



NHS Standard Contract

Guidance on the Variations Process (full-length and shorter- form contracts)

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NHS Standard Contract Guidance on the Variations Process (full-length and shorter-form contracts)

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CCG Clinical Leaders, CCG Accountable Officers, CSU Managing Directors, Care Trust CEs, Foundation Trust CEs, Local Authority CEs, NHS England Regional Directors, NHS Trust CEs, Parties to the NHS Standard Contract (commissioners and providers)

Additional Circulation List**Description**

This document contains guidance on the process to effect variations to NHS Standard Contracts (full-length and shorter form). It applies both to variations initiated by a party to the Contract and to variations mandated by NHS England (National Variations).

Cross Reference

NHS Standard Contract Variation Agreement
<https://www.england.nhs.uk/nhs-standard-contract/>

Superseded Docs (if applicable)

NHS Standard Contract Guidance on the Variations Process
<https://www.england.nhs.uk/wp-content/uploads/2015/05/2-var-process-guidance.pdf>

Action Required

NA

Timing / Deadlines (if applicable)

NA

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Document Status

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NHS Standard Contract Guidance on the Variations Process

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This guidance was republished in August 2017 to add a reference to the Public Contract Regulations 2015 in section 5; and to add detail under steps 1, step 7 and 8 in the table at section 6.1.

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1 Executive summary

This document contains guidance on the process to effect variations to contracts based on the NHS Standard Contract (full-length and shorter form).

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).

2 Introduction

This guidance is relevant to all commissioners and providers who are parties to commissioning contracts based on the NHS Standard Contract (full-length and shorter form).

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.

3 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 document 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 the steps which must be taken, and how to use the template Variation Agreement.

Whenever a 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 National or Local Variation Agreement).

The tables at Section 6 below describe the process in detail, and you will need to follow the steps described carefully.

The **Template Variation Agreement** is available on the NHS Standard Contract [webpage](#).

4 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.

5 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 refer to regulation 72 of the Public Contract Regulations 2015 and seek their own legal advice before proceeding with any Variation.

6 Variations step-by-step

6.1 For a Local Variation proposed by a Commissioner or a Provider

Note that under GC13.2, a Variation (unless it is a National Variation) may involve only changes to:

(a) the Particulars, and/or

(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), and/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.

SEE THE NHS STANDARD CONTRACT [TECHNICAL GUIDANCE](#) FOR MORE INFORMATION ON VARIABLE ELEMENTS.

The steps and contract references below relate to the full-length NHS Standard Contract.

The process for effecting a variation is not spelt out in detail in the shorter-form NHS Standard Contract, but parties should generally follow the process set out below in any event, **and at a minimum comply with the steps shown in red below.**

Step	Contract ref	Activity
1	GC13.4	<p>Co-ordinating Commissioner or Provider (Proposer) serves a draft <u>Variation Agreement</u> on the other party (Recipient) 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” or “Provider”, as appropriate.</p> <p>Date of Variation Agreement: date to be inserted once Variation Agreement has been agreed and signed by the parties.</p>

Step	Contract ref	Activity
	GC13.3	<p>In the text box under item 1 in the draft Variation Agreement, insert a summary of the proposed Variation OR, if revised Particulars and/or Service Conditions and/or incorporated documents are NOT to be attached to the Variation Agreement, a full and complete description of the agreed changes to be made to those documents.</p>
	GC13.3	<p>In the former case, attach revised versions of the Particulars, the Service Conditions or any incorporated documents, and complete the text under item 2 below the text box accordingly.</p> <p>The revised versions of the Particulars and / or the Service Conditions may be produced by the <u>eContract system</u> (please refer to 6.3 below).</p>
	GC13.7	<p>Under item 3, insert the date on which the Variation is to take effect.</p> <p>Under item 4, remove the square brackets if the Contract being varied is in the form of the NHS Standard Contract 2014/15 or later (and all Commissioners have agreed, via their Collaborative Commissioning Agreement or otherwise, that the Co-ordinating Commissioner may sign the Variation Agreement on their behalf). If this is not the case, delete item 4.</p>
	GC36	<p>The draft Variation Agreement (and any attached documents) must be served on the Recipient in accordance with the procedure for service of notices set out in GC36.</p>
2	GC13.8	<p>The Recipient must issue Recipient's Response within 10 Operational Days.</p>
	GC36	<p>This must be done in accordance with the procedure for service of notices set out in GC36.</p>
3	GC13.9	<p>If necessary, the parties must meet to discuss the draft Variation Agreement and the Recipient's Response within 10 Operational Days.</p> <p>This may result in changes needing to be made to the draft Variation Agreement and/or any revised Particulars and/or Service Conditions and/or incorporated documents already issued and/or the issue</p>

Step	Contract ref	Activity
		and development of the appropriate drafts.
4	GC13.10 GC36	The Recipient serves written notice accepting or refusing Variation Agreement. This must be done in accordance with the procedure for service of notices set out in GC36.
5	NA	If the draft Variation Agreement is accepted , the parties finalise the details of the Variation. 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.
6	GC13.3	The Proposer issues the final Variation Agreement for signature, with agreed revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) attached.
7	GC13.3	<p><u>Authorised signatories for each of the parties</u> (the Provider and the Co-ordinating Commissioner, or all Commissioners, as appropriate – see below) must sign a copy of the Variation Agreement. Authority must be granted to an individual to sign on behalf of the relevant party in accordance with the governance procedures for that party. Note that the authorised signatory for the Variation Agreement need not necessarily be the same person that signed the original contract or any previous Variation Agreement.</p> <p>Note that, if the Contract being varied is in the form of the NHS Standard Contract 2014/15 onwards (and all Commissioners have agreed, via their Collaborative Commissioning Agreement or otherwise, that the Co-ordinating Commissioner may sign the Variation Agreement on their behalf), only the Co-ordinating Commissioner need sign. In all other circumstances, all Commissioners must sign the Variation Agreement.</p> <p>The parties should <u>not</u> sign the revised Particulars – this is not a new contract, but a variation to the existing contract, so what needs to be signed is the Variation Agreement, not the Particulars attached to it.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>

Step	Contract ref	Activity
8	NA	The agreed variations will now take effect from the date agreed locally and set out in paragraph 3 of the Variation Agreement. The contract as varied will apply from that date onwards. (Note that the parties may agree that the date on which the variation takes effect should be at some point after the date on which it is signed. Where the parties are agreeing updated schedules to apply for the second or subsequent Contract Year of a multi-year contract, for instance, they will normally wish the variation to take effect from 1 April of the relevant year, even if it is signed well in advance of that.)

OR

5	GC13.14 – 13.16	If the draft Variation Agreement is not agreed, the Proposer must withdraw the draft Variation Agreement. The process in GC13.14 and GC13.15 may apply.
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6.2 For a National Variation mandated by NHS England

Step	Contract ref	Activity
1	GC36.5/GC13.13 (GC13.4 in the shorter form)	<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 NHS Standard Contract webpage and CCG bulletins. The new version(s) will be published on the NHS Standard Contract webpage.</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 Local Variation. as set out in 1) above.</p>

Classification: Official

6.3 Use of eContract system

The revised versions of the Particulars and / or the Service Conditions (full-length or shorter form) if required for the process outlined in s6.1 above may be produced by using the eContract system. The eContract system offers the following benefits to system users:

- easy to use, intuitive and robust system;
- allows the contract content to be easily tailored to reflect the different services being provided (thus producing shorter, more relevant contracts – a particular benefit to small providers);
- makes the contract production process more efficient; and
- gives assurance that the correct form of contract is used and that Contract tailoring is being applied correctly.

Using the eContract platform, users can:

- create a tailored version of the Service Conditions (in pdf format) to save to their local drive
- create a partially completed and tailored version of the Particulars (in Word format) to save to their local drive for later population.

A user guide for the eContract portal is available at <https://www.econtract.england.nhs.uk/Home/>. Queries on the eContract system may be emailed to england.econtract@nhs.net.