



## **NHS Standard Contract**

**Guidance on National  
Variations to existing 2012/13,  
2013/14 and 2014/15 form  
contracts**

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<b>Additional Circulation List</b>	
<b>Description</b>	Guidance on the completion of National Variations to existing contracts on 2012/13, 2013/14 and 2014/15 forms to reflect mandatory changes as a result of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Overseas Visitor Charging Regulations 2015, and other regulatory and policy developments. Commissioners and providers are required to vary their existing and ongoing contracts.
<b>Cross Reference</b>	NHS Standard Contract 2015/16 ( <a href="http://www.england.nhs.uk/nhs-standard-contract/15-16/">http://www.england.nhs.uk/nhs-standard-contract/15-16/</a> )
<b>Superseded Docs (if applicable)</b>	NHS Standard Contract Guidance on National Variations to existing 2011/12, 2012/13 and 2013/14 form contracts
<b>Action Required</b>	Action variations
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<b>Contact Details for further information</b>	NHS Standard Contract Team 4E44 Quarry House Quarry Hill Leeds LS2 7UB nhscb.contractshelp@nhs.net  <a href="http://www.england.nhs.uk/nhs-standard-contract/15-16/">http://www.england.nhs.uk/nhs-standard-contract/15-16/</a>

**Document Status**

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## **NHS Standard Contract**

### **Guidance on National Variations to existing 2012/13, 2013/14 and 2014/15 form contracts**

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Changes made from version 1 (March 2015) to version 2 (April 2015):

eContract hyperlink updated - page 4 and page 5

Third option added (included as Option 2) - page 7

Previous Option 2 renumbered as Option 3 – page 9

## Executive summary

This document contains guidance on the completion of the National Variations to existing contracts on the 2012/13, 2013/14 and 2014/15 forms to reflect changes which are mandatory as a result of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Overseas Visitor Charging Regulations 2015, and other regulatory and policy developments.

## Introduction

This guidance is relevant to any commissioners and providers who are parties to an existing commissioning contract the duration of which extends beyond 31 March 2015.

As in previous years, all commissioners and providers are required to vary their existing and ongoing contracts in order to incorporate regulatory and policy requirements for the coming commissioning year, as reflected in the NHS Standard Contract for 2015/16.

These variations will be a National Variation as defined in the applicable NHS Standard Contract.

***The National Variation must be effected for every commissioning contract the duration of which extends beyond 31 March 2015, preferably by no later than 31 March 2015 but in any event as soon as practicable.***

## Process

The 2015/16 NHS Standard Contract follows the structure of the 2014/15 NHS Standard Contract and, as last year, is published and available for use via the [eContract portal](#). Commissioners and providers are strongly encouraged to review the 2015/16 contract and supporting guidance (available via the NHS Standard Contract [2015/16 webpage](#)) before taking any further action in response to this National Variations guidance.

Commissioners and providers must effect the required National Variation in respect of their contracts in one of two ways.

### **Option 1: Effect the National Variation by short form National Variation Agreement and the 2015/16 eContract system**

The parties to any existing contract which is EITHER in 2014/15 eContract form OR is a paper contract may opt to vary it by using a short form National Variation Agreement, and using the 2015/16 eContract portal available at <https://2015.econtract.england.nhs.uk/>. The 2015/16 eContract system is essentially a contract generation system, rather than a system which stores and issues contracts. Using the eContract platform they can:

- create a tailored version of the 2015/16 Service Conditions (in pdf format) to save to their local drive
- create a tailored version of the 2015/16 Particulars (in Word format) to save to their local drive

Then:

- repopulate the Particulars with all locally agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from their existing paper contract (as previously varied) or as newly agreed for the coming year
- by this means adopt not only the new policy changes, but also all other updates and improvements contained in the 2015/16 Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2015/16 form. This will make management of a portfolio of contracts simpler and more consistent.

A user guide for the 2015/16 eContract portal is available at <https://2015.econtract.england.nhs.uk/>. Queries on the 2015/16 eContract system may be emailed to [england.econtract@nhs.net](mailto:england.econtract@nhs.net).

The commissioner should use the 2015/16 eContract system to generate a new set of Particulars, save them to their local drive and complete them, and otherwise proceed, as follows:

- at **Particulars - Service Commencement:**
  - Date of Contract** – enter the date of the original contract being varied
  - Contract Term** – insert the term of the original contract
  - Effective Date** – insert the Effective Date of the original contract
  - Expiry Date** – insert the Expiry Date of the original contract
  - Expected Service Commencement Date** – insert the Expected Service Commencement Date or Anticipated Service Commencement Date from the original contract
- otherwise, reflect all locally-agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from the existing paper contract or newly agreed for the

coming year

- there is no need to date or sign the updated Particulars
- the parties should record the National Variation by completing, signing, and then dating **two copies** of the simple, one page National Variation Agreement available at <http://www.england.nhs.uk/nhs-standard-contract/15-16/> and by completing details of the National Variation in Schedule 6A (*Recorded Variations*) of the new eContract. **If the contract being varied is in 2014/15 form, the Co-ordinating Commissioner may sign the National Variation Agreement on behalf of all Commissioners (subject of course to the governance processes set out on the relevant Collaborative Commissioning Agreement); if the contract being varied is in earlier form, all Commissioners must sign**
- a copy of the updated Particulars and Service Conditions should be attached to each copy of the signed National Variation Agreement
- **Note:** an option to extend the contract should **not** be included in the new Particulars unless it was included in the contract being varied - see paragraph 13 of the NHS Standard Contract 2015/16 Technical Guidance

**Option 2: Effect the National Variation by short form National Variation Agreement without using the 2015/16 eContract system**

The parties to any existing contract which is EITHER in 2014/15 eContract form OR is a paper contract may opt to vary it by using a short form National Variation Agreement, without using the 2015/16 eContract portal.

This should be considered less preferable than Option 1, in that the parties will:

- not be able to create a tailored version of the 2015/16 Service Conditions (in pdf format)
- have to create a tailored version of the 2015/16 Particulars (in Word format) manually, rather than automatically

but it may nevertheless be favoured for some or all contracts.

The parties will need to:

- save the 2015/16 Particulars (in Word format) locally
- carefully complete the tables on pages 9 – 13, following their existing contract as appropriate, and paying particular attention to **Service Categories**, and the **Yes/No** options on pages 10 -11. **It is the information given in these sections which will inform which Service Conditions, Operational Standards, National Quality Requirements, CDiff formula, Reporting Requirements and Surveys will apply to the contract** - all will appear in the contract, so it will be necessary to use the key in the right hand column to determine which provisions apply.

Then:

- repopulate the Particulars with all locally agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from their existing paper contract (as previously varied) or as newly agreed for the coming year
- by this means adopt not only the new policy changes, but also all other updates and improvements contained in the 2015/16 Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2015/16 form. This will make management of a portfolio of contracts simpler and more consistent.

In relation to the Particulars:

- **at Particulars - Service Commencement:**  
**Date of Contract** – enter the date of the original contract being varied  
**Contract Term** – insert the term of the original contract  
**Effective Date** – insert the Effective Date of the original contract

**Expiry Date** – insert the Expiry Date of the original contract

**Expected Service Commencement Date** – insert the Expected Service Commencement Date or Anticipated Service Commencement Date from the original contract

- otherwise, reflect all locally-agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from the existing paper contract or newly agreed for the coming year
- there is no need to date or sign the updated Particulars
- the parties should record the National Variation by completing, signing, and then dating **two copies** of the simple, one page National Variation Agreement available at <http://www.england.nhs.uk/nhs-standard-contract/15-16/> and by completing details of the National Variation in Schedule 6A (*Recorded Variations*) of the new eContract. **If the contract being varied is in 2014/15 form, the Co-ordinating Commissioner may sign the National Variation Agreement on behalf of all Commissioners (subject of course to the governance processes set out on the relevant Collaborative Commissioning Agreement); if the contract being varied is in earlier form, all Commissioners must sign**
- a copy of the updated Particulars and the 2015/16 Service Conditions should be attached to each copy of the signed National Variation Agreement
- **Note:** an option to extend the contract should **not** be included in the new Particulars unless it was included in the contract being varied - see paragraph 13 of the NHS Standard Contract 2015/16 Technical Guidance



### **Option 3: Effect the National Variation by entering into a detailed National Variation Agreement**

The parties to an existing contract may prefer to retain their existing form of contract, and vary it only so far as is necessary to reflect new policy positions.

To cater for this we have prepared template national variation agreements to effect that variation in respect of contracts on the following forms:

2014/15	All Services
2013/14	All Services
2012/13	Acute/Ambulance/Community/Mental Health and Learning Disabilities Services (Multilateral)
2012/13	Acute/Ambulance/Community/Mental Health and Learning Disabilities Services (Bilateral)

**Note that** for 2015/16 we have again prepared these documents as simple agreements rather than as deeds. This will make things easier for the parties to them as they can simply be signed by an authorised signatory on behalf of each party: there will be no need to execute using a seal or otherwise comply with requirements for execution of deeds.

These template agreements will be available via the NHS England 2015/16 webpage <http://www.england.nhs.uk/nhs-standard-contract/15-16/>

Each template Variation Agreement is drafted on the basis that the commissioners and providers have signed all previous applicable national deeds of variation issued by the Department of Health and NHS England.

Each template Variation Agreement is drafted so as to effect only the new regulatory and policy positions required by the NHS England to be incorporated in all NHS standard contracts. Contracts varied by means of one of the template Variation Agreements will otherwise continue on their existing terms (as may have been varied previously).

Where commissioners and providers wish to agree further variations to their contract (for example, to update Service Specifications), they must follow the variation procedure set out in their contract and enter into a separate Variation Agreement to effect those further changes.

As in previous years, we are publishing template variation documents in respect of the forms of contract published for the last three years. Where contracts based on standard forms for earlier than 2012/13 are to continue beyond 31 March 2015, commissioners and providers should either:

- (a) pursue Option 1 or Option 2 outlined above, or
- (b) take their own legal advice in order to produce a Variation Agreement based on the templates we have provided but adapted to suit the contract being varied.

The table below summarises the actions necessary to complete a Variation Agreement.

	Guidance
Inside cover page	Insert the full names of all Commissioners who are parties to the original, the full name of the Provider, and the date of the original contract. Delete the square brackets.
First page of operative text	After “THIS NATIONAL VARIATION AGREEMENT is dated” insert the date on which the Variation Agreement is completed – ie when it has been signed by all the parties. Note that if the parties sign on different dates, the date to be inserted here is a date on or after that on which the last party signs. This is the date on which the Variation Agreement becomes legally binding. Delete the square brackets.
First page of operative text	At “(1)” at the top of the first page insert the names and addresses of all Commissioners. Delete the brackets.
First page of operative text	At “(2)” insert the name of the Provider and the address of its principal/registered office. Delete the brackets.
First page of operative text	After “WHEREAS”, in paragraph A insert the date of the original contract.
Appendix 2 Appendix 3	Please refer to the 2015/16 NHS Standard Contract and associated Technical Guidance for instructions on how to complete the open fields in these Appendices.
Execution page	<p>Signatures</p> <p>The authorised signatory of the Provider and (each) Commissioner must execute the Variation Agreement where indicated. Insert additional signature blocks as required. <b>(If the contract being varied is in 2014/15 form, the Co-ordinating Commissioner may sign on behalf of all Commissioners (subject of course to the governance processes set out on the relevant Collaborative Commissioning Agreement); if the contract being varied is in earlier form, all Commissioners must sign)</b></p> <p>The Variation Agreement may be signed in counterpart (by each party signing separate but identical copies), or alternatively all parties can execute the same copy of the Variation Agreement.</p>

## Order of Events

Whichever of the options outlined above is taken, the order of events in respect of each contract must be as follows:

<p><b>Period to 31 March 2015</b></p>	<ul style="list-style-type: none"> <li>(a) commissioner(s) and provider to consider 2015/16 NHS Standard Contract/eContract and associated guidance alongside this guidance and relevant template National Variation Agreement;</li> <li>(b) commissioner(s) and provider to agree which of Option 1, Option 2 or Option 3 it is appropriate to pursue in relation to that contract;</li> <li>(c) commissioner(s) and provider to agree the form of short form National Variation Agreement (Option 1 or 2) and eContract (Option 1) or long form National Variation Agreement (Option 3) accordingly;</li> <li>(d) commissioner(s) and provider to enter into new short form National Variation Agreement (Option 1 or Option 2) or long form National Variation Agreement (Option 3) to effect variation of contract <b>on or before 31 March 2015 or as soon as practicable after that.</b></li> </ul>
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### Varying a contract: legal considerations

In order to vary an existing Contract, the parties to that contract must follow the variation procedure set out in that contract. The variation procedure appears at General Condition 13 in the 2014/15 and 2013/14 NHS Standard Contracts. In the case of contracts on the 2012/13 NHS Standard Contract form those provisions are set out in clause 52 in Section E.

The parties should seek their own procurement advice before deciding whether to pursue Option 1, Option 2 or Option 3 and in considering any further variations.

The parties may wish to meet to discuss the National Variation required by NHS England and whether they are to be effected via Option 1, Option 2 or Option 3. The parties should try to reach agreement. If agreement on the National Variation cannot be reached, the parties may refer the issue to the Dispute Resolution Procedure in accordance with their contract. If agreement still cannot be reached, either the Co-ordinating Commissioner or the Provider may terminate the contract.

If agreed, the National Variation becomes binding on the date on which the National Variation Agreement is signed by the relevant parties and dated, as appropriate. However, whichever option is pursued to effect the variations, they will take effect on and from 1 April 2015. So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2015 will be as set out in that contract before it was varied for 2015/16. For example if a

breach of the 18 Weeks Referral to Treatment Standard occurs in March 2015, the consequence of that breach will be as set out in the original contract and/or 2014/15 National Deeds of Variation, and not the consequence set out in the 2015/16 NHS Standard Contract and the 2015/16 Variation Agreement.

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