1. The NHS Constitution was given its legal status by the Health Act 2009. It is intended to provide a statement of NHS principles and values. The Act also placed duties on various bodies, to ensure that these values, along with the rights and pledges set out in the Constitution, would be reflected in NHS services.

2. The original draft of the Constitution presented for consultation built on an extensive development process, including a literature review, discussions with patients, the public and staff, advice from lawyers, contributions from a wide range of experts and think-tanks, and a major deliberative event with stakeholders in February 2008. Early drafts of the Constitution were tested with these stakeholders, with experts and with patients, the public and staff. The consultation itself was supported by a Constitutional Advisory Forum, made up of a range of stakeholders from patient and professional bodies.

3. This was intended to promote ownership of the NHS Constitution amongst patients, staff and the public as it was recognised that much of the value of the NHS Constitution would come from it being a statement of collective values, rather than a set of ideas imposed from above. The Health Act 2009 requires Secretary of State to undertake appropriate and proportionate consultation on any changes proposed to the constitution or the supporting documents.

4. Following the publication of the NHS Constitution, the NHS Management Board convened a State of Readiness group (SORG) to understand and support development of a state of readiness in the health service for the NHS Constitution. The SORG also made recommendations on how to fully embed the NHS Constitution throughout the NHS.

Contents and legal status

5. The NHS Constitution is a ‘declaratory document’, articulating existing rights and responsibilities in one place.

6. The NHS Constitution is made up of five main elements:
   - **Principles** – described as ‘enduring high level ‘rules’ that govern the way that the NHS operates, and define how it seeks to achieve its purpose’.
   - **Values** – which underpin the principles and are intended to ‘provide the common ground for co-operation to achieve shared aspirations.
   - **Rights** – an ‘entitlement protected by law’. These include rights conferred explicitly by law and rights derived from legal obligations imposed on NHS bodies and healthcare providers. The Constitution brings together all of these rights in one place but does not create or replace them.
   - **Pledges** – promises that the NHS is committed to achieve. Pledges are not legally binding.
   - **Responsibilities** – ‘expectations of how patients, the public and staff can help the NHS work effectively and ensure that finite resources are used fairly.’
7. The Constitution is also supported by two additional documents that provide further information, including information that would be subject to frequent changes, allowing the NHS Constitution itself to be a more high-level and enduring document:
   - The Handbook to the NHS Constitution – which provides additional, detailed information on the rights, pledges and responsibilities set out in the Constitution, as well as explaining what underpins them.
   - The Statement of NHS Accountability – a description of the system of responsibility and accountability for taking decisions in the NHS. The Constitution commits the Government to providing a clear and up-to-date Statement of NHS Accountability.

8. Where a patient feels that a right has not been upheld or the NHS is not meeting its commitments, the Handbook suggests:
   - speaking to the clinician or the commissioner to see if the concern can be resolved immediately,
   - making a complaint to either the service provider or the commissioner,
   - if a patient remains unhappy with the local resolution of their complaint, they can ask the Health Service Ombudsman to look into their case.

9. In the last resort, patients and staff can seek legal redress if they feel that NHS organisations have infringed the legal rights described in the NHS Constitution. For patients and the public, this could be in the form of a judicial review of the process by which an NHS organisation has reached a decision.

The role of the Secretary of State

10. The Health Act 2009, places a number of duties on the Secretary of State with respect to the NHS Constitution, these include duties to:
    - report on how the NHS Constitution has affected patients, staff, carers and members of the public at least once every three years;
    - review and republish the *Handbook to the NHS Constitution* at least once every three years;
    - review and republish the NHS Constitution at least once every 10 years;
    - consult patients, public, staff, bodies representing patients, bodies representing staff, carers and local authorities, in respect of any changes to the NHS Constitution;
    - publish any changes to the guiding principles in regulations.

Legal duties to promote and have regard to the NHS Constitution

11. The Health Act 2009 places a duty on various NHS bodies to have regard to the NHS Constitution. The Health and Social Care Bill applies this duty to the new bodies set up by the Bill so that it will apply to:
    - Clinical commissioning groups
    - NHS Commissioning Board
    - Local authorities
    - Special Health Authorities
    - NHS foundation trusts
Monitor
Care Quality Commission

12. The Health Act 2009 also includes a duty on NHS providers which, when amended by the Health and Social Care Bill, will require anyone who provides NHS services under a contract, agreement or arrangements made by the Secretary of State, the NHS Commissioning Board or clinical commissioning groups to have regard to the NHS Constitution.

13. The Health and Social Care Bill 2011 introduces new duties on clinical commissioning groups and the NHS Commissioning Board to:
   - act with a view to securing that health services are provided in a way which promotes the NHS Constitution; and
   - promote awareness of the NHS Constitution among patients, staff and members of the public.

14. In addition, the Bill has just been amended to place a duty on the Secretary of State to have regard to the NHS Constitution. The new duty on the Secretary of State will ensure that he has to bear in mind the principles of the Constitution when he is exercising his functions.

Future Forum working group on NHS Constitution

15. The Secretary of State has asked the Future Forum working group on the NHS Constitution to advise him on:
   - How the NHS Constitution has affected patients, staff, carers and the public since its introduction.
   - Whether changes are required to the NHS Constitution or Handbook:
     - Following the implementation of the Health and Social Care Bill, or
     - To strengthen the NHS Constitution for the future.

16. The advice of the group will inform the Secretary of State as he:
   - Prepares a report on how the NHS Constitution has affected patients, staff, carers and the public, in order to meet his statutory duty to publish such a report by 5 July 2012.
   - As he consults patients, staff, carers and the public on any changes he proposes to make to the NHS Constitution and Handbook.