



NHS Standard Contract

**Guidance on National
Variations to existing 2013/14,
2014/15 and 2015/16 form
contracts**

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Author	NHS Standard Contract Team
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Additional Circulation List	
Description	This is guidance on the completion of the National Variations to existing NHS Standard Contracts on 2013/14, 2014/15 and 2015/16 forms, to reflect changes which are mandatory as a result of regulatory and policy developments. The National Variations must be effected by commissioners pursuant to the NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012.
Cross Reference	National Variations and short form National Variation Agreement template https://www.england.nhs.uk/nhs-standard-contract/16-17/
Superseded Docs (if applicable)	NHS Standard Contract Guidance on National Variations to existing 2012/13, 2013/14 and 2014/15 form contracts https://www.england.nhs.uk/wp-content/uploads/2015/04/guid-nat-var-tin-options.pdf
Action Required	Exact National Variation in accordance with this guidance
Timing / Deadlines (if applicable)	By 31 March 2016
Contact Details for further information	NHS Standard Contract Team 4E64 Quarry House Quarry Hill Leeds LS2 7UE nhscb.contractshelp@nhs.net https://www.england.nhs.uk/nhs-standard-contract/16-17/

Document Status

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NHS Standard Contract

Guidance on National Variations to existing 2013/14, 2014/15 and 2015/16 form contracts

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Executive summary

This document contains guidance on the completion of the National Variations to existing contracts on the 2013/14, 2014/15 and 2015/16 forms to reflect changes which are mandatory as a result of regulatory and policy developments and must be effected by commissioners pursuant to the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012.

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 2016.

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 2016/17.

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 2016, preferably by no later than 31 March 2016 but in any event as soon as practicable.

Process

The 2016/17 NHS Standard Contract (full-length version) follows the structure of the 2015/16 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 2016/17 contract and supporting guidance (available via the NHS Standard Contract [2016/17 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 three ways.

If varying a contract which includes “Small Provider” tailoring, you MUST follow Option 3 (because by following either Option 1 or 2 you would lose the Small Provider provisions).

Option 1: Effect the National Variation by short form National Variation Agreement and the 2016/17 eContract system

The parties to any existing contract which is EITHER in 2015/16 eContract form OR is a paper contract may opt to vary it by using a short form National Variation Agreement, and using the [2016/17 eContract portal](#). The 2016/17 eContract system is essentially a contract generation system, rather than a system which stores and issues contracts. Using the eContract platform, users can:

- create a tailored version of the 2016/17 full-length Service Conditions (in pdf format) to save to their local drive
- create a partially completed and tailored version of the 2016/17 full-length 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 full-length 2016/17 Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2016/17 form. This will make management of a portfolio of contracts simpler and more consistent.

A user guide for the 2016/17 eContract is available on the [eContract portal](#). Queries on the 2016/17 eContract system may be emailed to england.econtract@nhs.net.

The commissioner should use the 2016/17 eContract system to generate a new set of **full-length** 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, National Variation Agreement available at <https://www.england.nhs.uk/nhs-standard-contract/16-17/>. **If the contract being varied is in 2014/15 or 2015/16 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 18 of the NHS Standard Contract [2016/17 Technical Guidance](#).

Option 2: Effect the National Variation by short form National Variation Agreement and re-stated paper contract in 2016/17 form

This is essentially the same as Option 1, but without using the eContract portal to create the re-stated contract.

The parties to any existing contract may opt to vary it by using a short form National Variation Agreement and re-stating their contract in 2016/17 form by:

- Saving the 2016/17 full-length Particulars (in Word format) to their local drive, completing them and otherwise proceeding as set out below

Then:

- repopulating 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 full-length 2016/17 Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2016/17 form. This will make management of a portfolio of contracts simpler and more consistent.

- 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, National Variation Agreement available at <https://www.england.nhs.uk/nhs-standard-contract/16-17/>. **If the contract being varied is in 2014/15 or 2015/16 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 complete 2016/17 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 18 of the NHS Standard Contract [2016/17 Technical Guidance](#)

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

The parties to an existing contract may, notwithstanding the benefits of transferring to an eContract, 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 **a single national variation agreement** to effect that variation in respect of contracts on any of the following forms:

2015/16 – all Services

2014/15 – all Services

2013/14 – all Services

Note that for 2016/17 we have again prepared this document as a simple agreement rather than as a deed. This will make things easier for the parties to them as it 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.

The template agreement is available via the NHS England [2016/17 webpage](#).

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

The 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 documentation (this year as a single composite agreement) in respect of the forms of contract published for the last three years. Where contracts based on standard forms for earlier than 2013/14 are to continue beyond 31 March 2016, 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 2016/17 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. (If the contract being varied is in 2014/15 or 2015/16 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).</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>Period to 31 March 2016</p>	<ul style="list-style-type: none"> (a) commissioner(s) and provider to consider 2016/17 NHS Standard Contract/eContract and associated guidance alongside this guidance and relevant template National Variation Agreement; (b) commissioner(s) and provider to agree which of Option, Option 2 or Option 3 it is appropriate to pursue in relation to that contract; (c) commissioner(s) and provider to agree the form of short form National Variation Agreement and eContract (Option 1), or the form of short form National Variation Agreement and restated Particulars (Option 2) or long form National Variation Agreement (Option 3) accordingly; (d) commissioner(s) and provider to enter into new short form National Variation Agreement (Option 1 or 2) or long form National Variation Agreement (Option 3) to effect variation of contract on or before 31 March 2016 or as soon as practicable after that.
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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 2015/16, 2014/15 and 2013/14 NHS Standard Contracts.

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 2016. So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2016 will be as set out in that contract before it was varied for 2016/17. For example if a breach of the 18 Weeks Referral to Treatment Standard occurs in March 2016, the consequence of that breach will be as per 2015/16 terms, and not the consequence set out in the 2016/17 NHS Standard Contract and the 2016/17 Variation Agreement.