



# **Draft NHS Standard Contract 2019/20 (full length and shorter-form versions): A consultation**

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## **Proposed changes to the full-length and shorter-form NHS Standard Contract for 2019/20**

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Promoting equality and addressing health inequalities 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 eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.

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## 1 Introduction

The NHS Standard Contract is published by NHS England and is mandated, under Standing Rules regulations, for use by NHS commissioners to contract for all healthcare services other than primary care services.

The Contract is published in two versions – the full-length version, which is used to commission the bulk of such services by value, and the shorter-form version, which can be used in defined circumstances for certain services where lower financial values are involved.

NHS England has been considering a range of changes to the Contract – to keep it up-to-date and relevant; to ensure it correctly relates to new legislation; to ensure it reflects significant new policies; and to deliver technical improvements. NHS England is now consulting on updated versions of both the full-length and shorter-form versions of the Contract. Both are available on the NHS Standard Contract 2019/20 webpage.

This paper describes the main, material changes we are proposing to make to both versions of the Contract, and we would welcome comments from stakeholders on our proposals, along with any other suggestions for improvement.

**Comments on the draft Contracts should be sent to [england.contractsengagement@nhs.net](mailto:england.contractsengagement@nhs.net) by Friday 1 February 2019. We expect to publish the final version of the Contract (both full-length and shorter-form) by 22 February 2019, once the outcome of the statutory consultation on the National Tariff Payment System for 2019/20 is known.**

## 2 Period covered by the Contract

The Contract is intended to set national terms and conditions applicable for the 2019/20 financial year. If urgent issues arise in-year which require any amendment to the Contract, NHS England will consult on and publish a National Variation for implementation locally. NHS England will in due course review the Contract again and consult on potential changes to take effect from 1 April 2020.

This is not to say, of course, that commissioners may only award contracts covering the single financial year of 2019/20. There will be situations where commissioners decide that it is appropriate to award longer-term contracts covering multiple years. Where they do so, they will need to implement a National Variation for 2020/21 and each subsequent year of their contract term, so that their local contract continues to reflect the mandatory national terms and conditions of the Contract as they evolve.

### 3 Proposed changes to the full-length Contract

We describe below the main, material changes we propose to make to the full-length version of the Contract for 2019/20.

#### 3.1 Key policy changes

##### Changes affecting specific clinical services

This section sets out proposed changes which are aimed at improving care in specific clinical services.

Topic	Change	Contract Reference
Maternity services	The 2019/20 Planning Guidance sets two objectives around maternity services which we propose to support by introducing new Contract requirements. The first requires implementation of the <a href="#">Saving Babies' Lives Care Bundle</a> , aimed at reducing still-births and neonatal deaths; the second sets a standard of 35%, for March 2020, for the proportion of women who experience continuity of carer during their maternity care.	Service Condition 3 and Particulars Schedule 4B
Care for people with learning disabilities	NHS Improvement has recently published <a href="#">improvement standards</a> , and NHS England is about to publish good practice guidance, for providers of NHS services in respect of care and treatment of people with learning disabilities and autism. We propose to add a new requirement to the Contract for providers to have regard to these documents.	Service Condition 3
Eating disorder services	We propose including a new requirement relating to the <a href="#">national standard for access to eating disorder services</a> for children and young people.	Service Condition 3
Early Intervention in Psychosis (EIP)	The Contract contains a National Quality Requirement in relation to patients experiencing a first episode of psychosis. We propose to continue the gradual upward trend in the national standard, in line with the published national trajectory, raising the threshold from 53% of Service Users waiting less than two weeks to access treatment in 2018/19 to 56% from 1 April 2019. We also propose to introduce a new requirement to achieve Level 2 performance under the Royal College of Psychiatrists' annual assessment process for providers of EIP services.	Service Condition 3 and Particulars Schedule 4B
Care and Treatment Reviews	The Contract contains very broad requirements to comply with guidance relating to admission to / discharge from hospital of people with learning disabilities. We propose to update the relevant wording to require compliance with more recent specific guidance on undertaking <a href="#">Care and Treatment Reviews</a> before admission or discharge. ***	Service Conditions 6 and 11

Physical healthcare for people with severe mental illness	A national CQUIN indicator has been in place since 2014 to incentivise providers of mental health services to monitor the physical health of patients with severe mental illness and arrange for further assessment or treatment where indicated. We now propose to translate that into a broadly equivalent requirement to do so within the Contract.	Service Condition 8
Adalimumab	Adalimumab is the NHS's most costly individual drug, used for treating severe conditions such as rheumatoid arthritis, inflammatory bowel disease and psoriasis. Following NHS England's recent national procurement exercise, we propose to include a new requirement to ensure that providers only source adalimumab from their allocated regional supplier under that procurement. This will maximise value for money from the procurement for the NHS as a whole.	Service Condition 39
Vehicle specification for ambulance services	As proposed in the recent <a href="#">Carter report into NHS ambulance Trusts</a> , we intend, through the Contract, to mandate adoption, over time, of a new <a href="#">national specification for emergency double-crewed ambulance vehicles</a> .	Service Condition 39
Ambulance service response times	New national standards for ambulance response times took effect from 1 April 2018. Now that these have bedded in, we propose to introduce financial sanctions for failure to achieve certain of these standards. For qualifying providers, these sanctions will be subject to the PSF suspension arrangement described in section 3.2 below.	Particulars Schedule 4A
Sepsis	Since 2016, financial incentives have been in place through CQUIN to drive improvements in the identification and initial treatment of patients with sepsis. We now propose to transfer the key CQUIN requirements into the Contract as two new national standards, covering screening and initial treatment for A&E attenders and inpatients. We also propose including additional references to the use of the National Early Warning Score (NEWS 2) and to compliance with national guidance on sepsis screening and treatment.	Service Condition 22 and Particulars Schedule 4B

### **Integrated system working and Primary Care Networks**

This section sets out proposed changes which are aimed at promoting effective system-wide collaboration between commissioners and providers within a local health community.

<b>Topic</b>	<b>Change</b>	<b>Contract Reference</b>
System-wide collaboration and integration of services	We propose to strengthen the requirements in the Contract which relate to the integration and co-ordination of care across different providers, by including a new requirement on both commissioner and provider to contribute towards implementation of any relevant local System Operating Plan. A separate schedule will allow each party's obligations under that Plan to be set out in detail, if required, thereby giving them contractual force.	Service Condition 4 and Particulars Schedule 8



Primary Care Networks	The draft Contract includes a new requirement on community services providers to ensure that their services are organised and delivered in such a way as to integrate effectively with the local configuration of <a href="#">Primary Care Networks</a> .	Service Condition 4
Urgent Care Directory of Service	It is essential to ensure that people in need of urgent care are directed to the right part of the local healthcare system. We propose including new requirements on commissioners and providers with the aim of ensuring that comprehensive and up-to-date information about a provider's services is always included in the <a href="#">Urgent and Emergency Care Directory of Service</a> .	Service Condition 6
Health inequalities	We propose to include a high-level requirement in the Contract for the provider to support the commissioners in carrying out their duties in respect of the reduction of inequalities in access to health services and in the outcomes achieved from the delivery of health services.	Service Condition 13

### **Other broader policy initiatives**

This section sets out proposed changes which are aimed at promoting other more general improvements in how care and treatment are delivered for patients.

<b>Topic</b>	<b>Change</b>	<b>Contract Reference</b>
Staffing of clinical services	We propose to strengthen the Contract requirements on safe staffing to include reference to <a href="#">Developing Workforce Safeguards</a> , recently published by NHS Improvement. Our proposed wording includes new requirements, described in NHS Improvement's guidance, to undertake quality impact assessments before making staffing changes and to implement a standard operating procedure for dealing with day-to-day staff shortfalls.	General Condition 5
Protected disclosures under settlement agreements	We propose to include a new requirement that any settlement agreement or other agreement between a provider and an employee relating to the termination or expiry of the employee's employment must include a new standard statement to the effect that nothing in such agreement will prevent the employee from making "protected disclosures" or from raising concerns that relate to patient safety. (Discussions are continuing between national bodies which may result in an update to the current <a href="#">NHS Employers guidance</a> being published in the New Year, and we will ensure that the final Contract wording aligns with any updated guidance.) ***	General Condition 5



Provision of advice and guidance	The Contract has for many years included a requirement relating to provision of advice and guidance to GPs via the NHS e-Referral Service (eRS). More recently, CQUIN has encouraged the establishment of advice and guidance services on a larger scale, not necessarily via eRS. We now propose to amend the Contract requirement, enabling advice and guidance requirements to be described in local service specifications, with the locally-agreed prices payable for these to be set out in the relevant schedule.	Service Condition 6
NHS e-Referral Service	After the success of the national paper switch-off programme, moving GP referrals to acute services fully onto eRS, we now propose to encourage mental health services to follow suit, with a new Contract requirement for elective mental health services to be listed on eRS by no later than 1 October 2019.	Service Condition 6
Personalised care	We propose to include additional requirements in the Contract to support implementation at local level of personalised care and the roll-out of personal health budgets. A new Schedule will be provided in which local implementation arrangements can be set out if and as required.	Service Condition 10 and Schedule 2M.
NHS Continuing Healthcare Framework	The new <a href="#">National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care</a> took effect from October 2018, and <a href="#">Refreshing NHS Plans for 2018/19</a> emphasised the need to minimise the number of NHS continuing healthcare assessments which take place in an acute hospital setting. We propose adding requirements to the Contract to reflect these obligations. ***	Service Condition 11
Sales of sugary drinks	As described at <a href="https://www.england.nhs.uk/sugar-action/">https://www.england.nhs.uk/sugar-action/</a> , in recognition of progress made on this initiative we propose to amend the Contract to include a requirement, based on the current national CQUIN indicator, to ensure that sales of sugar-sweetened beverages (SSBs) account for no more than 10% by volume of all beverages which are sold from the Trust's premises in any year. For consistency, we also propose to update the definition of an SSB to align with the Government Buying Standards and advice from Public Health England.	Service Condition 19
Infection control and antimicrobial stewardship	A national CQUIN indicator has been in place since 2016 to incentivise improvements in antimicrobial stewardship and reductions in the total volume of antibiotic prescribing. We now propose to transfer specific requirements into the Contract, requiring providers to have regard to key national guidance on antimicrobial stewardship and to strive to achieve ongoing reductions in its use of antibiotics.	Service Condition 21
Interoperability of major IT systems	The current Contract requires providers to ensure that their major clinical IT systems feature open interfaces, allowing full interoperability with other providers' systems. We propose to update the Contract wording to reflect recent <a href="#">NHS England guidance on interoperability requirements</a> , including a new requirement to implement specific mandated <a href="#">Care Connect APIs</a> by 31 March 2020.	Service Condition 23

Data Quality Maturity Index	The current Contract includes four standards on aspects of data quality, covering completion of the NHS Number in mental health, acute and A&E commissioning data sets, completion of the ethnicity field in mental health commissioning datasets and completion of outcomes fields in IAPT datasets. A much more comprehensive measure of the quality of a provider's data submissions is now available through the Data Quality Maturity Index (DQMI), published by NHS Digital; this covers eight different commissioning datasets and measures data quality across a much wider set of content. We therefore propose to remove the four specific data quality standards from Schedule 4B, replacing them with an ongoing requirement on providers to optimise their performance against the DQMI. ***	Service Condition 28 and Particulars Schedule 4B
Evidence-based interventions	NHS England and other national bodies have recently consulted on a new national approach to the provision of interventions which evidence has shown to be clinically ineffective. <a href="#">Final guidance for CCGs</a> has now been published, and the draft Contract includes the proposed provisions relating to implementation of the national evidence-based interventions policy.	Service Condition 29

## 3.2 NHS financial and business rules

### **Contract sanctions and the Provider Sustainability Fund**

A Provider Sustainability Fund (PSF) will operate for 2019/20, as a key means for ensuring that the NHS provider sector returns to overall financial balance. NHS Trusts and NHS Foundation Trusts accepting PSF allocations will be required to sign up to financial control totals. Trusts which do so will continue to be protected from the impact of certain contractual sanctions, as has been the case since 2016. The Contract wording giving effect to this suspension of sanctions continues to be set out in Service Condition 36.38 and General Condition 9.26, with only minor amendments from the 2017/19 provisions.

This measure affects the financial sanctions which would otherwise apply where providers fail to deliver certain of the national standards set out in Schedules 4A and 4B of the Particulars of the Contract. The national standards for which sanctions remain active for all providers, regardless of PSF status, are those covering infection control (MRSA and C difficile), cancelled operations, mixed sex accommodation, the duty of candour and 52-week waits (see below).

We propose that new arrangements should apply in respect of sanctions for 52-week breaches in 2019/20.

- The suspension of 52-week breach sanctions, for providers who sign up to the PSF, will cease with effect from 1 April 2019, in accordance with the 2019/20 Planning Guidance requirement to eliminate 52-week waits.

- From that date, the Contract sanction on providers for each breach will be revised to £2,500.
- Given that 52-week breaches are typically a symptom of whole-system level problems, there will be a new financial commitment on commissioners, also from 1 April 2019 – in effect a virtual sanction mirroring that on providers. This will also be set at £2,500, meaning that the overall value of 52-week breach sanctions, in total, will remain at the 2018/19 level of £5,000 – but the burden will be shared between provider and commissioner, giving each an equal incentive to reduce long waits.
- Where a breach occurs, the commissioner must apply the £2,500 sanction to the provider and must then report this to the relevant NHS England / NHS Improvement regional team. The aggregate of sanctions levied on the provider and the matched commissioner funding may then only be used at the express direction of the regional team, which will determine how it should best be applied to support local service delivery priorities.

Further detail on the operation of all of these arrangements is set out in our draft Contract Technical Guidance (see paragraphs 3.6 - 3.14).

### **Changes to the National Tariff Payment System**

NHS England and NHS Improvement have announced their intention – subject to formal consultation in the New Year – to [reform the model of payment for acute emergency care](#) for 2019/20 onwards. If the proposed reforms proceed, they will require us to make some changes to the Contract. We will need to remove Schedules 3D and 3E and Service Conditions 36.21 and 36.22 (which deal with the Marginal Rate Emergency Rule and the payment rule for emergency readmissions), potentially replacing them with additional provisions and schedules to reflect the new arrangements. At this stage, we have simply flagged in the draft Contract documentation the areas where changes are likely to be needed. We will confirm the final position when we publish the final Contract in February 2019, after the outcome of the Tariff consultation is known.

### **Counting and coding changes**

The Contract sets out, at Service Condition 28, provisions for managing the financial impact of changes in the way a provider records patient activity. To provide greater clarity and to reduce the potential for local disputes, we propose to make changes to these provisions for 2019/20, and we have further clarified the section of our Contract Technical Guidance which deals with this topic. The key changes we propose are as follows.

- The short-term requirement to neutralise the financial impact of counting and coding changes will continue to apply both to nationally-mandated changes (that is, those made in response to specific new, formal guidance from NHS Digital) and locally-proposed changes, as currently. But we propose amending the requirements around giving notice of proposed changes so that, from 1 April 2019, there will be no requirement for the provider to give advance notice of a

nationally-mandated change. All new NHS Digital guidance requiring such a change will be published on a publicly accessible website, allowing commissioners direct access to the details and removing the necessity for advance notice. However, the provider must implement relevant nationally-mandated changes in accordance with the timetable set by the guidance, and must inform the commissioner of the changes it is making when it commences implementation of new guidance.

- The revised provisions clarify that, ultimately, the need for, and extent of, any “neutralising” financial adjustment is triggered by the actual financial impact, in practice, of a counting and coding change, rather than by the impact which is estimated in advance, before the change is implemented.
- Local disputes over transactional issues such as these must be kept to an absolute minimum, so that commissioners and providers can focus their efforts on more important matters relating to patient care. We therefore propose to include an explicit new provision requiring the parties to work jointly and in good faith to monitor the actual impact of counting and coding changes and to agree the extent of any necessary financial adjustments.

### 3.3 Technical improvements

We propose to make a number of technical changes which we believe will make the Contract more effective in practice.

Topic	Detailed change	Contract Reference
Payment	The long-standing requirement in the Contract has been for payment on account to be made in equal 12 <sup>ths</sup> . We recognise that this profile may not always be appropriate: for example, where QIPP plans are profiled to take effect later in the year; in this situation, a payment profile of equal 12 <sup>ths</sup> can cause cashflow issues for providers. We therefore propose to amend the Contract wording to allow the parties to adopt, by agreement between the parties, a more tailored payment profile. ***	Service Condition 36
CQUIN	In order to minimise bureaucracy, national CQUIN Guidance enables commissioners to disapply CQUIN for very small-value contracts, with the relevant amount being instead simply included within the Local Prices and Expected Annual Contract Value. There can sometimes be confusion, in an individual contract, about whether this disapplication has been properly applied, and we have amended the Contract provisions to address this. ***	Service Condition 38 and Particulars Schedule 4D

Topic	Detailed change	Contract Reference
Contract management	Remedial Action Plans (RAPs) are a key tool in the Contract for putting right breaches of contractual requirements and securing improved services for patients. We propose to tighten the Contract wording to make clearer that, where the provider is in breach of contract, the commissioner may ultimately apply financial sanctions where a RAP cannot be agreed as a direct result of unreasonableness or failure to engage on the part of the provider.	General Condition 9
Sub-contracting	Feedback has indicated that the longstanding distinction made in the Contract between Mandatory and Permitted Material Sub-Contractors is still not well understood and causes unnecessary confusion. We propose to simplify the Contract provisions by removing the distinction and referring simply to Material Sub-Contractors in future.	General Condition 12
Derogations	In relation to specialised services, the Contract currently allows for “Derogations” to be set out in Schedule 2A1, where a provider cannot meet all aspects of a national service specification. NHS England no longer intends to permit derogations from its national service specifications and will instead require any affected provider to implement a time-limited Remedial Action Plan, through which it will become compliant with the full requirements of the relevant specification. We therefore propose to remove Schedule 2A1 and all associated references to Derogations.	Particulars Schedule 2A1
Definitions for national standards	We propose to provide clearer links to definitions for all of the national standards set out in the Contract. This will in part be done through Annex F of the 2019/20 Planning Guidance. ***	Particulars Schedules 4A and 4B
Reporting requirements	Schedule 6A sets out national and local reporting requirements. We have reviewed this with input from NHS Digital and propose changes as follows: <ul style="list-style-type: none"> <li>• an amended description and <a href="#">weblink</a> for the schedule of approved national data collections (National Requirements Reported Nationally);</li> <li>• removal of certain requirements which are no longer appropriate for inclusion in the list of National Requirements Reported Locally; and</li> <li>• a requirement for local patient datasets (under Local Requirements Reported Locally) to be submitted via NHS Digital’s <a href="#">Data Landing Portal</a>. ***</li> </ul>	Particulars Schedule 6A
Activity and Finance Report	NHS England has for some time specified a mandatory form of Activity and Finance Report (known as the Aggregate Contract Monitoring report) for services it commissions; this is supported by flows of patient-level data covering activity and, where relevant, separately-charged drugs and devices. Following an engagement exercise carried out in January 2018 and detailed subsequent discussions with NHS Digital, we now propose to mandate use of the standard report format, and supporting data flows, for <u>all acute and mental health services</u> commissioned under the full-length version of the Contract. We propose to do this through a combination of	Particulars Schedule 6A

Topic	Detailed change	Contract Reference
	changes to the wording of the Contract and a new Information Standards Notice, to be published by NHS Digital early in 2019, subject to the outcome of the Contract consultation. Our overall intention is to improve efficiency and reduce burden by standardising the format of information which is being provided. Full details of the proposals are available at <a href="https://www.england.nhs.uk/nhs-standard-contract/19-20">https://www.england.nhs.uk/nhs-standard-contract/19-20</a> .	

### 3.4 Other smaller changes

The changes below are proposed primarily in order to ensure that references within the Contract to national policy guidance are accurate and up-to-date.

Topic	Change	Contract Reference
Format and content of referrals	We propose adding a requirement for commissioners to ensure that referrals from GPs comply with <a href="#">guidance from the Professional Record Standards Body</a> on format and content.	Service Condition 6
Fit notes	The Contract states a requirement on providers to issue fit notes to patients where required, in accordance with guidance from the Department of Work and Pensions ( <a href="https://www.gov.uk/government/collections/fit-note">https://www.gov.uk/government/collections/fit-note</a> ). We have become aware that the Contract wording has been drafted slightly too narrowly, referring only to fit notes for outpatients and inpatients, whereas the guidance makes clear that A&E departments must also issue fit notes where required. We propose to amend the Contract accordingly.	Service Condition 11
Prescribing guidance	The Contract includes detailed requirements on the supply of medication on discharge or following clinic attendance, and we do not intend to change these. But national bodies have now published overarching <a href="#">guidance on managing responsibilities for prescribing</a> across the interface between primary and secondary / tertiary care, and we propose to amend the Contract wording to require local parties to have regard to the underpinning principles in this national guidance.	Service Condition 11
Sustainable development	The Contract already contains provisions relating to sustainable development. We propose to broaden the requirements slightly, making clear that providers must plan to address the social, economic and environmental aspects of sustainable development, addressing not only climate change and carbon reduction but also air pollution, minimising waste and minimising use of plastics.	Service Condition 18
Use of NHS Number	We propose to broaden the Contract provisions relating to the NHS Number, to ensure that it is always available to staff at the point of care delivery. ***	Service Condition 23



Topic	Change	Contract Reference
Safeguarding and Prevent	We propose to update references in the Contract to guidance to safeguarding and safeguarding training requirements and to Prevent policy. ***	Service Condition 32 and Definitions
Electronic invoicing	Significant savings can be made if commissioners and providers use electronic invoicing systems. Many now do so, but a significant minority do not. The Contract has for some years included a “reasonable endeavours” provision relating to the electronic submission of invoices; we now propose to strengthen this requirement so that electronic invoicing is <u>mandated</u> with effect from 1 April 2019. ***	Service Condition 36
Data Security and Protection Toolkit	The NHS Information Governance Toolkit has now been replaced by the <a href="#">NHS Data Security and Protection Toolkit</a> , and we propose to update the relevant Contract wording accordingly. ***	General Condition 21

We have made other minor changes to rationalise and improve the Contract where we have considered it appropriate to do so.

## 4 The shorter-form Contract

A small number of the changes described in sections 3.1 to 3.4 above are also appropriate to include within the shorter-form version of the Contract. These changes are identified with asterisks (\*\*\*) in the tables above and relate to:

- Protected disclosures under settlement agreements (part only)
- Care and Treatment Reviews
- NHS Continuing Healthcare Framework
- Data Quality Maturity Index
- Payment
- CQUIN
- Definitions for national standards
- Reporting requirements (part only)
- Use of NHS Number
- Safeguarding and Prevent (part only)
- Electronic invoicing
- Data Security and Protection Toolkit.

The shorter-form Contract remains significantly ‘lighter-touch’ than the full-length version. Our Contract Technical Guidance continues to describe the situations where use of the shorter-form Contract is encouraged – as well as those for which it is not designed.



## 5 Consultation responses

We invite you to review this consultation document and the two draft Contracts (available on the NHS Standard Contract 2019/20 webpage) and provide us with feedback on any of our proposals.

Comments on the draft Contracts should be sent to [england.contractsengagement@nhs.net](mailto:england.contractsengagement@nhs.net) by **Friday 1 February 2019**. We expect to publish the final version of the Contracts by 22 February 2019, once the outcome of the statutory consultation on the National Tariff Payment System for 2019/20 is known.