



**Guidance on completing the
National Variation Deeds
2012/13 for all 2009/10, 2010/11
and 2011/12 NHS Standard
Contracts**

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Executive summary

This document contains Guidance on the completion of the National Variation Deeds for the NHS Standard Contracts issued in 2009/10, 2010/11 and 2011/12 to reflect the 2012/13 Operating Framework requirements.

Introduction

The 2012/13 National Variation Deed (“**Deed of Variation**”) varies the 2009/10, 2010/11 and 2011/12 NHS Standard Contracts by incorporating the policy requirements of the 2012/13 NHS Operating Framework¹ (“**Operating Framework**”). Each Deed of Variation is a National Variation as defined in the applicable NHS Standard Contract.

All commissioners and providers who entered into NHS Standard Contracts in 2009, 2010 and/or 2011, which do not expire or terminate prior to 1 April 2012, will be requested to sign the relevant Deed of Variation in accordance with the provisions of the applicable NHS Standard Contract.

Each Deed of Variation is drafted on the basis that the commissioners and providers have signed all applicable previous deeds of variation issued by the Department of Health.

This Guidance does not cover any Service Variations (as defined in NHS Standard Contracts) entered into by the parties. Any Service Variations in existing contracts will continue in accordance with the terms of the applicable Service Variation, unless they are otherwise varied by the Deed of Variation.

Guidance is given below on the following points:

- The legal considerations relating to varying a contract
- Practical guidance
- A note on some of the changes

Varying a contract: legal considerations

Once a contract has been agreed and signed by the parties, one party cannot generally change the terms of such contract unilaterally. In order to ensure the validity of a contract variation, variations to contract are often recorded in a document called a “deed of variation”, which is mutually agreed and executed by the parties to the original contract.

Different formalities apply to “executing” (i.e. signing) a deed than apply to executing a contract, and these are explained in the Practical Guidance section below.

In order to vary an existing NHS Standard Contract, the parties must act in accordance with the variation provisions of the NHS Standard Contract (clause 38) and the variation procedure set out in the relevant schedule to the applicable NHS Standard Contract. The parties may execute the Deed of Variation once it is agreed.

The parties may wish to meet to discuss the provisions of the Deed of Variation and should try to reach agreement. If agreement cannot be reached, the parties may agree to go to dispute

¹ http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131428.pdf

resolution, or the dissatisfied party may terminate the NHS Standard Contract in accordance with clause 35.1.2 or 35.2.2, as appropriate.

The Deed of Variation becomes legally binding on the date that it is signed by both parties (refer to Table 1 below). However, the obligations in the Deed of Variation do not come into effect until 1 April 2012. All rights, obligations and liabilities accrued before 1 April 2012 will continue to exist and the Deed of Variation does not extinguish such rights or obligations. For example, if data relating to March 2012 delivered in April 2012 (or thereafter) reveals that a breach of the 18 Weeks Referral to Treatment Standard occurred in March 2012, the consequence of that breach will be as set out in the Nationally Specified Events Table in the 2011/12 NHS Standard Contract or 2011/12 National Variation Deeds, and not the consequences contained in the 2012/13 Deed of Variation.

Practical Guidance

Table 1 (below) summarises the actions necessary to complete a Deed of Variation. References to “Co-ordinating Commissioner” apply to multilateral NHS Standard Contracts, and references to “Commissioner” apply to bilateral NHS Standard Contracts.

Table 1: The Deed of Variation and necessary actions

Clause	Guidance
Cover Page	Insert the full name of the Co-ordinating Commissioner/ Commissioner (as appropriate), the full name of the Provider, and the date on which the original 2009/10, 2010/11 or 2011/12 NHS Standard Contract was signed.
First page	After “ THIS NATIONAL VARIATION DEED is dated ” insert the date on which the Deed of Variation is fully executed by both parties. Note that if the parties sign on different dates, the date to be inserted here is the date on which the last party signs the Deed of Variation and this is the date on which the Deed of Variation becomes legally binding.
First page	In the space between the brackets next to “(1)” at the top of the first page insert the name of the Co-ordinating Commissioner or Commissioner (as appropriate) and the principal office address of the Co-ordinating Commissioner or Commissioner (as appropriate). <i>Note: Specialised Commissioning Groups will need to insert the name of the SCG.</i>
First page	In the space between the brackets next to “(2)” insert the name of the Provider and the address of its principal office, which the Provider will be required to confirm to the Co-ordinating Commissioner/ Commissioner (as appropriate).

First page	After “ WHEREAS ”, in paragraph “A” insert the date on which the original NHS Standard Contract was signed.
Execution page	<p>Signatures and Sealing</p> <p>The Provider and the Co-ordinating Commissioner/ Commissioner (as appropriate) must execute the Deed of Variation where indicated, by affixing their respective common seals in the presence of two authorised signatories, or where the Provider is an incorporated company, by a single Director in the presence of a witness.</p> <p>The parties are not required to date the execution page, as the date on which the Deed of Variation is executed is inserted on the first page of the Deed of Variation (see above).</p> <p>The Deed of Variation may be executed in counterpart (by each party signing separate but identical copies), or alternatively both parties can execute the same copy of the Deed of Variation.</p> <p>Where the NHS Standard Contract is a multilateral contract, it is recommended that the Co-ordinating Commissioner executes the Deed of Variation for itself and as the agent for and on behalf of each of the Associates, if authorised pursuant to a Consortium Agreement.</p>

Reference for the changes

Prior to entering into the Deed of Variation, commissioners and providers are referred to Guidance on the NHS Standard Contract 2012/13², which describes the key changes from previous versions of the NHS Standard Contracts, and provides guidance on the key parts of the NHS Standard Contract 2012/13, including those sections to be incorporated by the Deed of Variation.

² http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131999.pdf

