

NHS Standard Contract 2021/22

Guidance on National Variations to existing 2016/17, 2017-19 (November 2016 edition), 2017-19 (January 2018 edition), 2017-19 (May 2018 edition), 2019/20 and 2020/21 Full Length and Shorter Form contracts

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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
- 2020/21

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 2021.

This guidance should be read in conjunction with section 3 of the [NHS Standard Contract Technical Guidance 2021/22](#). As will be clear from that section of the Technical Guidance, with effect from 1 April 2021, the mandatory terms of the NHS Standard Contract 2021/22 will be implied as between Trusts and their commissioners, pending their entry into written, signed contracts for 2021/22. There is therefore no need for Trusts and their commissioners to enter into Variation Agreements for the first part of 2021/22 as contemplated by this guidance. Updated guidance for the remainder of 2021/22 will be provided in due course.

Where commissioners and providers have included locally-agreed sanctions in Schedule 4C of their ongoing contracts, they should also refer to section 40.2 of the [NHS Standard Contract Technical Guidance 2021/22](#).

As in previous years, in respect of all other existing and ongoing contracts, commissioners and providers are required to vary those 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 2021, preferably by no later than 31 March 2021, 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.

3. Process

The 2021/22 NHS Standard Contract retains the structure of the 2020/21 NHS Standard Contract published in [March 2020](#) and in immediately preceding years. 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 2021/22 Contract and supporting guidance (available via the NHS Standard Contract [2021/22 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 two ways:

- 1) Option 1: Effect the National Variation by simple National Variation Agreement and the eContract system; or

- 2) Option 2: Effect the National Variation by simple National Variation Agreement and re-stated paper contract in 2021/22 form.

In previous years we have offered the additional option of effecting the National Variation by entering into a detailed National Variation Agreement, setting out item by item the mandatory changes to be incorporated in contracts. We are not offering this option for 2021/22 because the events of 2020/21 and the actions taken centrally and locally in response to those events mean that:

- **in comparison with previous years, relatively few contracts will straddle financial years; and**
- **those which do (and are not Trust contracts as referred to in 2) above) need to be revisited and confirmed and/or updated to reflect current circumstances and local requirements for 2021/22, and to ensure that there is no confusion or difference of opinion as to the terms on which the parties are operating.**

Effecting the National Variation using Option 1 or Option 2 requires the parties to restate their contract in the form of the NHS Standard 2021/22 Contract, and so encourages and facilitates that exercise.

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 2021/22 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 2021/22 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 2021/22 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 2021/22 Particulars (in Word format) to save to their local drive (as set out in more detail below); and
- download a copy of the appropriate 2021/22 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 section 18 of the NHS Standard Contract 2021/22 [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](#). **Subject to following any governance processes set out on the relevant Collaborative Commissioning Agreement, the Co-ordinating Commissioner may sign the National Variation Agreement on behalf of all Commissioners.**

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.

Option 2: Effect the National Variation by simple National Variation Agreement and re-stated paper contract in 2021/22 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 2021/22 form by saving the appropriate 2021/22 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 section 18 of the NHS Standard Contract 2021/22 [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](#). **Subject to following any governance processes set out on the relevant Collaborative Commissioning Agreement, the Co-ordinating Commissioner may sign the National Variation Agreement on behalf of all Commissioners.**

A copy of the updated Particulars and complete 2021/22 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 2021/22 General Conditions, though these will, once the Variation is completed, form part of the updated Contract.

Order of Events

Whichever of the options outlined above is taken, the order of events in respect of each contract must be as follows:

Period to 31 March 2021	<ul style="list-style-type: none">(a) commissioner(s) and provider to consider 2021/22 NHS Standard Contract / eContract and associated guidance alongside this guidance and relevant template National Variation Agreement;(b) commissioner(s) and provider to agree which of Option 1 or Option 2 to pursue in relation to that contract;(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);(d) commissioner(s) and provider to enter into new simple National Variation Agreement (Option 1 or 2) to effect variation of contract on or before 31 March 2021.
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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 or Option 2 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 or Option 2. 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 2021. So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2021 will be as set out in that contract before it was varied in accordance with the 2021/22 Contract. For example if an Information Breach under Service Condition 28 occurs in March 2021, the consequence of that breach will be as per 2020/21 terms, and not the consequence set out in the 2021/22 NHS Standard Contract and the 2021/22 Variation Agreement.

Queries

Queries on the NHS Standard Contract and this National Variation guidance may be sent to nhscb.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.

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