

HEALTH ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Quality and Delivery of NHS Services

Chapter 1 - NHS Constitution

Section 1: NHS Constitution

84. **Section 1** identifies the NHS Constitution and the Handbook as the documents published on 21st January 2009, entitled *The NHS Constitution* and *The Handbook to the NHS Constitution*, or as any revised versions of those documents published in accordance with the provisions of Chapter 1.

Section 2: Duty to have regard to NHS Constitution

85. **Section 2** requires specified bodies to have regard to the NHS Constitution when performing their NHS functions. Those functions include the commissioning or provision of NHS services or, in the case of Monitor and the Care Quality Commission, the regulation of those services. The bodies to which the new duty applies are: Strategic Health Authorities, PCTs, NHS trusts, Special Health Authorities, NHS foundation trusts, Monitor and the Care Quality Commission.
86. In addition, those bodies that provide or assist in providing NHS services under arrangements under section 12(1) of the NHS Act or who are providing NHS services under contracts or other arrangements made pursuant to the provisions of the NHS Act listed in *subsection (6)*, must (in doing so) also have regard to the NHS Constitution. This includes bodies providing primary care services, such as pharmaceutical services, dental services and general medical services.
87. *Subsection (7)* defines “NHS services” as being health services provided in England for the purposes of the NHS in England. *Subsection (8)* provides that references to the provision of services include the provision of services carried out jointly with another person.
88. The Constitution is for the NHS in England only. However, on 3 July 2008, England, Scotland, Northern Ireland and Wales committed to a high-level statement declaring the principles of the NHS across the UK. This was to reaffirm that the underlying principles of the NHS across the UK remain the same, even as the way the NHS provides care may vary between the four countries, reflecting their different needs and circumstances.

Section 3: Availability and review of NHS Constitution

89. **Section 3(1)** provides that the Secretary of State must ensure that the NHS Constitution continues to be available to patients, staff and members of the public. The NHS Constitution and the Handbook published on 21 January 2009 were published under the general powers of the Secretary of State in relation to the NHS. The effect of

subsection (1) (and section 5(1)) is to prevent the Secretary of State from using those general powers to withdraw either document.

90. The Secretary of State is obliged to review the whole NHS Constitution at least once every ten years, with the first review to be completed by 5 July 2018 (5 July is the anniversary of the founding of the NHS; this would be the 70th anniversary). The Secretary of State must ensure, when reviewing the Constitution, that the following are consulted: patients and bodies or other persons representing patients; staff and bodies or other persons representing staff (such as unions or professional bodies); members of the public; carers; local authorities; the providers of NHS services and the independent regulators. If any revision is made to the NHS Constitution as a result of a 10 year review, the Secretary of State is obliged to republish it (see subsection (5)).
91. Any revision to the guiding principles in the NHS Constitution must first be set out in regulations made by the Secretary of State. Those regulations will be subject to the negative resolution procedure.
92. [Section 3\(7\)](#) defines “patients” as those to whom NHS services are being provided. It defines the “guiding principles” as the principles described in the NHS Constitution published on 21 January 2009, or any revised version of those principles. It defines “staff” as those persons who are employed by, or working in some other capacity for, the bodies and other persons who, in providing NHS services, are obliged to have regard to the NHS Constitution where those persons are employed or work in (or in connection with) the provision, commissioning or regulation of NHS services. It defines “carers” as persons who, as relatives or friends, care for other persons to whom NHS services are provided, and [section 3\(8\)](#) defines “local authorities” to include unitary, county and district councils. This mirrors the definition of local authorities in section 229 of the Local Government and Public Involvement in Health Act 2007

Section 4: Other revisions of NHS Constitution

93. In addition to any revisions that follow a review, the Secretary of State is able to revise the NHS Constitution from time to time. However, the Secretary of State will be obliged to undertake appropriate consultation – with patients, staff, members of the public and other persons who are affected by the revision – before any such revision.
94. As in section 3, any revision to the guiding principles in the NHS Constitution (though not to the other parts of the Constitution) must first be set out in regulations made by the Secretary of State. Those regulations will be subject to the negative resolution procedure.
95. After any revision, the Secretary of State must republish the NHS Constitution.

Section 5: Availability, review and revision of Handbook

96. [Section 5](#) provides that the Secretary of State must ensure that the Handbook continues to be available to patients, staff and members of the public (see discussion in paragraph 89 above).
97. The Secretary of State is able to revise the Handbook at any time, but is obliged to review it at least once every three years, with the first review completed by 5 July 2012. After any change to the Handbook, the Secretary of State is obliged to republish it. The Government intends this document to be updated periodically, as Department policy or law evolves.

Section 6: Report on effect of NHS Constitution

98. This section provides that the Secretary of State must publish a report on the effect that the NHS Constitution has had on patients, the public, staff and carers. Each report is required to be laid before Parliament. The first report must be published no later than 5 July 2012 and subsequent reports are required to be published every 3 years thereafter.

*These notes refer to the Health Act 2009 (c.21)
which received Royal Assent on 12 November 2009*

99. The Department intends to use the reports on the effect of the NHS Constitution to assess what further measures are required in order for the NHS Constitution to be effective. The aim of the report is to ensure that all bodies who are required to do so are having regard to the NHS Constitution – and so to the principles, values, as well as the legally-binding rights and the pledges, that the NHS is committed to achieve.

Section 7: Regulations under section 3 or 4

100. This section gives the Secretary of State power to make the regulations referred to in sections 3 and 4 by statutory instrument under the negative resolution procedure.