient and staff groups, children and young people, voluntary patient organisations, and mental health service users and staff. The Secretary of State for Health accepted the NHS Future Forum's advice in full and held a public consultation on strengthening the NHS Constitution from 5 November 2012 to 28 January 2013.[2]

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 the guiding Principles 1, 3, 4 and 5. We received 357 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, published on 15 February 2013 (available at: http://www.dh.gov.uk/health/2013/02/constitution-response/), did not set out the Government's view or response to the comments made, other than outlining changes that will be made to the Principles of the NHS Constitution.

8.3 Regarding the Principles, the consultation set out the following changes:

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[1] Report on the Effect of the NHS Constitution (2012) www.dh.gov.uk/health/2012/07/nhs-constitution/)

[2] A consultation on strengthening the NHS Constitution (2012) www.dh.gov.uk/health/2012/11/constitution-consultation/

Principle 1: We consulted on changing the text of "The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief" to reflect the protected characteristics set out in the Equality Act 2010. On that basis, we proposed updating Principle 1 to include references to gender reassignment and marital or civil partnership status. In addition, further changes to Principle 1 were proposed to emphasise that mental health must be considered on a par with physical health, which reflects Government commitments set out in the mental health strategy, No Health without Mental Health and amendments to the Health and Social Care Act 2012.

Following the consultation, we have made a further change to include "pregnancy and maternity", which now fully reflects the list of protected characteristics in the Equality Act 2010.

Principle 3: We consulted on amending the text in response to the NHS Future Forum's recommendation that it should reflect that only when staff are valued and supported will patients receive excellent care. A further change reduced the emphasis on planning and delivery as this is just one of many elements of delivering excellent patient care. The change also focuses this principle on the value the NHS places on its staff. A further amendment made clear that the NHS not only conducts research but uses it to improve services for patients.

Following the consultation, we have made no further changes to the suggested revision to this guiding principle.

Principle 4: We consulted on changing the text to emphasise the centrality of patients managing their own health and the need for care to be integrated around the needs and preferences of patients. Reflecting the recommendation from the Future Forum, the amendments also add a new aspect to this principle that the NHS will encourage feedback and use it to improve services.

Following the consultation, we are replacing the wording 'be coordinated around' with 'should be coordinated around and tailored to' to reflect the strong emphasis in consultation responses for further clarity regarding integrated care and support for patient involvement, which the NHS is committed to achieving.

Principle 5: We consulted on making technical amendments to the text to reflect that under the Health and Social Care Act 2012, local authorities are taking on new functions in relation to public health. As such, the amendments clarify that the NHS should work not only with local authority public health services but the full range of local authority services. It also emphasises that the NHS works in partnership with other public sector organisations.

Following the consultation, we are making a minor wording change removing "independent" from the list of organisations that the NHS works with as this type of organisation is already covered by private

and voluntary sector organisations and this word was therefore considered superfluous.

9. Guidance

9.1 None

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 and January 2009.[3]

This instrument updates the guiding principles of the NHS Constitution, bringing it into line with the changes made by the Health and Social Care Act 2012, the impact of which was considered in the Coordinating Document for the Health and Social Care Bill.[4]

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

Stephen Robinson at the Department of Health (Tel: 020 7210 5229 or email: stephen.robinson@dh.gsi.gov.uk) can answer any queries regarding the instrument.

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

[4] Coordinating document for Impact Assessments and Equality Analysis for the Health and Social Care Bill. www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129916.pdf