

NHS Standard Contract 2022/23

**Guidance on National Variations to
existing 2017-19 (November 2016
edition), 2017-19 (January 2018
edition), 2017-19 (May 2018 edition),
2019/20, 2020/21 and 2021/22 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 NHS Standard Contracts (full length and shorter-form) on the following forms:

- 2017-19 (November 2016 edition)
- 2017-19 (January 2018 edition)
- 2017-19 (May 2018 edition)
- 2019/20
- 2020/21
- 2021/22

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](#) to bring their ongoing contracts in line with the [2022/23 NHS Standard Contract](#).

2. Introduction

This guidance is relevant to commissioners and providers who are parties to an existing commissioning contract which extends beyond 31 March 2022.

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. This includes contracts with both NHS Trusts and NHS Foundation Trusts, and contracts with non-NHS providers.

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

In 2020/21 and 2021/22, when the annual contracting round coincided with peak periods of the pandemic, the requirement for signed contracts and signed National Variations with NHS Trusts and NHS Foundation Trusts was relaxed. But, as the NHS reverts to more normal working arrangements, it is important, from a governance perspective, that properly documented arrangements are put in place in all cases.

For future years, the change we propose to make in relation to the online presentation of the Service Conditions and General Conditions of the Contract – described in paragraphs 3.19-23 of the [Contract Technical Guidance 2022/23](#) – will mean that National Variations will no longer be necessary.

This guidance should be read in conjunction with section 2 of the [NHS Standard Contract Technical Guidance 2022/23](#).

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 2022/23](#).

The National Variation must be effected for every commissioning contract the duration of which extends beyond 31 March 2022, preferably by no later than 31 March 2022, 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 2022/23 NHS Standard Contract retains the structure of the [2021/22 NHS Standard Contract](#) and previous Contracts. The 2022/23 Contract is available at <https://www.england.nhs.uk/nhs-standard-contract/>. Commissioners and providers are strongly encouraged to review the 2022/23 Contract and supporting guidance 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 by using the simple National Variation Agreement and the re-stated [Particulars in 2022/23 form](#). The National Variation Agreement incorporates the updated, online versions of the Service Conditions (as applicable to the service categories indicated in the contract's Particulars) and the General Conditions into local contracts.

In the past we 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 no longer offering this option, as it is incompatible with the move to the online presentation of the Service Conditions and General Conditions of the Contract (on which, see s3.17 onwards of the [Contract Technical Guidance](#)).

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 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 originally included in the contract being varied - see section 18 of the NHS Standard Contract [2022/23 Technical Guidance](#).

There is no need to date or sign the updated Particulars.

Exchange of National Variation

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 should be attached to each copy of the signed National Variation Agreement. There is no need to attach a copy of the Service Conditions or the General Conditions, as from 1 April 2022, the Service Conditions and the General Conditions are incorporated into local contracts by reference.

4. Order of Events

The order of events in respect of each contract must be as follows:

<p>Period to 31 March 2022</p>	<p>(a) commissioner(s) and provider to consider this guidance and the simple National Variation Agreement;</p> <p>(b) commissioner(s) and provider to enter into new simple National Variation Agreement to effect variation of contract on or before 31 March 2022.</p>
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5. 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 considering any further variations.

The parties should try to reach agreement on the National 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 under GC17.4.

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 2022. So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2022 will be as set out in that contract before it was varied in accordance with the 2022/23 Contract. For example, if an Information Breach under Service Condition 28 occurs in March 2022, the consequence of that breach will be as per 2021/22 terms, and not the consequence set out in the 2022/23 NHS Standard Contract and the 2022/23 Variation Agreement.

6. Queries

Queries on the NHS Standard Contract and this National Variation guidance may be sent to england.contracts-help@nhs.net.

If you would like to be added to the NHS Standard Contract stakeholder list, please send your contact details to england.contracts-engagement@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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