Classification: Official

Publication reference: 1579

NHS Standard Contract 2023/24: A consultation

Proposed changes to the NHS Standard Contract for 2023/24

Version 1, December 2022

Prepared by: NHS Standard Contract Team, NHS England
england.contractsengagement@nhs.net

Contents

NHS Standard Contract 2023/24: A consultation 1

Context for 2023/24 and beyond 2

Pre-consultation engagement 2

Introduction 4

Period covered by the Contract 4

Proposed changes to Contract content 4

The shorter-form Contract 17

Consultation responses 18

Context for 2023/24 and beyond

Under the Health and Care Act 2022 (the 2022 Act), Integrated Care Boards (ICBs) and NHSE have statutory responsibility for "arranging for" (that is, commissioning) the provision of healthcare services. They do this from a wide range of different providers – from NHS Trusts and NHS Foundation Trusts, but also from private sector providers and voluntary sector bodies. Although, under the Act, there is to be increased collaborative working between ICBs and partner Trusts, they remain separate statutory bodies, and the Act continues to envisage the commissioner / provider relationship being governed by commissioning contracts. Legislation continues to give NHSE the power to publish, and mandate use of, a model commissioning contract.

There continue to be clear benefits from NHSE mandating core terms for such a contract (the NHS Standard Contract) at national level.

- Having mandatory national terms allows us to set, at a high level, consistent national standards of care (to be followed by all providers of NHS-funded services) and to promote local implementation of key national policy priorities.

- It offers significant economies of scale (avoiding ICBs having to pay lawyers to draft contract terms locally).

- It provides one consistent set of contractual rules and processes, easily understood and used by all – and a level playing field for providers.

In this context, we continue to believe that there is an important role for the NHS Standard Contract for 2023/24 and beyond. Clearly, however, the Contract may need to evolve further as collaborative system working becomes embedded in the NHS. In this context, therefore, we intend to undertake during 2023 a more fundamental review of the purpose and content of the Contract.

Pre-consultation engagement

To inform our thinking about how the Contract should develop, we have again undertaken a structured survey of commissioners and providers who use the Contract in practice. We conducted this survey over the summer of 2022.

Three key themes were evident in the feedback we received.

- **Provisions for contract management.** The Contract contains well-established mechanisms through which the parties can manage their relationship and commissioners can hold providers to account for the quality of the services they provide. We asked whether we should consider

slimming down these "contract management" provisions at this stage, with the aim of promoting a more strategic, less transactional approach to contracting. The feedback we received reflects the fact that ICBs are still bedding in as new commissioning organisations. Most respondents favoured an approach of continuity for 2023/24, saying we should retain the current provisions broadly as at present but emphasise their "backstop" nature – that is, that they can be used where necessary on a case-by-case basis, rather than having to be used all the time as standard. Further review – and potentially more significant changes – could then follow for 2024/25. **In this consultation, we are therefore not proposing major changes to the contract management provisions.**

- **National clinical and service policy priorities.** Respondents recognised that we would need to continue to update the terms of the Contract, in respect of national clinical and service standards and priorities. There was very strong support for our proposed criteria for including any new such requirements in the Contract. These were that any new inclusion should:
    - address an important NHS priority;
    - be consistent with official published guidance, where relevant;
    - apply consistently to all relevant providers, as a national standard or expectation, in the same way; and
    - be specific, understandable and realistic.

  For this year, we have sought to apply these criteria (largely consistent with our previous practice), wherever possible, in considering the potential changes on which we are now consulting below. But we will look again at this approach for the future in the light of the review described above.

- **Supporting products.** We asked specifically about the extent to which commissioners and providers used or referred to the various supporting products we publish alongside the Contract – our Contract Technical Guidance, model Collaborative Commissioning Agreement, model sub-contract and model System Collaboration and Financial Management Agreement. Feedback was generally very positive: that these products are used and are found useful. **We will therefore continue to make these products available, enhancing them where we can.**

Introduction

This consultation asks for views from stakeholders on changes which NHS England (NHSE) proposes to make to the NHS Standard Contract for 2023/24.

The NHS Standard Contract is published by NHSE for use by NHS commissioners to contract for all healthcare services other than primary care services. We are now consulting on changes for 2023/24 to both versions of the Contract – the full-length version, which is used to commission the bulk of such services by value, and the shorter-form version, which can be used in defined circumstances for certain less complex and typically lower cost services. The updated Contracts are available on the NHS Standard Contract 2023/24 webpage.

This consultation document describes the material changes and updates we are proposing to make to both versions of the Contract. We welcome comments from stakeholders on our proposals, along with any other suggestions for improvement. Comments on the draft Contracts can be submitted via an online feedback form.

The deadline for receipt of responses is Friday 27 January 2023. We will publish the final versions of the generic Contract (both full-length and shorter-form) as soon after that as possible.

Period covered by the Contract

The Contract is intended to set national terms and conditions applicable for the 2023/24 financial year. If issues arise in-year which require any amendment to the Contract, NHS England will consult on changes as necessary.

It is for commissioners to determine locally the period for which they wish to offer each local contract – there is no default duration for an NHS Standard Contract and no bar to a contract duration of longer than one year. See paragraph 18 of our 2023/24 Contract Technical Guidance for further detail.

Proposed changes to Contract content

We describe below the main, material changes and updates we propose to make to the content of the full-length version of the Contract for 2023/24.

(The topic numbers in the left-hand column in the tables below have been added so that stakeholders can 'read across' more easily to the online feedback form. Numbers 1-6 are not used in this consultation document, as they correspond to stakeholders' name, email address etc on the online feedback form.)

Changes to national waiting times standards

This section sets out proposed changes which are aimed at supporting the specific requirements on national waiting times standards set out in the 2023/24 Priorities and Operational Planning Guidance (the Planning Guidance).

Topic	Change	New Contract Reference
6) Maximum RTT waiting times	We intend to amend the maximum RTT waiting time standard from 104 weeks in the 2022/23 Contract to no more than 65 weeks (to be achieved by March 2024).	Service Conditions, Annex A
7) Four-hour A&E waiting times	We propose to amend the four-hour standard for A&E waiting times so that the threshold is set at 76% (to be achieved by March 2024), rather than 95%.	Service Conditions, Annex A
8) Ambulance response times	We propose to amend the standard for mean Category 2 ambulance response times to no more than 30 minutes (to be achieved across 2023/24), rather than no more than 18 minutes.	Service Conditions, Annex A
9) 28-day cancer faster diagnosis standard	The Contract includes a standard for patients to wait no more than 28 days from urgent cancer referral to diagnosis, with a threshold of 75%. We propose to retain the standard and the threshold, but make clear that this is to be achieved by March 2024.	Service Conditions, Annex A

The draft Contract continues to contain a range of other long-established national waiting times standards, many of them derived from the NHS Constitution. The pandemic affected delivery of many of these standards, and post-pandemic recovery is inevitably a gradual process. In that context, note the following key points.

- Except as described above, we do not propose to amend these national standards in the 2023/24 Contract.
- In relation to some standards, the Planning Guidance sets a target for improvement over a longer timeframe than March 2024 (six-week diagnostic waits, for example). In these cases, commissioners and providers may wish to agree objectives and/or action plans, for inclusion in their local contracts, setting out the level of improvement the provider is expected to deliver by March 2024. These local objectives should then be used for local contract management purposes.
- All providers and systems which are able to deliver any or all of the national standards relevant to their services should of course continue to do so.
- Otherwise, commissioners should take a realistic approach in managing provider performance against other national standards which have not been prioritised for immediate recovery action in the Planning Guidance.

Clinical services – new additions to reflect national priorities

This section sets out a limited number of new additions to the Contract which are aimed at promoting improvements in how clinical services are delivered for patients, in line with the latest national policy direction.

Topic	Change	New Contract Reference
10) Peri-operative care guidance	In accordance with the requirement stated in the Delivery plan for tackling the COVID-19 backlog of elective care, we propose to add a requirement for acute providers to implement, by no later than 31 March 2024, a system of early screening, risk assessment and health optimisation for all adults waiting for inpatient surgery. Detailed further guidance on these arrangements is expected to be published shortly.	Service Condition 3.20
11) Outpatient services	Redesigning outpatient services to make them more patient-centred and efficient is a key priority for elective recovery. To support this, we propose to include a new requirement in the Contract on providers to have regard to national guidance on implementing patient-initiated follow-up.	Service Condition 10.6
12) National Infection Prevention and Control Manual	The National Infection Prevention and Control Manual was published in September 2022. For Trusts, implementation of the Manual's requirements is mandatory by no later than 31 March 2024, and we propose to include a corresponding requirement in the Contract. For other providers, the requirement will be to have regard to the Manual.	Service Condition 21.1 and Definitions
13) Vaccination for Covid-19	In accordance with JCVI guidance and the Green Book, specified at-risk groups will continue to be eligible for vaccination against Covid-19 during 2023/24. We propose to include a new requirement around contacts which a provider's staff may have, in the course of delivering outpatient or community services, with two high-risk patient groups – those who are immunosuppressed or pregnant. The requirement would be that Service Users from these two groups should, wherever possible, be offered brief advice on Covid-19 vaccination, including on how to access a vaccination service. (Procurement and funding arrangements to ensure that eligible long-stay hospital inpatients are always offered an appropriate Covid-19 vaccination are still under consideration; depending on the outcome, we may include a further provision relating to this in the final version of the Contract.)	Service Condition 21.5 and Definitions
14) Reporting deaths of people with a learning disability and/or autism	The NHS England Learning from Lives and Deaths (LeDeR) programme uses information on the deaths of people with a learning disability, autism or both to conduct reviews, to identify examples of good practice and opportunities to improve services. We propose to add a requirement on providers to notify, via the LeDeR website, deaths of Service Users with a learning disability, autism or both. This will apply to Service Users whose death occurs while an inpatient or of whose death the provider otherwise becomes aware.	Service Condition 33.1

15) Medical Devices Safety Officer and Medication Safety Officer	We propose to include a requirement for providers of relevant services to appoint a Medical Devices Safety Officer and a Medication Safety Officer. These are important roles to promote patient safety, the importance of which has been highlighted in existing national Patient Safety Alerts.	Service Condition 33.10

Clinical services – areas where updated Contract wording is needed

This section sets out areas where we need to update Contract wording in relation to clinical services, in order to keep the Contract consistent with published national standards or policies.

Topic	Change	New Contract Reference
16) Maternity and neonatal services	We propose to update the wording of the Contract in relation to maternity and neonatal services, particularly in the light of the continuing need for the NHS to respond to the recommendations of the Ockenden Review and the East Kent Report. • These two reports have highlighted the vital importance of ensuring safe staffing levels in maternity services. We therefore propose to add a specific requirement to the Contract for providers of maternity services to have regard to NICE guideline NG4 (*Safe midwifery staffing for maternity settings*). • We also propose to include a new obligation on providers to comply with the requirements on providers set out in the Perinatal Quality Surveillance Model; this is an important tool for oversight of the safety and quality of maternity services. • Updated guidance has been published on midwifery continuity of carer (MCoC). This confirms that, where an individual provider can demonstrate that it meets safe staffing requirements, it can continue to use and roll out the MCoC model – but there is no national target or expectation that every provider must deliver MCoC. On this basis, we propose to remove the reference to MCoC from the Contract. • The current 2022/23 Contract requires providers to take forward the recommendations in the Ockenden Review. We propose now to update that with a broader requirement to work, through the relevant Local Maternity and Neonatal System, to implement the requirements of both the Ockenden Review and the East Kent Report. (NHS England's initial response to the East Kent review commits to the publication in 2023 of a single delivery plan for maternity and neonatal care, bringing together actions required following the two reports and from the NHS Long-Term Plan and Maternity Transformation Programme deliverables. We will build a reference to this plan into the Contract in due course.)	Service Condition 3.13
17) Patient safety	We intend to update the Contract to reflect the requirements of the new national Patient Safety Incident Response Framework	Service Condition 33.2-3

	(PSIRF). The updated requirements are proposed to be as follows. • The national expectation is that PSIRF will be adopted over the coming year, with the exact date for local adoption being agreed between the provider and its Co-ordinating Commissioner. Until the agreed adoption date, therefore, each provider must continue to comply with the NHS Serious Incident Framework; from the agreed adoption date, it must comply with PSIRF. • In order to adopt PSIRF, each provider must agree with its Co-ordinating Commissioner a Patient Safety Incident Response Policy and a Patient Safety Incident Response Plan, as described in detail in PSIRF. These must be published on the provider's website. • Under PSIRF, each provider must ➢ engage compassionately with affected patients, carers and staff following any patient safety incident; ➢ respond in a proportionate way to such incidents, undertaking investigations where appropriate; and ➢ ensure that improvements to services are implemented following responses to incidents. Given that changes introduced under PSIRF to incident reporting and investigation, we believe that it is no longer necessary to have a specific schedule in the Contract which sets out a local procedure for the provider to report all incidents to the commissioner. We therefore propose to remove Schedule 6C (Incidents Requiring Reporting Procedure).	Schedule 6C
18) End of life care	The current Contract requires providers to have regard to Guidance on the Care of Dying People – defined by reference to national good practice documents. We propose to amend this to refer to an expanded set of up-to-date guidance documents, to include • Ambitions for Palliative and End of Life Care: A national framework for local action 2021-2026; • Universal Principles for Advance Care Planning; and • this letter sent in 2021 to NHS organisations, relating specifically to Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) decisions for people with a learning disability and/or autism (the letter reiterates that blanket policies on DNACPR are inappropriate whether due to medical condition, disability, or age; DNACPR orders should only ever be made on an individual basis and in consultation with the individual or their family). We also propose to amend the term we use in the Contract, from Guidance on the Care of Dying People to Guidance on End of Life Care.	Service Condition 34.1 and Definitions
19) Palliative care co-ordination	We propose to make two updates in this area. • The Contract refers specifically to Information Standard SCCI 1580 on palliative care co-ordination. This standard is being retired shortly, to be replaced the Palliative and End of Life Care Information Standard (now published in draft form on the	Service Condition 34.1 and Definitions

	Professional Record Standards Body website). We propose to amend the Contract wording accordingly. • We propose to remove the reference to the implementation of electronic palliative care co-ordination systems (EPACCS), as the guidance to which the Contract refers in this area is no longer current.	

Workforce

This section sets out proposed updates relating to workforce and staffing issues.

Topic	Change	New Contract Reference
20) Workforce Race and Disability Equality Standards	The Contract currently requires i) all providers to comply with the Workforce Race Equality Standard and ii) Trusts to comply with the Workforce Disability Equality Standard, in each case reporting to the commissioner annually on compliance. We have reflected that this "comply with" language is not quite suitable for these two standards, where the focus is on the provider improving its overall position against the indicators in the round. We therefore propose to amend the wording, so that there is instead a focus on improvement (through development of provider action plans to improve performance against the Standards) and on transparency (through publication on provider websites of Board-approved annual performance reports and action plans). Existing reporting requirement (both nationally in accordance with national data collections approved by NHS Digital and locally to the commissioner) remain in place.	Service Condition 13.6 and 13.8
21) Professional Nurse Advocate role	The Contract has for some time included requirements relating to clinical supervision for midwives, using a system of Professional Midwifery Advocates under the A-EQUIP model. Following successful national roll-out, we now propose to introduce equivalent requirements relating to clinical supervision for nurses through Professional Nurse Advocates.	General Condition 5.5
22) Workforce planning	The existing Contract requires providers to co-operate with Local Education Training Boards (LETBs) and with Health Education England (HEE) in relation to the provision of education and training for healthcare workers. For 2023/24, we propose to amend the wording a) to add a requirement to co-operate in relation to healthcare workforce planning, b) to delete the references to LETBs and HEE and replace them with references to NHSE, local ICBs and local Trusts and c) make clear that all providers should be approaching workforce planning, education and training and the development and delivery of workforce plans more broadly in a way which supports NHS bodies to deliver their "triple aim" duties (population health, service quality, efficiency / sustainability). These duties have now been formalised in law through the "wider effects of decisions" statutory duties imposed on NHS organisations via provisions inserted by the Health and Care Act 2022 into the NHS Act 2006.	General Condition 5.7

23) Staff health and wellbeing	Reflecting the intention behind the NHS Health and Wellbeing Framework, we propose to include additional requirements in the Contract relating to staff health and wellbeing. • We propose to add a general requirement on providers to promote staff health and wellbeing. Providers will be required to ensure that the issue is addressed in staff appraisals (through "wellbeing conversations") and that staff are made aware of any support services available and are enabled to access those services where needed. • In accordance with published guidance, we intend to amend the Contract so that each Trust is required to appoint a board-level Wellbeing Guardian.	General Condition 5.9
24) Freedom to Speak Up	We propose to update the Contract to refer to the new national Freedom to Speak Up policy and guidance, removing the now out-of-date reference to the former "Raising Concerns" policy.	General Condition 5.10

Procurement of medicines and devices

This section sets out proposed updates aimed at ensuring value for money from the procurement of medicines and high-cost devices.

Topic	Change	New Contract Reference
25) Procurement of medicines via national frameworks	High-cost drugs and devices are typically funded on a "pass-through" basis, with the commissioner bearing the financial risk of demand for those items. As a way of ensuring best value, the Contract has for many years included a provision which allows the commissioner, on notice, to require the provider to purchase a particular high-cost drug or device from a specific supplier or framework. Where the provider does not comply, it is not entitled to payment for the drug / device in question. The provision applies to Trusts only. More recently, a requirement was added to the Contract for providers to purchase one specific high-cost drug, adalimumab, from a newly established national framework. More national frameworks are now being put in place for the purchase of medicines, and full use of these by Trusts will maximise value for public money. We therefore propose to update the Contract wording, so that – where a particular medicine is available via a national framework – a Trust <u>must</u> purchase that medicine through that framework. This is subject to the caveats that the product available via the framework must be clinically appropriate for the patient in question, and that a Trust may first use up any existing stock of the same or a similar product purchased through other means. (Trusts can access details of current national frameworks here.) We also propose to include a new requirement for <u>accountability</u> – so that any Trust which breaches its contractual duty to use national frameworks must, on request, provide a written statement to its commissioner, to its public board and/or to NHS England,	Service Condition 39.2-4

	explaining its purchasing decision and what it will do to ensure compliance with the contractual requirement in future.	
26) Procurement of high-cost devices used in specialised services	The existing provision described above has been used routinely by NHSE in relation to high-cost devices used in specialised services. We now propose to separate this from the provision relating to procurement of medicines and to amend it so that, where a high-cost device required in the provision of specialised services is available for purchase via NHS Supply Chain, the provider must purchase it via that route.	Service Condition 39.5

Greener NHS and healthcare food and drink standards

This section sets out proposed changes reflecting updates to national policies in relation to the "greener NHS" agenda and to the provision of food and drink in healthcare settings.

Topic	Change	New Contract Reference
27) Desflurane	The 2022/23 Contract requires providers to reduce the proportion of desflurane to all volatile gases used in surgery to 5% or less by volume. The NHS has made good progress on this commitment, and we propose to amend the target, for 2023/24, to 2% or less.	Service Condition 18.3
28) Piped nitrous oxide	The 2022/23 Contract requires providers to reduce the carbon impact of the use or release of nitrous oxide. A significant proportion of nitrous oxide emissions is caused by waste from manifolds and the associated piped infrastructure. We propose to amend the Contract to focus the requirement specifically on reducing piped nitrous oxide waste.	Service Condition 18.3
29) Electricity supplies	The Contract requires Trusts to ensure that they source their electricity from certified renewable sources. Given the increased cost of renewable electricity, we now propose to amend this requirement so that it applies only as far as reasonably feasible.	Service Condition 18.4
30) NHS Net Zero Supplier Roadmap	We added a requirement to the 2022/23 Contract, on Trusts, to comply with Cabinet Office guidance, Taking Account of Public Value. This meant that all Trust procurements needed to include a minimum 10% net zero and social value weighting. We now propose to broaden this duty, so that Trusts have to comply with the requirements of the published NHS Net Zero Supplier Roadmap. In addition to the existing 10% weighting requirement, one key effect will be that, for 2023/24 onwards, for all contracts above a £5 million value, Trusts must require suppliers to publish a carbon reduction plan.	Service Condition 18.5
31) National standards for healthcare food and drink	The current Contract contains detailed provisions relating to the provision of food and drink to patients, visitors and staff. NHSE has now published new comprehensive national standards for healthcare food and drink. As a result, we propose to shorten the Contract wording, so that it simply requires providers to comply with the new standards as applicable ("as applicable" because a	Service Condition 19.1

	small number of the standards apply only to Trusts, not to non-NHS providers). (Note also that the publication of these national standards allows us to remove one detailed provision from Service Condition 18. This required providers to cease use of single-use plastic cutlery, plates and cups. The national standards for healthcare food and drink now state this as a specific expectation, so there is no need for it to continue to be set out separately in the Contract.)	

Payment and reporting

This section sets out changes to the arrangements set out in the Contract for payment, invoicing and financial reconciliation and reporting requirements.

Topic	Change	New Contract Reference
32) Withholding of payment / financial sanctions	For many years, the Contract included financial sanctions on providers for failure to achieve national waiting times standards. These were first suspended and then, in 2021, removed from the Contract altogether. With the 2022 Act now in place, requiring ICBs and Trusts to work to shared system-level financial objectives, we have further reviewed the remaining provisions in the Contract which involve application of financial sanctions or withholding of payment. We now propose to make further changes as follows. We intend to remove the detailed provisions which require commissioners to withhold payment i) for acute outpatient attendances made following acceptance of a GP referral not made via the NHS e-Referral Service (e-RS) and ii) for activity undertaken in breach of national Evidence Based Interventions (EBI) guidance. • Use of e-RS in the acute sector is very high, backed by a contractual requirement on GPs to use it; a specific financial incentive on acute providers is no longer needed. • The third list of interventions subject to EBI guidance is about to be published and will feature some examples where providers will be encouraged to undertake more, rather than less, activity. In that context, a non-payment provision makes no sense. • The idea of financial transactions at a very granular, individual procedure level, is not consistent with the greater emphasis on fixed payments now built into the Aligned Payment and Incentive (API) rules for Trusts. We also intend to remove the financial sanctions which apply to providers in relation to delays in undertaking Care (Education) and Treatment Reviews (CETRs). The Contract will of course continue to require use of e-RS, compliance with EBI guidance and timely support to the C(E)TR process. The point of the changes is simply to remove the very transactional "withholding of payment" / financial sanction element	Service Conditions 6.3, 6.11-12 and 29.31

	in each case. Financial incentives for Trusts to follow EBI guidance will instead be built into the API rules.	
33) Reporting requirements	Following review, we propose removing two requirements for providers to provide reports or data on specific issues to their local commissioners. These are: • the annual report on their success in reducing antibiotic usage (this is no longer required because performance data for each Trust is published separately on the national Fingertips database); and • the requirement to submit data on violence-related injuries in accordance with ISB1594 (NHS Digital has announced that compliance with this separate dataset will no longer be compulsory from 1 April 2023, with data instead being collected via the Emergency Care Data Set).	Service Condition 21.3 and Schedule 6A
34) NHS Payment Scheme	Under the 2022 Act, NHS rules on the payment of providers are now referred to as the NHS Payment Scheme, rather than the National Tariff Payment Scheme. NHSE is currently consulting on the NHS Payment Scheme 2023/25, and we have included in the draft Contract a number of provisional changes to give effect to the new Scheme. These should be read in conjunction with the consultation draft NHS Payment Scheme. As a result of these changes, we have been able to shorten Service Condition 36 considerably. We have also amended the order and content of the various related Schedules. Under the proposed NHS Payment Scheme 2023/25, the Aligned Payment and Incentive (API) rules (which include CQUIN) will now apply to all Trust contracts. Neither API nor CQUIN feature in the shorter-form version of the Contract, and including them would make that version longer and more complex. In consequence, therefore, our Contract Technical Guidance now makes clear that the shorter-form version of the Contract should not be used for Trusts. When we publish the final version of the 2023/24 Contract, we will confirm wording in relation to payment in line with the outcome of the consultation on the NHS Payment Scheme.	Service Condition 36, Schedules 3A-F and Definitions
35) Charging of overseas visitors	There have been arrangements in place for many years for financial risk-sharing between commissioners and providers in relation to NHS charges levied on overseas visitors. These have been described in guidance (Improving Systems for Cost Recovery for Overseas Visitors) and given effect through wording in the Contract. It is proposed to discontinue these risk-sharing arrangements for 2023/24, and we have simplified the Contract text as a result.	Service Condition 36.26
36) Deadlines for contesting invoices and reconciliation accounts	Where a commissioner wishes to contest any element of payment in a provider's invoice or reconciliation account, the Contract requires that it must do so within five working days of receipt of that invoice or account. We have been made aware of (rare) instances where, because the provider submits its invoice or account very early, the Contract timescale means that the commissioner has to decide whether to contest any element of payment before it is able to view, in SUS, the provider's activity data for the relevant period.	Service Condition 36.21-22 and 36.31

	That is clearly inappropriate – and we have therefore proposed minor amendments to the Contract wording, so that the five-day period for contesting payment will run from either receipt of the invoice / account or publication in SUS of the relevant period's activity data, whichever is the later.	

Other smaller updates

We propose to make a number of other smaller updates to existing Contract provisions, to ensure that the Contract wording remains current, accurate and robust. (If you wish to comment on the topics below, please do so under 'any comments' on the feedback form.)

Topic	Detailed change	New Contract Reference
Armed Forces Covenant	The Contract has for many years included a reference to the Armed Forces Covenant. In support of the Armed Forces Act 2021, the Government has now published new statutory guidance on the duties of public bodies in this area, and we propose to amend the Contract wording so that commissioners and providers must have due regard both to the principles of Covenant itself and to the guidance.	Service Condition 1.4 and Definitions
NHS "triple aim"	The 2022 Act has (through "wider effects of decisions" provisions inserted into the NHS Act 2006) established consistent legal duties for NHSE, ICBs and Trusts in relation to the NHS "triple aim" of promoting population health, service quality and efficiency / sustainability. We propose to update the wording of the Contract so that it is fully consistent with these duties as described in the relevant legislation.	Service Condition 4.6
Booking from NHS 111 into A&E services	The Contract contains an existing requirement on providers of urgent care services to enable NHS 111 providers to book attendance slots in those services for suitable patients. We propose to update the requirement to refer to the new Booking and Referral Standard, in consequence broadening its applicability so that it applies to providers of A&E services, as well as urgent care services.	Service Condition 6.15 and Definitions
Antibiotic usage	Since 2019, the Contract has required acute providers to make year-on-year reductions in their antibiotic usage, in line with the ambition for a 10% cumulative reduction set out in the UK 5-year action plan for antimicrobial resistance 2019 to 2024. To date, the Contract requirement for annual reductions have been expressed against the 2018 baseline of actual usage. For consistency with the UK 5-year AMR National Action Plan target, we propose to amend the Contract wording so that the requirement is for a 10% cumulative reduction by 31 March 2024 against the 2017 baseline (instead of a 6.5% reduction against a 2018 baseline).	Service Condition 21.3 and Definitions
Domestic abuse	The 2022/23 Contract requires providers to comply with the requirements of the Domestic Abuse Act 2021. Statutory guidance in support of the Act has now been published. The guidance	Service Condition

Topic	Detailed change	New Contract Reference
	• is designed to help organisations to identify and respond to domestic abuse; • explains the expanded definition of domestic abuse used in the Act (covering a wide range of crimes, including physical, economic, psychological and emotional abuse, controlling or coercive behaviour, 'honour-based' abuse, female genital mutilation and forced marriage); and • clarifies that the Act now recognises children as victims of domestic abuse in their own right, including when they have not themselves suffered any physical injuries. We propose to include a reference to the guidance in the Contract.	32.3.9 and Definitions
Delegation of commissioning functions	It is expected that NHSE will, at some future point, delegate to ICBs some of its functions for commissioning prescribed specialised services. We propose to amend the Contract wording to ensure that the use of national service specifications, relevant national quality requirements and nationally-set reporting requirements remains mandatory, even where delegation has taken place and contracts for specialised services are awarded and managed by ICBs, rather than by NHSE itself.	Annex A to the Service Conditions and Definitions
Liability under indemnities	For the avoidance of doubt, we propose to add wording to the Contract to make clear that – except as expressly stated in General Condition 11 – any liability of the commissioner or provider under the contractual indemnities cannot be excluded or limited. In other words, there is and can be no cap or ceiling on either party's liability under their respective indemnities, and any attempt to include one (for instance in the Particulars) will be void.	General Condition 11.1-2
Payment of sub-contractors	The Contract already stipulates, in accordance with the Government's Prompt Payment Policy, that any sub-contract awarded by a provider must require full payment to be made within 30 days from the receipt of a valid invoice. For completeness, we now propose to add a specific requirement to the Contract for the provider to comply at all times with that requirement for prompt payment in its sub-contracts.	General Condition 12.6
Suspension and termination	General Condition 16 allows the commissioner, in certain specific circumstances (defined in the Contract as a Suspension Event), to suspend, <u>temporarily</u>, the provision by the provider of all (or some or aspects of) the services commissioned under the local contract. General Condition 17 then sets out rights for either party, in specific circumstances, to terminate the local contact <u>permanently</u>. General Condition 17.10 deals specifically with termination for provider default, listing specific situations where unsatisfactory performance or breach of contract by the provider justifies termination with immediate effect. We propose minor amendments to clarify the interplay between the suspension and termination provisions. The changes make explicit that • where the commissioner exercises its "suspension" rights under General Condition 16, it will not be deemed to have waived its	General Conditions 16.10 and 17.10 and Definitions

Topic	Detailed change	New Contract Reference
	“termination” rights under General Condition 17, where such rights exist; and • where the commissioner is entitled to terminate the contract in whole or in part in accordance with General Condition 17.10, this automatically constitutes a Suspension Event – to make it clear that the commissioner can choose the less drastic option of suspending the services, if it wishes, rather than terminating the contract.	
Definition of Change in Control	We have amended the definition to ensure that it covers companies limited by guarantee, limited liability partnerships and sales of the business and assets of provider organisations.	Definitions
Primary and community mental health services	Schedule 2Aii relates to the employment or engagement of Mental Health Practitioners (MHPs) by mental health providers to support local Primary Care Networks (PCNs). These roles, which can be for adults / older adults or for children / young people, are able to be 50%-funded by PCNs through the Additional Roles Reimbursement Scheme under the Network Contract Directed Enhanced Service; the balance of funding is provided by the relevant ICB, as part of its overall payment to the mental health provider. We propose to amend the Schedule, so that it allows explicitly for the agreed number of MHPs, by PCN, to be documented.	Schedule 2Aii
Joint System Plan Obligations	Prior to the 2022 Act, as “system working” was being promoted on a non-statutory basis, we sought to encourage a joined-up approach across CCGs and local providers by including a specific schedule in the Contact, in which a particular provider’s detailed responsibilities under “system plans” could be set out, so as to become contractual obligations. But the Act now places legal duties on ICBs and partner Trusts to agree and publish five-year joint forward plans – and, in that context, we believe that a mandatory Contract schedule is no longer required. We therefore propose to remove the schedule. (A commissioner wishing to place specific contractual obligations on a particular provider, arising from the agreed joint forward plan, could still do so by addition of appropriate text as necessary, for example in Schedule 2G (Other Local Agreements, Policies and Procedures).)	Schedule 8

We have made other minor changes to rationalise and improve the Contract where we have considered it appropriate to do so.

Impact of the 2022 Act and associated organisational changes

We drafted the current 2022/23 version of the Contract at the point when the Health and Care Bill had not yet completed its passage through Parliament – and so the current Contract contains additional wording in certain areas which was designed to ensure that the Contract would work satisfactorily whether the Bill passed or not. Much of this additional wording can now be stripped away for 2023/24, leaving only

that reflecting the 2022 Act as enacted. References to certain organisations (Clinical Commissioning Groups, local education and training boards, Monitor, the NHS Trust Development Authority,) can be deleted, for instance, and caveats relating to the establishment of other organisations (ICBs, Integrated Care Partnerships) can be removed. Appropriate changes to the Contract wording have been proposed accordingly, throughout the General Conditions and Service Conditions, but especially in the Definitions.

In other cases, where changes envisaged or enabled by the 2022 Act have not yet taken full effect, the Contract has to continue to be worded flexibly to reflect both the current position and the intended future position. This applies, for example, to

- the intended establishment of the Health Services Safety Investigations Body; and

- the arrangements for Essential Services provided by NHS Trusts (these will become redundant once, as envisaged under section 51 of the 2022 Act, NHS Trusts are issued with Provider Licences and thus come within scope of the Commissioner Requested Services regime).

We have proposed specific changes in how the Contract refers to NHS Digital, which will be abolished at the end of January 2023, with its functions transferring to NHSE. We have retained those references to NHS Digital where the Contract is looking back to guidance issued by NHS Digital before its abolition – but we have proposed amending other references to include NHS England (where the Contract is looking forward to guidance which may be issued in future, for example).

The shorter-form Contract

A number of the changes described above are also appropriate to include within the shorter-form version of the Contract. These changes relate to:

- reporting deaths of people with a learning disability and/or autism
- patient safety
- end of life care
- palliative care co-ordination
- workforce planning
- Freedom to Speak Up
- NHS Payment Scheme
- charging of overseas visitors
- delegation of commissioning functions
- liability under indemnities
- suspension and termination
- definition of Change in Control
- impact of the 2022 Act.

The shorter-form Contract remains significantly ‘lighter-touch’ than the full-length version. Our Contract Technical Guidance continues to describe the situations

where use of the shorter-form Contract is encouraged – as well as those for which it is not designed (see section 9).

Consultation responses

We invite you to review this consultation document and the two draft Contracts (available on the NHS Standard Contract 2023/24 webpage) and provide us with feedback on any of our proposals.

Comments can be submitted only via the NHSE engagement portal through this online feedback form. We have provided a Word version of the consultation questions, to help stakeholders collate responses from across their organisation. This document should not be used to submit responses by email, and all responses should be submitted via the online form.

The deadline for receipt of responses is Friday 27 January 2023. We will publish the final versions of the generic Contract (both full-length and shorter-form) as soon after that as possible.

NHS England
Wellington House
133-155 Waterloo Road
London
SE1 8UG

Contact: enquiries@england.nhs.uk

This publication can be made available in a number of alternative formats on request

© NHS England December 2022 | PR1579