

# **NHS Standard Contract 2020/21**

## **Summary of key changes made in response to consultation feedback**

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## Introduction

NHS England has now published the final NHS Standard Contract and Contract Technical Guidance for 2020/21 at <https://www.england.nhs.uk/nhs-standard-contract/20-21/>. This document describes, by exception, the material changes we have made in the final full-length Contract in response to stakeholder feedback received during the consultation process.

## New provisions proposed in the draft 2020/21 Contract

We received feedback from 261 organisations or individuals in relation to the 39 specific proposals we included in the draft 2020/21 Contract. Most responses received were from providers (55%); CCGs/CSUs accounted for 24%. For each of the 39 proposed changes, the consultation feedback demonstrated majority support amongst those responding with a view on that specific change.

However, there were many helpful suggestions for ways in which the wording of the Contract itself or our Contract Technical Guidance could be clarified. We list below the areas in which we have made changes in response and where further clarification has been, or will shortly be, provided by other publications.

Topic	Change	Contract Reference
EU Exit	We have retained the new requirement for providers to comply with applicable EU Exit Guidance. The specific no-deal guidance previously published by DHSC has now been withdrawn, but it is possible that further guidance may be issued as the end of the transition period nears, and it will be essential that the NHS implements any such guidance in full.	Service Condition 2
Maternity services	A majority of respondents supported our proposal to raise the standard for the proportion of women receiving continuity of carer from 35% in March 2020 to 51% in March 2021 – but there was feedback from some that the standard was challenging. Women who receive midwifery continuity of care have better outcomes, and successful implementation supports the national ambition to halve the rate of stillbirths and neonatal deaths by 2025. We are reluctant to row back from this aim and have retained the requirement in the Contract for the provider to use “reasonable endeavours” to achieve the 51% standard. Significant transformation funding is being made available in 2019/20 and 2020/21 to enable implementation, and national supporting resources are available via the <a href="#">Local Transformation Hub</a> (please contact the NHSE&I regional maternity team for any access issues.)	Service Condition 3 and Definitions

Topic	Change	Contract Reference
Medical Examiners of Deaths	<p>Since we published the draft Contract, the National Medical Examiner has published additional <a href="#">guidance</a> on implementing and funding the new system of Medical Examiners. Medical Examiners will provide independent scrutiny of deaths not referred to the coroner; initially, their focus will be on such deaths occurring in acute hospitals hosting medical examiner offices, but this will expand to cover deaths in other settings. We have amended the proposed Contract requirements to reflect this new guidance.</p> <ul style="list-style-type: none"> <li>• The requirement remains for all acute Trusts to establish a Medical Examiner’s Office, other than where the National Medical Examiner approves exceptions (for some very small Trusts, for example). We have amended the Contract wording to allow for this.</li> <li>• Acute Trusts for which such an exception has been approved and providers other than acute Trusts will be required to begin planning arrangements in respect of deaths of patients on their premises or under their care to be scrutinised by Medical Examiners at another acute Trust. NHS England and NHS Improvement will publish further guidance on this in due course, but – with this in view – we have included an additional requirement on <u>all</u> providers to comply with this guidance as applicable.</li> </ul>	Service Condition 3
System-wide collaboration to manage performance and finance	<p>The final Contract continues to set the expectation that CCGs and NHS Trusts / Foundation Trusts within each ICS/STP will sign, and act in accordance with, an overarching System Collaboration and Financial Management Agreement (SCFMA), setting out how they will work together to deliver system financial balance. NHSE/I regional teams will also be party to these agreements. In response to feedback we have</p> <ul style="list-style-type: none"> <li>• amended and republished our model SCFMA;</li> <li>• removed the condition precedent which we had previously included in Schedule 1A;</li> <li>• created a new Schedule 9 which can be used to <u>list</u> the SCFMAs to which the contracting parties have signed up; and</li> <li>• made clear in our Contract Technical Guidance that the content of SCFMAs should not be included in Schedule 9 or elsewhere in local contracts, as the intention is that its provisions should not be legally binding.</li> </ul>	Service Condition 4 Particulars Schedule 9

Topic	Change	Contract Reference
Supporting Primary Care Networks (PCNs) to deliver Enhanced Health in Care Homes	The draft Contract included a requirement for providers of community physical and mental health services to support PCNs in implementing the proposed service specifications for Anticipatory Care and Enhanced Health in Care Homes (EHCH). Following completion of the 2020/21GP Contract negotiations, only the EHCH specification is being taken forward in 2020/21. We have therefore amended Service Condition 4 and what is now Schedule 2Ai) to refer only to EHCH and to be fully consistent with the published GP contract agreement, <a href="#">Update to the GP contract agreement 2020/21 - 2023/24</a> .	Service Condition 4 Particulars Schedule 2Ai
Choice of provider for long-wait patients	After consideration of the consultation feedback, we have amended the proposed new requirement on patient choice. We recognise the logic of offering choice at 18 weeks, to coincide with the existing legal right for patients to request a change of provider at that point; but we also accept that this is challenging in those systems with the largest numbers of long-waiters. We have therefore retained a requirement for commissioners and providers to work together to offer choice of provider for long-wait patients; the offer of choice should be made as close to 18 weeks as possible and no later than 26 weeks, in the local context. NHS England and NHS Improvement will publish further guidance shortly, setting out detailed expectations and timescales for 2020/21.	Service Condition 6
Patient choice of clinician	We have retained the new proposed provision stating that a provider may withhold treatment where a patient displays behaviour which constitutes discrimination or harassment (within the meaning of the Equality Act 2010) towards staff or other patients. But we have amended the wording to clarify that the provider must take into account the patient's mental health and clinical presentation, as well as any other health conditions. Note also that this clause is subject to Service Condition 7.1: "Nothing in this SC7 allows the Provider to refuse to provide or to stop providing a Service if that would be contrary to the Law".	Service Condition 7
Screening and onward referral to smoking cessation and alcohol advisory services	We have retained the proposed Contract provision requiring acute and mental health providers to screen inpatients for alcohol or tobacco use and, where appropriate, to offer brief advice or intervention and/or onward referral to relevant local authority services. We have amended the Contract wording to make clear that the onward referral requirement only applies where local authority services are actually available.	Service Condition 8

Topic	Change	Contract Reference
NHS Premises Assurance Model	We have retained the proposed new requirement for each NHS Trust / Foundation Trust to complete the safety and the patient experience domains of the NHS Premises Assurance Model and to report the findings to its Governing Body. Note that the Model has now been published at <a href="https://improvement.nhs.uk/resources/nhs-premises-assurance-model/">https://improvement.nhs.uk/resources/nhs-premises-assurance-model/</a> .	Service Condition 17
Influenza vaccinations	We have amended the proposed new requirement here to make clear that providers must use reasonable endeavours to ensure that all <u>front-line staff in contact with patients</u> are vaccinated against influenza.	Service Condition 21
Evidence-Based Interventions	<p>We have retained the proposed new requirement for commissioners and providers to agree local activity goals in relation to the interventions covered by the national Evidence-Based Interventions guidance – but we have amended the wording to make clear that the activity goals must be clinically-appropriate.</p> <p>We have also clarified in our Contract Technical Guidance that, in requiring activity goals to be agreed, our intention is to encourage commissioners and providers to focus on this important issue, first through early discussion and engagement and then through ongoing monitoring. Material over-performance against the activity goals in-year should prompt review and action to ensure that EBI policy is being fully implemented, but no individual patient should be prevented from accessing clinically appropriate treatment, in accordance with EBI guidance criteria, simply because the overall activity goal has been exceeded.</p>	Service Condition 29
Safeguarding	<p>We have made further minor changes to:</p> <ul style="list-style-type: none"> <li>• update definitions for Prevent Guidance and Safeguarding Guidance; and</li> <li>• include a reference to the requirements of the Modern Slavery Act</li> </ul>	Service Condition 32 and Definitions
Patient Safety Specialists	We have retained the new requirement on each provider to designate an existing staff member as its Patient Safety Specialist. NHS England and NHS Improvement are consulting on <a href="#">model role descriptions for Patient Safety Specialists</a> and will publish final versions shortly.	Service Condition 33

Topic	Change	Contract Reference
Cancer waiting times	Having considered the consultation feedback, we have decided to set the performance threshold for the new cancer 28-day Faster Diagnosis Standard at 75% for each quarter of 2020/21. 2020/21 will be a transition year, as the NHS works towards consistent achievement of the standard by the end of the year, as part of a broader programme of work to improve operational performance.	Particulars Schedule 4A
NHS People Plan	We have retained the proposed new requirement on providers to develop a plan to implement in full the “NHS People Offer” (that is, the core standards in relation to work environment and experience of work for staff working in NHS services). This will be published in conjunction with the final NHS People Plan.	General Condition 5
Dispute resolution	We have retained the proposed changes but amended the wording to make clear that Expert Determination for disputes involving NHS Trusts and NHS Foundation Trusts will be undertaken by an <u>independent and suitably experienced</u> Expert allocated by NHS England and NHS Improvement. This is in accordance with the dispute resolution process set out in <a href="#">Annex D1</a> of the NHS Operational Planning and Contracting Guidance 2020/21.	General Condition 14
Declarations of interest	<p>We have retained the proposed new requirement for providers to publish the names of those decision-making staff not completing declarations or making nil-returns. However, we have added wording to make clear that each provider must ensure that an appropriate Privacy Notice is provided to Staff to enable publication of such information. <a href="#">Guidance on Managing Conflicts in the NHS</a> will be updated shortly to reflect these new requirements. Note also the following.</p> <ul style="list-style-type: none"> <li>• These requirements apply, on a mandatory basis, only to NHS Trusts and NHS Foundation Trusts, but other providers are invited to adopt the same approach.</li> <li>• Detailed advice on the definition of “decision-making staff” is included in the Guidance, but the duty to make a declaration or submit a nil-return will normally apply, at least, to all board members, all medical consultants and all Agenda for Change staff at band 8d and above. Annual Governance Statements to be completed by trusts in respect of 2019/20 will ask for confirmation that registers covering these groups have been published.</li> <li>• The Electronic Staff Record is being adapted to include <a href="#">new functionality</a> to enable simpler submission of declarations.</li> </ul>	General Condition 27

## Additional requirements

Following consultation, we have added new provisions into the final version of the Contract as follows.

Topic	Change	Contract Reference
Workforce diversity	We have added a new requirement to the Contract in accordance with the requirement in the <a href="#">NHS Operational Planning and Contracting Guidance 2020/21</a> for NHS Trusts and NHS Foundation Trusts to work towards their bespoke targets for black and minority ethnic representation in their workforce at senior levels – as outlined in the <a href="#">Workforce Race Equality Standard Model Employer strategy</a> . The NHSE/I national team has already shared and agreed targets with each individual Trust.	Service Condition 13
NHS car parking	The Department of Health and Social Care asked that we include a new explicit provision in the final Contract relating to NHS car parking. A requirement on NHS Trusts and NHS Foundation Trusts to comply with the existing <a href="#">NHS Car Parking Principles</a> was already implicit, but we have now made that requirement explicit, and also made explicit that the requirement will apply to an update to those Principles by means of further guidance to be published, by spring 2020, to support and provide funding for implementation of the Government’s commitment to enabling free parking for certain groups, as set out at <a href="https://www.gov.uk/government/news/free-hospital-parking-for-thousands-of-patients-staff-and-carers">https://www.gov.uk/government/news/free-hospital-parking-for-thousands-of-patients-staff-and-carers</a> .	Service Condition 17
COVID-19 response	Both the full-length and shorter-form versions of the Contract already require providers to comply with national Emergency Preparedness, Resilience and Response (EPRR) Guidance and to provide necessary support and assistance in the event of public health emergencies or incidents. Given the developing position in relation to COVID-19, we have <ul style="list-style-type: none"> <li>• amended the Contract definition of EPRR Guidance to include, specifically, <a href="#">national guidance on COVID-19</a>; and</li> <li>• removed from SC30.4 (SC30.3 in the shorter-form version) the references to “at the request of the Co-ordinating Commissioner”, reflecting that requirements will be passed down to the NHS direct from national bodies.</li> </ul>	Service Condition 30 and Definitions

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.

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