



NHS Standard Contract

Guidance on National Variations to existing 2015/16, 2016/17, 2017-19 (November 2016 edition) and 2017-19 (January 2018 edition) full length contracts and to existing 2016/17, 2017-19 (November 2016 edition) and 2017-19 (January 2018 edition) shorter-form contracts

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Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have given due regard to the need to:

- reduce health inequalities in access and outcomes of healthcare services integrate services where this might reduce health inequalities
- eliminate discrimination, harassment and victimisation
- advance equality of opportunity and foster good relations between people who share a relevant protected characteristic (as cited in under the Equality Act 2010) and those who do not share it.

Executive summary

This document contains guidance on the completion of the National Variations to existing full length contracts on the following forms:

- 2015/16
- 2016/17
- 2017-19 (November 2016 edition)
- 2017-19 (January 2018 edition)

and to existing shorter-form contracts on the following forms:

- 2016/17
- 2017-19 (November 2016 edition)
- 2017-19 (January 2018).

The National Variations are required to reflect changes resulting from regulatory and policy developments. The National Variations must be effected by commissioners pursuant to the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012.

Some of the changes in the National Variations are effective from 1 April 2018, and some are effective from 25 May 2018. More information is given under 'Effective dates of National Variation' below.

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 2018.

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.

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

Some of the changes in the National Variation are to incorporate new contract provisions arising from the new General Data Protection Regulation, which comes into force on 25 May 2018, and the anticipated new Data Protection Act. Others reflect new policy or policy changes on the part of NHS England.

The National Variation must be effected for every commissioning contract the duration of which extends beyond 31 March 2018, preferably by no later than 25 May 2018 but in any event as soon as practicable.

The process below applies to both the full length and the shorter-form versions of the NHS Standard Contract. Please ensure that you use the documentation appropriate to your original contract – full length or shorter-form.

Effective Dates of National Variation

The changes to the NHS Standard Contract arising from the General Data Protection Regulation are effective on the date that the GDPR is implemented into UK Law (that is, 25 May 2018). The changes arising as a result of policy change are effective from 1 April 2018. These effective dates are stated against each change in the detailed National Variation and are provided for in the simple National Variation Agreement.

Process

The May 2018 edition of the 2017-19 NHS Standard Contract (both full length and shorter-form versions) retains the structure of the original 2017-19 NHS Standard Contract published in January 2018. As in previous years, the updated Contract will be published and made available for use via the [eContract portal](#). Commissioners and providers are strongly encouraged to review the May 2018 edition of the 2017-19 Contract and supporting guidance (available via the NHS Standard Contract [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 you are varying a full length contract which includes “Small Provider” tailoring (i.e. pre 2016/17), you MUST follow Option 3 (because by following either Option 1 or 2 you would lose the Small Provider provisions).

If you are varying a contract which has not been varied to bring it in line with the 2017-19 (January 2018 edition) Contract, you MUST follow Option 1 or Option 2 below.

Option 1: Effect the National Variation by simple National Variation Agreement and the eContract system

The parties to any existing contract (full length or shorter-form) which is EITHER in eContract form OR is a paper contract may opt to vary it by using a simple National Variation Agreement (for a full length or shorter-form Contract as appropriate), and using the [eContract portal](#). The 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 2017-19 (May 2018 edition) Service Conditions (in pdf format) in full length or shorter-form version (as appropriate) to save to their local drive
- create a partially completed and tailored version of the 2017-19 (May 2018 edition) Particulars (in Word format) in full length or shorter-form version (as appropriate) to save to their local drive
- download a copy of the 2017-19 (May 2018 edition) General Conditions in full length or shorter-form version (as appropriate).

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 or required for the coming year
- by this means adopt not only the new policy changes, but also all other updates and improvements contained in the 2017-19 (May 2018 edition) Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2017-19 (May 2018 edition) form. This will make management of a portfolio of contracts simpler and more consistent.

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

The commissioner should use the eContract system to generate a new set of Particulars in full length or shorter-form version (as appropriate), 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
- at **Particulars – Service Requirements:**
 - Is the Provider acting as a Data Processor in order to deliver the Services?** – indicate yes or no
- at **Particulars – Governance and Regulatory:**
 - Provider’s Data Protection Officer** – if applicable, enter the name, telephone number and email address of the Provider’s Data Protection Officer
- 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 (for a full length or for a shorter-form Contract as appropriate) available on the NHS Standard Contract [web page](#). **If the contract being varied is in 2014/15 form or later, 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 2017-19 (May 2018 edition) [Technical Guidance](#).

Option 2: Effect the National Variation by simple National Variation Agreement and re-stated paper contract in 2017-19 (May 2018 edition) 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 simple National Variation Agreement and re-stating their contract in 2017-19 (May 2018 edition) form by:

- Saving the 2017-19 (May 2018 edition) Particulars (in Word format) in full length or shorter-form version (as appropriate) 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 or required for the coming year
- by this means adopt not only the new policy changes, but also all other updates and improvements contained in the 2017-19 (May 2018 edition) Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2017-19 (May 2018 edition) 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
- at **Particulars – Service Requirements:**
 - Is the Provider acting as a Data Processor in order to deliver the Services?** – indicate yes or no
- at **Particulars – Governance and Regulatory:**
 - Provider’s Data Protection Officer** – if applicable, enter the name, telephone number and email address of the Provider’s Data Protection Officer
- 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 (for a full length or for a shorter-form Contract as appropriate) available on the NHS Standard Contract [web page](#). **If the contract being varied is in 2015/16 or later 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 2017-19 (May 2018 edition) Service Conditions and General Conditions, each in full length or shorter-form version (as appropriate) 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 2017-19 [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 **a single national variation agreement for each of:**

- 2015/16, 2016/17, 2017-19 (November 2016 edition), and 2017-19 (January 2018 edition) full length contracts, and
- 2016/17, 2017-19 (November 2016 edition), and 2017-18 (January 2018) shorter-form contracts

to effect the variation.

Note that for this National Variation we have again prepared these variation documents as 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.

Each template agreement is available via the NHS Standard Contract [web page](#). 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. If this is not the case, the parties must follow Option 1 or Option 2 above.

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 full length contracts based on standard forms for earlier than 2015/16 are to continue beyond 31 March 2018, 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. Delete the brackets.
Under Particulars – Service Requirements: Is the Provider acting as a Data Processor in order to deliver the Services?	Indicate yes or no.
Under Particulars – Governance and Regulatory: Provider’s Data Protection Officer (if required by Data Protection Legislation)	Where required, enter the name, telephone number and email address of the Provider’s Data Protection Officer.
Appendix 2 Appendix 3	Please refer to the 2017-19 (May 2018 edition) NHS Standard Contract and associated Technical Guidance for instructions on how to complete the open fields in these Appendices.
Schedule 6F Annex A	Where applicable (ie where the Provider is to act as Data Processor for the purposes of the Contract), please refer to the 2017-19 (May 2018 edition) NHS Standard Contract and associated Technical Guidance for instructions on how to complete the open fields in Schedule 6F annex A

<p>Execution page</p>	<p>Signatures 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 2015/16 or later 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>
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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 25 May 2018</p>	<ul style="list-style-type: none"> (a) commissioner(s) and provider to consider 2017-19 NHS Standard Contract (May 2018 edition) / eContract and associated guidance alongside this guidance and relevant template National Variation Agreement; (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; (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 25 May 2018.
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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.

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 2018 or 25 May 2018 (as appropriate for each individual variation to the contract). So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2018 or 24 May 2018 (as appropriate) will be as set out in that contract before it was varied in accordance with the 2017-19 Contract (May 2018 edition). For example if a breach of an Operational Standard occurs in March 2018, the consequence of that breach will be as per 2017-19 (January 2018 edition) terms, and not the consequence set out in the 2017-19 NHS Standard Contract (May 2018 edition) and the 2017-19 Variation Agreement published in May 2018.