

Updating the NHS Standard Contract for 2022/23

Alastair Hill / David Savage / Michelle Coleman
NHS England
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<https://www.england.nhs.uk/nhs-standard-contract/22-23/>

<https://www.engage.england.nhs.uk/>

Housekeeping

- Please use the chat function to ask questions.
- We will try to answer some questions today through the chat.
- Where questions raise generic issues, we'll make sure there are answers in the final Technical Guidance (Feb / Mar).
- For individual questions we can't answer today, we'll try to answer you direct via Teams after the webinar.
- We will share the slides with everyone on our stakeholder list. We may add some answers to generic FAQs also.
- If you want to be added, email us at england.contractsengagement@nhs.net

Agenda for today

Welcome	Alastair Hill
The draft 2022/23 NHS Standard Contract <ul style="list-style-type: none">• main policy changes• contracting in 2022/23	Alastair Hill
Amending the Contract to adapt for the Health and Care Bill	David Savage
Use of electronic signatures	David Savage
Online presentation of the General Conditions and Service Conditions	Michelle Coleman
Responding to the consultation	Michelle Coleman

Main policy changes in the Contract

National quality standards	Mental health practitioners / PCNs	Midwifery continuity of carer
Interface with primary care	Medical Practitioners Assurance Framework	Mental Health Units (Use of Force) Act 2018
Community pharmacy smoking cessation service	NHS Discharge Medicines Service	Health literacy
National Quarterly Pulse Survey	Antibiotic prescribing	Vaccination of staff against coronavirus
Assessment and treatment for acute illness	Safeguarding	National Standards of Healthcare Cleanliness
NHS Premises Assurance Model	Green NHS	Car parking
Listing of services on eRS	Use of e-RS for mental health services	Legal right of choice of provider

See the Contract [Technical Guidance](#) s3.11 onwards

National quality standards

We have proposed changes, in line with the 2022/23 Priorities and Planning Guidance, to several standards:

- very long elective RTT waits – no waits above 104 weeks (rather than 52)
- very long waits in A&E - 98% within 12 hours (rather than 100%)
- ambulance handover to A&E:
 - no waits above 60 minutes
 - 95% of handovers within 30 minutes
 - 65% within 15 minutes(rather than no waits above 30 minutes)

See the Contract [Technical Guidance](#) s3.10

Contracting for 22/23 - key messages

- Signed contracts are required for all providers including Trusts
- Prices set in accordance with National Tariff Payment System (NTPS) rules
- CQUIN is active again, but only for relationships within scope of Aligned Payment and Incentive (API) rules
- National CQUIN indicators and guidance are now published at <https://www.england.nhs.uk/nhs-standard-contract/cquin/>
- If you have detailed questions on NTPS/API or CQUIN, please email pricing@england.nhs.uk or e.cquin@nhs.net

Contract documentation

Crucial schedules to complete:

- Service Specifications (2A)
- Indicative Activity Plan (2B)
- Local Prices (3A)
- Expected Annual Contract Value (3F)
- Local Quality Requirements (4)
- Local Reporting Requirements (6A)

and where the API rules apply:

- Operation of API rules (3D)
- CQUIN (3E)

Establishment of ICBs – Transfer Schemes

- Contracts to cover the period from 1 April 2022 need to be negotiated and signed by CCGs
- On ICB establishment, those contracts will then be transferred to ICBs under nationally-arranged Transfer Schemes
- There will be no need for local novation of contracts from CCG to ICB
- See [*Due diligence, transfer of people and property from CCGs to ICBs and CCG close down*](#)

See the Contract [Technical Guidance](#) s2.3

Establishment of ICBs – collaborative commissioning

It makes sense to continue to contract on a collaborative basis, across and beyond your local system:

- multiple commissioners sign one contract with the provider
- each commissioner makes its own payment to the provider
- one commissioner is identified as the Co-ordinating Commissioner
- use our model Collaborative Commissioning Agreement to set out how the commissioners will work together (see <https://www.england.nhs.uk/nhs-standard-contract/22-23/>)

Establishment of ICBs – other preparations

- Make sure in advance that key Contract requirements are fully aligned across the CCGs which will form an ICB:
 - Service Specifications
 - local quality and reporting requirements
 - Prior Approval Schemes
- This will make the CCG-to-ICB transition easier

Contract management

- The Contract sets out processes through which the commissioner/ provider relationship is managed and the parties hold each other to account
- They cover performance management, audit, information/ reporting flows, activity management, payment, subcontracting, variations, dispute resolution and suspension/ termination
- We haven't proposed material changes to these processes for 2022/23
- As ICBs mature, it may be appropriate for us to make some of these processes “lighter-touch” – we'll review that further for 2023/24
- In the meantime, remember that
 - mostly, those processes are there to be used when you need them – they provide a formal backstop for when things go wrong, but you can often take a less formal approach where performance and relationships are good
 - local behaviour and attitudes will be key to determining whether the commissioner/ provider relationship is collaborative and productive, rather than adversarial and bureaucratic

System Collaboration and Financial Management Agreement (SCFMA)

- For the last two years, the Contract has (technically) required (through SC4.7) that CCGs and partner Trusts must sign, and act in accordance with, an SCFMA, setting out how they will work together to manage NHS system finances. We published a model SCFMA to support this.
- For 2022/23, we are making the SCFMA non-mandatory – in recognition that ICB governance arrangements being put in place will often give alternative formal mechanisms to deliver collaboration on system financial balance.
- But we will continue to publish a model SCFMA which can be used where local systems wish to adopt it – see <https://www.england.nhs.uk/nhs-standard-contract/>

See the Contract [Technical Guidance](#) s3.8

Low volume activity (LVA) flows

Note the new arrangements for 2022/23, for CCGs/ICBs and Trusts only, to avoid a return to burdensome invoicing for “non-contract activity”.

- Each CCG/ICB-Trust relationship will fall into one of two categories:
 - A. EACV expected to be £500K or more (ICB footprint) – commissioner must agree and sign a contract with that Trust
 - B. EACV expected to be less than £500k (ICB footprint) – no local contract to be agreed, but a contract will be implied on NHS Standard Contract terms; commissioner must make a one-off payment (in Q2) of a fixed, nationally determined sum
- Decisions on whether a relationship is above or below the £500k threshold – and, if below, what value is to be paid – are made nationally, based on NHSE’s assessment of historic (pre-pandemic) activity data (see planning portal)

See finance and contracting annex to main planning guidance and section 25 of Contract Technical Guidance for further detail.

See the Contract [Technical Guidance](#) s25

Amending the Contract to accommodate passage of the Health and Care Bill

- The Health and Care Bill envisages a new NHS landscape
- The Bill is timetabled to receive Royal Assent (ie become an Act, and therefore law) by 31 March 2022
- And a lot of the new landscape will depend on further legislation – Regulations and Orders – then being made
- It's already clear that the new landscape will not be operational until (at least) the middle of 22/23: Planning Guidance says the current target date for that is 1 July 2022
- This presents us with some challenges for the 22/23 NHS Standard Contract: how do we deal with this state of flux?

See the Contract [Technical Guidance](#) s3

Amending the Contract to accommodate passage of the Health and Care Bill

- The Bill provides for the abolition of some organisations and concepts to which the Contract refers, and for new ones in their place. So:
 - CCGs will be replaced by ICBs, responsible for larger populations;
 - Monitor/NHSTDA (NHS Improvement) will be abolished;
 - NHS England will, at last, officially be called NHS England;
 - NHSE will take on functions of Monitor/NHSTDA;
 - Healthcare Safety Investigation Branch dies, Health Services Safety Investigations Body is born;
 - Local Education and Training Boards disappear;
 - National Tariff Payment System will become (for 23/24) the NHS Payment Scheme;
 - current rules governing procurement of NHS-funded healthcare services (the PPCCRs and PCRs) will be replaced by a new [NHS Provider Selection Regime](#) (to be set out in Regulations and guidance);
 - the scope of the NHS Provider Licence will change, so that NHS Trusts will come within scope of the [Commissioner Requested Services](#) regime within the Licence provisions.

Amending the Contract to accommodate passage of the Health and Care Bill

- We can't pre-empt Parliament by making assumptions about whether, to what extent, and when the Bill will be enacted and/or the relevant changes will come into effect
- We have tried to “future-proof” the wording of the draft Contract, so that its provisions can operate effectively whatever Parliament decides about enactment of the Bill and relevant provisions coming into effect
- How have we done this? By introducing two new terms:
 - **the 2022 Act**, defined as “the Health and Care Bill (Bill 140) once it has received Royal Assent”;
 - **the Commencement Date**, defined as “the date that a section or a paragraph of a schedule of the 2022 Act comes into force”

See the Contract [Technical Guidance](#) s3

Amending the Contract to accommodate passage of the Health and Care Bill

- We have then kept the current references to existing organisations and concepts, but also included references to new organisations and concepts proposed under the Bill
- Note: we use “NHS England” throughout in the text, but define it to include Monitor and NHSTDA while they continue to exist)
- We’ve made clear that the current organisations and concepts stay until replaced or abolished (generally on the relevant Commencement Date)
- The proposed changes to Contract wording giving effect to all this are mostly in the Definitions section of the Contract
- Unavoidably, this involves some imprecision or ambivalence in the wording of the Contract
- Before we publish the final 2022/23 Contract, we will see whether we can commit to more precise wording – currently seems unlikely we’ll be able to do much on that front
- But we should be able to revert to more precise wording for the 2023/24 Contract.

Amending the Contract to accommodate passage of the Health and Care Bill

REMINDER:

- Neither the Bill nor the changes it envisages are yet in place: we're not in the new world yet, and may not be for some time
- So don't assume you can ignore current organisations, functions, duties, powers
- And don't assume new powers and discretions can be exercised yet
- Don't ignore PPCCRs or PCR's in awarding your 22/23 contracts and sub-contracts: procurement rules haven't changed yet, and you may be challenged if you breach them

See the Contract [Technical Guidance](#) s3

Use of electronic signatures

- A contract, sub-contract or variation must be signed by appropriately authorised signatories of each party
- We've always recommended that contractual documents are signed physically, in hard copy form, unless the parties have taken legal advice on appropriate governance arrangements and on the risks involved in using electronic signatures
- Use of e-signatures on legal documents is becoming common, much more so as a result of both the Covid-19 pandemic and what the [Law Commission](#) has said about the issue

See the Contract [Technical Guidance](#) s15

Use of electronic signatures

- Here are some general pointers on use and acceptance of e-signatures in relation to the contracts, sub-contracts and variations which we are all concerned with.
- **They should not be taken as a substitute for parties taking their own legal advice and consulting their own organisation's guidance and governance documents, nor as being applicable to all legal documents.**

See the Contract [Technical Guidance](#) s15

Use of electronic signatures

An e-signature can lawfully be used to sign a document provided that:

- all parties to the document intend that that e-signature will authenticate the document on the relevant party's behalf; and
- any formalities (eg governance requirements) relating to the signing of that document by that party are satisfied.

If these conditions are met, the document will be deemed signed just as it would if signed by hand in ink

See the Contract [Technical Guidance](#) s15

Use of electronic signatures

Generally, only the following forms of e-signature should be considered as 'safe':

- the use of e- signature software platforms; and
- uploading scanned photos of signatures

See the Contract [Technical Guidance](#) s15

Use of electronic signatures

- For further key points, see the Contract Technical Guidance
- And, of course, your organisation's own guidance and governance documents

See the Contract [Technical Guidance](#) s15

Online presentation of the Contract 1

- We are proposing to change the presentation of the Contract so that the General Conditions and the Service Conditions exist only in their on-line form
- The Particulars still need to be agreed locally but the GCs and SCs do not need to be exchanged
- Simplify contracting process

See the Contract [Technical Guidance](#) s3.19

Online presentation of the Contract 2

- The 'current' SCs and GCs will be published at <https://www.england.nhs.uk/nhs-standard-contract/>
- Ps and other documentation will be published at <https://www.england.nhs.uk/nhs-standard-contract/22-23/>

See the Contract draft [Technical Guidance](#) s3.7-3.21

Online presentation of the Contract 3

- The Contract still has the same look and feel as before, but we have made important changes to give the change effect:
 - See page 7 of the Particulars
 - Schedules 4A and 4B are now in Annex A of the SCs
 - The Provider Data Processing Agreement is now in Annex B (the Data Processing Services table is still in 6F)
 - Right hand column in Ps and SCs – now service categories only

See the Contract draft [Technical Guidance](#) s3.7-3.21

Online presentation of the Contract 4

- eContract system will be discontinued from the end of 2021/22
- Populating the Particulars
- We have removed the National Variation provisions from GC13, as they are no longer needed. Any changes to the Contract will automatically take place from the date stated.
- Consultation on material changes will continue
- No plan to update the Contract more often than annually.

See the Contract draft [Technical Guidance](#) s3.7-3.21

Contract consultation

The consultation paper, draft Contracts and draft Technical Guidance are available at <https://www.england.nhs.uk/nhs-standard-contract/22-23/>

The consultation is available at <https://www.engage.england.nhs.uk/>

Submit responses via the Engage portal by 28 January 2022.

Help and support

- Contract Technical Guidance
<https://www.england.nhs.uk/nhs-standard-contract/22-23/>.
- Please send queries to our helpdesk
nhs.cb.contracts.help@nhs.net
- Contract stakeholder list - please send your contact details to england.contractsengagement@nhs.net
- Queries on [CQUIN](#) may be sent to e.cquin@nhs.net
- Comments on the webinar – add to the chat or send to england.contractsengagement@nhs.net

See the Contract draft [Technical Guidance](#) s4 and s30