

NHS Standard Contract 2014/15

Guidance on the variations process



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Executive summary

This document contains guidance on the process to effect variations to contracts based on the 2014/15 NHS Standard Contract. It applies both to new 2014/15 contracts (whether they have been created as eContracts or in paper form) and to earlier contracts which have adopted the 2014/15 NHS Standard Contract terms by being transferred into eContracts.

It applies both to variations initiated by a party to the Contract (referred to in this guidance as Local Variations – not to be confused with Local Variations in respect of National Prices) and to variations mandated by NHS England (National Variations).

Introduction

This guidance is relevant to all commissioners and providers who are parties to commissioning contracts based on the 2014/15 NHS Standard Contract. This includes both new 2014/15 contracts (whether they have been created as eContracts or in paper form) and earlier contracts which have adopted the 2013/14 NHS Standard Contract terms by being transferred into eContracts.

It applies to both Variations proposed by one of the parties to a contract and to National Variations which may be mandated by NHS England, but in the case of the latter further guidance will be issued as and when necessary.

This guidance supplements, and should be read in conjunction with, General Condition 13 (*Variations*) of the NHS Standard Contract.

Process

General Condition 13 sets out the process with which the parties to a contract must comply if any one of them wishes to vary the terms of that contract, or if NHS England mandates a National Variation.

This guidance, and the template documents issued with it, do not in any way alter that process nor do they extend the scope of permissible variations (on which please refer to General Condition 13.2).

The table below explains how the process works in the context of (a) an eContract, and (b) a paper contract, and how to use the template documents in each case.

Whenever an eContract is being varied, the eContract system will ensure that the starting point for the Variation will be the latest version of the eContract (which may be the original eContract or the eContract as most recently updated by a signed and dated Variation Agreement).

Whenever a paper contract is being varied, the parties must ensure that they use as the starting point for that Variation the latest version of that contract (which may be the original contract or the contract as most recently updated by a signed and dated Variation Agreement).

The processes for Local Variations proposed by either a Commissioner or the Provider under General Condition 13 and the eContract system are summarised in the flow diagram at Annex 1 below. The tables at Annex 2 below describe the processes for eContracts and paper contracts in detail, and you will need to

follow the steps described carefully, particularly when using the eContract system.

Template Variation Proposal:

<http://www.england.nhs.uk/wp-content/uploads/2014/05/sc-var-pro.docx>

Template Variation Agreement:

<http://www.england.nhs.uk/wp-content/uploads/2014/05/sc-var-agr.docx>

Competing Variations

It is vital that, at every stage, the parties to a contract know exactly what the terms of that contract are. Equally, when considering, discussing or finalising a proposed Variation, it is vital that the parties know exactly the terms of the contract they are looking to vary. For that reason, parties to a contract should not progress Variations (National Variations or locally-initiated Variations) in parallel or in competition with each other – doing so is likely to result in confusion and, potentially, dispute as to the terms of each proposed Variation and of the contract itself. This applies whether the parties are varying an eContract or a paper contract.

Reflecting good practice in this respect, the eContract Variations process is deliberately designed so that:

1. If a Local Variation is in process, no further Local Variation can be initiated until the ongoing Local Variation has been completed (ie until the Variation Agreement has been signed by all parties and dated) or terminated.

This ensures that the further Variation takes as its starting point the contract as varied by the first Variation.

Alternatively, the parties may agree to effect both Variations together – in other words, to pause in the progression of the first Variation and agree to incorporate the matters to be covered by the proposed second Variation into the first Variation.

2. If a National Variation is in process, no Local Variation can be initiated until the ongoing National Variation has been completed (ie until the Variation Agreement has been signed by all parties and dated).

This ensures that the Local Variation takes as its starting point the contract as varied by the National Variation.

Alternatively, the parties may agree to effect both Variations together – in other words, to pause in the progression of the National Variation and

agree to incorporate the matters to be covered by the Local Variation into the National Variation.

3. If a National Variation is initiated while a Local Variation is in process, the ongoing Local Variation will be halted, as the National Variation must take precedence.

If and when the Local Variation is then re-initiated as a new Variation, it will take as its starting point the contract as varied by the National Variation.

Alternatively, the parties may agree to effect both Variations together – in other words, to incorporate the matters to be covered by the proposed Local Variation into the National Variation.

Where a paper contract is being varied, the parties should reflect the process in 1, 2 or 3 above, as appropriate.

Varying a contract: legal considerations

Any proposed Variation should be considered in the context of the contract as a whole, and in the context of wider procurement, competition and other issues, and not in isolation. Note in particular that a Variation may constitute a “material change” to the Contract, thereby raising the risk of a challenge for breach of procurement rules. The parties should seek their own legal advice before proceeding with any Variation.

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Variations step-by-step

1. For a Local Variation proposed by a Commissioner

Note that a Variation proposed by Commissioners should involve only changes to:

- (a) the Particulars,
- (b) the Service Conditions (but only to which Service Conditions apply to the contract – for example if the applicable Service Categories are varied – NOT TO THE WORDING OF ANY SERVICE CONDITION), or
- (c) one or more of the documents incorporated into the contract (eg a spreadsheet or a policy or protocol), or the incorporation of an additional document.

	eContract	Paper contract
A. Co-ordinating Commissioner initiates eContract Variation	<ol style="list-style-type: none"> 1. Ensure that the Contract you wish to vary is checked in and signed. All previous eContract Variations must also be signed. 2. From Contract Explorer, select the contract and 'Create Variation' 3. Go through the relevant contract screens, making the changes you require to the Particulars (which will, where appropriate, re-tailor the Service Conditions). Note that on each screen to which you want to make changes you will need to untick the box at the foot of the screen before making your changes. Once you have made all of the changes to that page, you must retick the box. 4. If you need to add a new linked document, or substitute a new version of an existing one, 	

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	<p>upload the new document to the external or generic documents library and copy it in, in exactly the same way as you did on creation of the eContract.</p> <ol style="list-style-type: none">5. Save Form regularly as you are making changes.6. Once you have made all the changes you require, Save Form again.7. Return to the Home Screen. From there you may Print Preview the pdf Particulars and Service Conditions.8. Check the pdfs and revisit screens to correct as necessary. Save Form again.9. Note: if on the Home Screen the Issue for Signature box is greyed out, you will need to go back through each screen of the Particulars and schedules to check which screen remains unticked. Complete and tick as necessary, then Save Form.10. From the Home Screen, select Variation Agreement. Complete the Variation Agreement screen to reflect the Variation Proposal (see below). NOTE FOOTNOTE TO VARIATION AGREEMENT TEMPLATE REGARDING COMMISSIONER SIGNATURES. Then Save Form.11. Return to Home Screen and select Issue for Signatures.12. Close Variation.13. Check in Variation. <p>If you have selected the 'Do you wish all parties to</p>	
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	<p>sign the Variation?’ option, the other parties to the Contract will receive an email alerting them to the issue of a Variation Agreement. If you have not selected this option, only you and the provider will receive an email alert.</p>	
<p>B. Co-ordinating Commissioner serves Variation Proposal on the Provider (GC13.4)</p>	<p>In parallel with the process above, the Co-ordinating Commissioner should complete a (paper) Variation Proposal template as follows:</p> <p>Contract/Variation Reference: insert the reference number (a combination of the Contract Reference and a sequential variation number) generated by the eContract system.</p> <p>Proposed by: select “Co-ordinating Commissioner on behalf of the Commissioners”.</p> <p>Date of Proposal: insert the date on which the proposal is to be served on the Provider.</p> <p>1. In the text box, insert a summary of the proposed Variation.</p> <p>Delete/complete the text below the box as appropriate. If the Variation involves changes to or the addition of a document to be incorporated into the eContract (eg a new spreadsheet or a revised local protocol), that document should be attached to the Variation Proposal.</p>	<p>The Co-ordinating Commissioner should complete a (paper) Variation Proposal template as follows:</p> <p>Contract/Variation Reference: insert local contract and variation reference</p> <p>Proposed by: to read “Co-ordinating Commissioner on behalf of the Commissioners”.</p> <p>Date of Proposal: insert the date on which the proposal is served on the Provider.</p> <p>1. In the text box, insert a summary of the proposed Variation.</p> <p>If the Co-ordinating Commissioner has produced revised versions or mark-ups of the Particulars, the Service Conditions or any incorporated documents at this stage, complete the text below the box accordingly. The draft revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) should be attached to the Variation Proposal.</p>

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	<p>2. Insert here the date on which the Commissioners wish the proposed Variation to take effect.</p> <p>The Co-ordinating Commissioner's authorised signatory must sign the Variation Proposal.</p> <p>The Variation Proposal (and any attached document) must be served on the Provider in accordance with the procedure for service of notices set out in GC 36 – ie outside the eContract system. This should be done simultaneously with the Issue for Signatures (step A.11 above).</p>	<p>If the Co-ordinating Commissioner has not yet produced revised versions or mark-ups, delete the text below the box.</p> <p>2. Insert here the date on which the Commissioners wish the proposed Variation to take effect.</p> <p>The Co-ordinating Commissioner's authorised signatory must sign the Variation Proposal.</p> <p>The Variation Proposal (and any attached documents) must be served on the Provider in accordance with the procedure for service of notices set out in GC 36.</p>
<p>C. Provider must issue Recipient's Response within 10 Operational Days (GC 13.8)</p>	<p>The Provider must serve its response in accordance with the procedure for service of notices set out in GC 36 – ie outside the eContract system.</p>	<p>The Provider must serve its response in accordance with the procedure for service of notices set out in GC 36.</p>
<p>D. Parties discuss Variation Proposal and Recipient's</p>	<p>This may result in changes needing to be made to the revised Particulars and/or Service Conditions and/or incorporated documents.</p> <p>To make the necessary changes, the Co-ordinating</p>	<p>This may result in changes needing to be made to any revised Particulars and/or Service Conditions and/or incorporated documents already issued and/or the issue and development of the appropriate drafts.</p>

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<p>Response (GC13.9)</p>	<p>Commissioner must:</p> <ol style="list-style-type: none"> 1. Select My eContracts. 2. Select My eContracts Awaiting Signature. Go to Contract Explorer. 3. Select the relevant Contract Variation, and select 'edit'. 4. Make the required changes to the relevant screens and the Variation Agreement, following step A.10 as above. 5. Reissue the Variation Agreement, following steps A.11 to A.13 as above. 	
<p>E. Provider serves written notice accepting or refusing Variation Proposal (GC 13.10)</p>	<p>The Provider must serve its notice in accordance with the procedure for service of notices set out in GC 36 – ie outside the eContract system.</p>	<p>The Provider must serve its notice in accordance with the procedure for service of notices set out in GC 36.</p>
<p>F. (If Variation Proposal is accepted) parties finalise details of Variation</p>	<p>Repeat step A.10 as above to make further changes and reissue as required.</p>	<p>The draft revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) must be finalised to reflect the terms agreed between the parties.</p>

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<p>G. Co-ordinating Commissioner issues Variation Agreement for signature</p>	<p>Repeat steps A.11 to A.13 as above.</p>	<p>The Co-ordinating Commissioner should complete a Variation Agreement template as follows:</p> <p>Contract Reference: insert as per the Variation Proposal.</p> <p>Variation Number: insert as per the Variation Proposal.</p> <p>Proposed by: complete as per the Variation Proposal.</p> <p>Date of Proposal: insert as per the Variation Proposal.</p> <ol style="list-style-type: none"> 1. In the text box, insert a summary of the agreed Variation, as agreed between the parties. 2. Delete and complete the text as appropriate. The draft revised Particulars, Service Conditions and incorporated document(s) (as appropriate) should be attached to the Variation Agreement. 3. Insert here the date on which the parties have agreed that Variation is to take effect. 4. Refer to footnote to template Variation Agreement: delete 4 if inapplicable. <p>Complete/delete signature blocks as required: refer to footnote to template Variation Agreement.</p>
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<p>H. All parties sign Variation Agreement (GC13.3)</p>	<p><u>All</u> signatories to the Variation Agreement (on which see footnote to template) must sign a copy of it.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>	<p><u>All</u> signatories to the Variation Agreement (on which see footnote to template) must sign a copy of it.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>
<p>I. Co-ordinating Commissioner logs signatures</p>	<p>Repeat steps D.1 to D.3 above, then:</p> <ol style="list-style-type: none"> 1. Select Log Party Signatures. 2. Select/complete that screen as appropriate. 3. Save Form. 4. Return to Home Screen. 5. A red box “Please enter the Variation date to signed copy” will have appeared. 6. Enter the date of the Variation Agreement in the box headed Variation Date. This should be the date on which all signatures have been collected and recorded and on which all parties have agreed that the Variation Agreement should be dated. 7. Save Form. 8. Issue Signed Copy. 9. Close Form. 10. Check In. 11. The Variation will now appear in Variations Signed. 12. The details of the Variation will appear in Schedule 6 Part A (Recorded Variations) of the varied Contract. 	

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J. Status of Contract	The previous version of the eContract has now been superseded by the version attached to and/or referred to in the Variation Agreement. The eContract status will now be shown as 'varied'.	The previous version of the Contract has now been superseded by the version attached to and/or referred to in the Variation Agreement
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2. For a Local Variation proposed by the Provider

A Variation proposed by the Provider should involve only changes to:

- (a) the Particulars,
- (b) the Service Conditions (but only to which Service Conditions apply to the contract – for example if the applicable Service Categories are varied – NOT TO THE WORDING OF ANY SERVICE CONDITION), or
- (c) one or more of the documents incorporated into the contract (eg a spreadsheet or a policy or protocol), or the incorporation of an additional document.

	eContract	Paper contract
A. Provider serves Variation Proposal on the Co-ordinating commissioner (GC13.4)	<p>The Provider should complete a (paper) Variation Proposal template as follows:</p> <p>Contract/Variation Reference: leave blank – the reference number can be completed later once generated by the eContract system Proposed by: to read “Provider” Date of Proposal: insert the date on which the proposal is served on the Co-ordinating Commissioner</p> <p>1. In the text box, insert a summary of the proposed Variation.</p> <p>If the Provider has produced revised versions or mark-ups of the Particulars, Services Conditions or incorporated documents at this stage, complete the text below the box accordingly. The draft revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) should</p>	<p>The Provider should complete a (paper) Variation Proposal template as follows:</p> <p>Contract/Variation Reference: insert local contract and variation reference Proposed by: to read “Provider” Date of Proposal: insert the date on which the proposal is served on the Co-ordinating Commissioner</p> <p>1. In the text box, insert a summary of the proposed Variation.</p> <p>If the Provider has produced revised versions or mark-ups of the Particulars, Service Conditions or incorporated documents at this stage, complete the text below the box accordingly. The draft revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) should be attached to the Variation</p>

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	<p>be attached to the Variation Proposal.</p> <p>If the Provider has not yet produced revised versions or mark-ups, delete the text below the box.</p> <p>2. Insert here the date on which the Provider wishes the proposed Variation to take effect.</p> <p>The Provider’s authorised signatory must sign the Variation Proposal.</p> <p>The Variation Proposal must be served on the Co-ordinating Commissioner in accordance with the procedure for service of notices set out in GC 36.</p>	<p>Proposal.</p> <p>If the Provider has not yet produced revised versions or mark-ups, delete the text below the box.</p> <p>2. Insert here the date on which the Provider wishes the proposed Variation to take effect.</p> <p>The Provider’s authorised signatory must sign the Variation Proposal.</p> <p>The Variation Proposal must be served on the Co-ordinating Commissioner in accordance with the procedure for service of notices set out in GC 36.</p>
<p>B. Co-ordinating Commissioner initiates eContract Variation.</p>	<ol style="list-style-type: none"> 1. Ensure that the Contract you wish to vary is checked in. 2. From the blue bar at the top of the home Screen, select My eContracts. 3. Select eContract Variation. This will generate a screen Create eContract Variation. 4. On that screen, select from the drop-down menu the appropriate CCG/commissioner. 5. Select from the drop-down menu the Contract to be varied. 6. Select LV (Local Variation). 7. Select Create a Variation. 8. Select eContract Forms. The Contract you 	

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	<p>wish to vary will be listed in eContract Forms.</p> <ol style="list-style-type: none">9. Check Out that Contract.10. Open the Contract.11. Go through the relevant contract screens, making the changes you require to the Particulars (which will, where appropriate, re-tailor the Service Conditions). Note that on each screen to which you want to make changes you will need to untick the box at the foot of the screen before making your changes. Once you have made all of the changes to that page, you must retick the box.12. If you need to add a new linked document, or substitute a new version of an existing one, upload the new document to the external or generic documents library and copy it in, in exactly the same way as you did on creation of the eContract.13. Save Form regularly as you are making changes.14. Once you have made all the changes you require, Save Form again.15. Return to the Home Screen. From there you may Print Preview the pdf Particulars and Service Conditions.16. Check the pdfs and revisit screens to correct as necessary. Save Form again.17. Note: if on the Home Screen the Issue for Signature box is greyed out, you will need to go back through each screen of the Particulars and schedules to check which	
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	<p>screen remains unticked. Complete and tick as necessary, then Save Form.</p> <p>18. From the Home Screen, select Variation Agreement. Complete the Variation Agreement screen to reflect the Variation Proposal (see above). NOTE FOOTNOTE TO VARIATION AGREEMENT TEMPLATE REGARDING COMMISSIONER SIGNATURES. Then Save Form.</p> <p>19. Return to the Home Screen and select Issue for Signatures.</p> <p>20. Close Variation.</p> <p>21. Check in Variation.</p> <p>If you have selected the 'Do you wish all parties to sign the Variation?' option, the other parties to the Contract will receive an email alerting them to the issue of a Variation Agreement. If you have not selected this option, only you and the provider will receive an email alert.</p>	
<p>C. Co-ordinating Commissioner must issue Recipient's Response within 10 Operational Days (GC 13.8)</p>	<p>The Co-ordinating Commissioner must serve its response in accordance with the procedure for service of notices set out in GC 36.</p>	<p>The Co-ordinating Commissioner must serve its response in accordance with the procedure for service of notices set out in GC 36.</p>

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<p>D. Parties discuss Variation Proposal and Recipient's Response (GC13.9)</p>	<p>This may result in changes needing to be made to the revised Particulars and/or Service Conditions and/or incorporated documents.</p> <p>To make the necessary changes, the Co-ordinating Commissioner must:</p> <ol style="list-style-type: none"> 1. Go to Contract Explorer. 2. Select the variation and click 'edit' under options. 3. Make the required changes to the relevant screens and the Variation Agreement, following steps B.10 to B.17 as above. 4. Reissue the Variation Agreement, following steps B.18 to B.21 as above. 	<p>This may involve changes to any revised Particulars and/or Service Conditions and/or incorporated documents already issued and/or the issue and development of the appropriate drafts.</p>
<p>E. Co-ordinating Commissioner serves written notice accepting or refusing Variation Proposal (GC 13.10)</p>	<p>The Co-ordinating Commissioner must serve its notice in accordance with the procedure for service of notices set out in GC 36.</p>	<p>The Co-ordinating Commissioner must serve its notice in accordance with the procedure for service of notices set out in GC 36.</p>
<p>F. (If Variation Proposal is accepted) parties finalise details of Variation</p>	<p>Repeat steps B.10 to B.17 as above to make further changes and reissue as required.</p>	<p>The draft revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) must be amended to reflect the terms agreed between the parties.</p>

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<p>G. Co-ordinating Commissioner issues Variation Agreement for signature</p>	<p>Repeat steps B.18 to B.21 as above.</p>	<p>The Co-ordinating Commissioner should complete a Variation Agreement template as follows:</p> <p>Contract Reference: insert as per the Variation Proposal</p> <p>Variation Number: insert as per the Variation Proposal</p> <p>Proposed by: complete as per the Variation Proposal</p> <p>Date of Proposal: insert as per the Variation Proposal</p> <ol style="list-style-type: none"> 1. In the text box, insert a summary of the agreed Variation, as agreed between the parties. 2. Delete and complete the text as appropriate. The draft revised Particulars, Service Conditions and incorporated document(s) (as appropriate) should be attached to the Variation Agreement. 3. Insert here the date on which the parties have agreed that Variation is to take effect.
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<p>H. All parties sign Variation Agreement (GC13.3)</p>	<p><u>All</u> signatories to the Variation Agreement (on which see footnote to template) must sign a copy of it.</p> <p>The parties should <u>not</u> sign the revised Particulars.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>	<p><u>All</u> signatories to the Variation Agreement (on which see footnote to template) must sign a copy of it.</p> <p>The parties should <u>not</u> sign the revised Particulars.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>
<p>I. Co-ordinating Commissioner logs signatures</p>	<p>Repeat steps D.1 to D.3 above, then:</p> <ol style="list-style-type: none"> 1. From the Home Screen, select Log Party Signatures. 2. Select/complete that screen as appropriate. 3. Save Form. 4. Return to Home Screen. 5. A red box “Please enter the Variation date to signed copy” will have appeared. 6. Enter the date of the Variation Agreement in the box headed Variation Date. This should be the date on which all signatures have been collected and recorded and on which all parties have agreed that the Variation Agreement should be dated. 7. Save Form. 8. Issue Signed Copy. 9. Close Form. 10. Check In. 11. The Variation will now appear in Variations Signed. 	

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	12. The details of the Variation will appear in Schedule 6 Part A (Recorded Variations) of the varied Contract.	
J. Status of Contract	The previous version of the eContract has now been superseded by the version attached to and/or referred to in the Variation Agreement. The eContract status will now be shown as 'varied'.	The previous version of the Contract has now been superseded by the version attached to and/or referred to in the Variation Agreement

3. Cancelling a Variation on the eContract system

Commissioners should note, once a variation is created on the eContract system, it is not possible to delete it from the system. If a variation is not agreed between the parties and is not signed, it must be 'overtyped' by the Commissioner and used as the next variation. If a variation is not signed, this will not affect the original eContract, as the eContract status only changes to 'varied' once the variation is signed.

4. For a National Variation mandated by NHS England

	eContract	Paper contract
NHS England mandates National Variation – publishes revised Particulars and/or Service Conditions and/or General Conditions	<p>A National Variation mandated by NHS England may involve updates to the Particulars and/or the Service Conditions and/or the General Conditions.</p> <p>Publication of any updates will be notified via the eContract platform and CCG bulletins. The new version(s) will be published on the eContract platform and the NHS England website.</p>	<p>A National Variation mandated by NHS England may involve updates to the Particulars and/or the Service Conditions and/or the General Conditions.</p> <p>Publication of any updates will be notified via the eContract platform and CCG bulletins. The new version(s) will be published on the eContract platform and the NHS England website.</p>

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	<p>Guidance will be issued to explain the process for effecting any National Variation, and its implications for local contracts, as and when that National Variation is mandated. The precise details of this process will depend on the nature and scope of the specific National Variation, but will broadly follow that for a Variation proposed by a Commissioner, as set out above.</p>	<p>Guidance will be issued to explain the process for effecting any National Variation, and its implications for local contracts, as and when that National Variation is mandated. The precise details of this process will depend on the nature and scope of the specific National Variation, but will broadly follow that for a Variation proposed by a Commissioner, as set out above.</p>
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