

# **NHS Standard Contract 2020/21**

**Guidance on National Variations to  
existing 2016/17, 2017-19 (November  
2016 edition), 2017-19 (January 2018  
edition), 2017-19 (May 2018 edition)  
and 2019/20 Full Length and Shorter  
Form contracts**

Prepared by: NHS Standard Contract Team, NHS England  
[nhs.cb.contracts.help@nhs.net](mailto:nhs.cb.contracts.help@nhs.net)  
(please do not send national variations to this email address)

First published: March 2020

Publication Approval Number: 001605

## 1. Executive summary

This document contains guidance on the completion of the National Variations to existing Full Length and Shorter Form contracts on the following forms:

- 2016/17
- 2017-19 (November 2016 edition)
- 2017-19 (January 2018 edition)
- 2017-19 (May 2018 edition)
- 2019/20

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](#).

## 2. 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 2020.

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.

***The National Variation must be effected for every commissioning contract the duration of which extends beyond 31 March 2020, preferably by no later than 31 March 2020, 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.***

## 3. Process

The 2020/21 NHS Standard Contract retains the structure of the 2019/20 NHS Standard Contract published in [March 2019](#). 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 2020/21 Contract and supporting guidance (available via the NHS Standard Contract [web page](#)) 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:

- 1) Option 1: Effect the National Variation by simple National Variation Agreement and the eContract system;
- 2) Option 2: Effect the National Variation by simple National Variation Agreement and re-stated paper contract in 2020/21 form; or
- 3) Option 3: Effect the National Variation by entering into a detailed National Variation Agreement.

**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 2019/20 Contract, you MUST follow Option 1 or Option 2.**

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

The parties to an existing contract which is EITHER in eContract form OR is a paper contract may opt to vary it by using the appropriate simple National Variation Agreement, and using the [eContract portal](#). This ensures that the parties adopt not only the new policy changes, but also all other updates and improvements contained in the 2020/21 NHS Standard Contract and achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2020/21 form. This will make management of a portfolio of contracts simpler and more consistent.

Using the eContract platform, users can:

- create a tailored version of the 2020/21 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 appropriate 2020/21 Particulars (in Word format) to save to their local drive (as set out in more detail below); and
- download a copy of the appropriate 2020/21 General Conditions.

### Populating the Particulars

The parties will need to repopulate the Particulars with all locally agreed matters, noting the following:

- **Front cover**
  - Contract title / ref** – enter the contract reference and locally generated variation number (if applicable) and contract title
- **Contract Reference** – enter the contract reference and locally generated variation number (if applicable)
- **Service Commencement and Contract Term**
  - 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
- 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.

**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 2020/21 [Technical Guidance](#).

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 appropriate simple National Variation Agreement 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 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.

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](mailto:england.econtract@nhs.net).

**Option 2: Effect the National Variation by simple National Variation Agreement and re-stated paper contract in 2020/21 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 2019/20 form by saving the appropriate 2020/21 Particulars (in Word format) to their local drive and populating them as set out above (Option 1).

**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 2020/21 [Technical Guidance](#).

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 appropriate simple National Variation Agreement 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 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 2020/21 Service Conditions in Full Length or Shorter Form version (as appropriate) should be attached to each copy of the signed National Variation Agreement. There is no need to attach a copy of the 2020/21 General Conditions, though these will, once the Variation is completed, form part of the updated Contract.

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](mailto:england.econtract@nhs.net).

### **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 a template **single national variation agreement for each of:**

- 2016/17, 2017-19 (November 2016 edition), 2017-19 (January 2018 edition), 2017/19 (May 2018 edition) and 2019/20 Full Length contracts, and
- 2016/17, 2017-19 (November 2016 edition), 2017-18 (January 2018 edition), 2017/19 (May 2018 edition) and 2019/20 Shorter Form contracts

to effect the 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 variations 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 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 in respect of the forms of contract published for the last four years. Where Full Length contracts based on standard forms for earlier than 2015/16 are to continue beyond 31 March 2020, 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 – i.e. 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 square brackets.
First page of operative text	At “(2)” insert the name of the Provider and the address of its principal/registered office. Delete the square brackets.
First page of operative text	After “WHEREAS”, in paragraph A insert the date of the original contract. Delete the square brackets.
Clauses 3, 4, 10, 11 and 12 of the Full Length National Variation Agreement and Clause 3 of the Shorter Form National Variation Agreement	Complete open fields in inserted tables, as and where relevant.
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 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).</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>

<p>Appendix 1 and 3 of the Full Length National Variation Agreement and Appendix 1 of the Shorter Form National Variation Agreement</p>	<p>Please refer to the <a href="#">2020/21 NHS Standard Contract</a> and associated <a href="#">Technical Guidance</a> for instructions on how to complete the open fields in these Appendices (where relevant).</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 2020</b></p>	<ul style="list-style-type: none"> <li>(a) commissioner(s) and provider to consider 2020/21 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 to pursue in relation to that contract;</li> <li>(c) commissioner(s) and provider to agree the form of simple National Variation Agreement and eContract (Option 1), or the form of simple National Variation Agreement and restated Particulars (Option 2) or detailed National Variation Agreement (Option 3) accordingly;</li> <li>(d) commissioner(s) and provider to enter into new simple National Variation Agreement (Option 1 or 2) or detailed National Variation Agreement (Option 3) to effect variation of contract <b>on or before 31 March 2020.</b></li> </ul>
---------------------------------------	---

### 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 2020. So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2019 will be as set out in that contract before it was varied in accordance with the 2020/21 Contract. For example if a breach of an Operational Standard occurs in March 2020, the consequence of that breach will be as per 2019/20 terms, and not the consequence set out in the 2020/21 NHS Standard Contract and the 2020/21 Variation Agreement.

## Queries

Queries on the NHS Standard Contract and this National Variation guidance may be sent to [nhs.cb.contractshelp@nhs.net](mailto:nhs.cb.contractshelp@nhs.net).

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.

This information can be made available in alternative formats, such as easy read or large print, and may be available in alternative languages, upon request. Please contact 0300 311 22 33 or email [england.contactus@nhs.net](mailto:england.contactus@nhs.net) stating that this document is owned by NHS Standard Contract team, Strategy and Innovation Directorate.

© Crown copyright 2020  
Published March 2020  
Published in electronic format only