



NARRATIVE DESCRIPTION OF SOME OF THE KEY DIFFERENCES AND SIMILARITIES BETWEEN THE 2008 CONTRACT AND THE 2023 CONTRACTS

1. Introduction

- 1.1 The implementation of a new Public Only Consultant Contract 2023 was proposed in the Sláintecare Report and recommended by the De Buitléir Group. It is a commitment in the Programme for Government. The Public Only Consultant Contract 2023 implements this commitment. The new contract will result in a phased elimination of private care from public acute hospitals. It is a significant step towards transforming how we deliver healthcare in Ireland, building towards an integrated health service with access to services for every citizen based on patient need and not ability to pay.
- 1.2 The 2023 contract is a template contract that will be used by various public health service employers and employers of academic consultant employers. Most consultants in the public service are employed by the HSE or separate State agencies funded under section 38 of the *Health Act 2004* (such as voluntary hospitals).
- 1.3 There are a large number of differences between the 2008 contract and the 2023 contract. Some of those differences are significant whereas others are minor. Some key provisions of the 2008 contract have been retained entirely, or with only minor changes. This briefing note summarises the key differences and the key similarities between the two contracts, but the 2023 contract needs to be read in its entirety in order to be fully understood.

2. Key difference 1: prohibition on private work in public hospitals

- 2.1 The 2023 contract will be a major step towards the delivery of a key policy commitment in the Sláintecare Report, namely the phased elimination of private care from public acute hospitals. The contract contains a prohibition (subject to limited exceptions) on private work in public hospitals, but sets out freedom (again subject to limited exceptions) for consultants to do private work in off-site private practice. These provisions are implemented in the following way in the contract.
- 2.2 Consultants are entitled to engage in external work if their employer grants permission for such external work. External work is any kind of employment outside the scope of the consultant's public service contract. It is expected that, in practice, external work will normally be clinical work. However, it could also be non-clinical work.
- (a) Some types of external work are types of external work that are pre-approved by the 2023 contract. For example, the contract pre-approves a consultant external medico-legal work and voluntary work provided that doing such work does not impede the consultant's discharge of their public service duties under the 2023 contract. The permission to engage in these types of external work is limited to circumstances in which the external work is done outside the consultant's contracted working hours.
- (b) Some types of external work are types of external work that require permission, but in respect of which permission will normally be given unless there are unusual circumstances that lead the employer to refuse permission. The main example of external work for which permission will normally be given will be private practice – outside the consultant's public work schedule – in off-site locations. There are limited circumstances in which such off-site private practice will be restricted. For example, consultants will not be permitted to work very long hours in their off-site practice (ie hours that are so long that they would endanger patient safety because of fatigue). Consultants will not be allowed to engage in off-site private

practice that would be likely to cause a conflict with their public service commitment.

- (c) Private practice will normally not be permitted at any location operated by the HSE. Limited exceptions may be made to this general rule in individual circumstances but it is expected that such exceptions will be of very limited application.

2.3 A consultant will normally not be permitted to refer public patients to their private practice. Limited exceptions can be made to this general rule in individual circumstances. One such example would be where the HSE does not provide a particular medical service but that service is available in a private practice. In such a case, permission can be given to refer patients to that private practice notwithstanding that in some cases the consultant(s) who make the referrals may have an interest in the private practice.

2.4 The 2023 contract sets out detailed provisions that will give effect to the foregoing principles. These provisions contain a significant amount of detail because the 2023 contract has been drafted in a way to ensure compliance with the *European Union (Transparent and Predictable Working Conditions) Regulations 2022*, which were introduced on 16 December 2022 to comply with an EU directive. These regulations require an employer to have objective grounds for restricting an employee from engaging in external work with a second employer.

2.5 Detailed guidelines will be provided to clinical directors about the application of the provisions relating to external work in the contract. These guidelines are being prepared and will be the subject of consultation with the consultants' representatives before being finalised.

3. Key difference 2: extended hours during which consultants will be available to be rostered

3.1 The contract provides for a core weekly working hours of 37 hours per week for full-time consultants.

3.2 These weekly working hours can be rostered across a larger number of hours than under previous contracts. In general, consultants will be available to be rostered within the following time-frame:

- (a) between 8.00 am and 10.00 pm (Monday to Friday) and
- (b) between 8.00 am and 6.00 pm (Saturday).

3.3 This will double the hours when consultant-delivered services will be available across many areas of the health service, including emergency departments, leading to a significant improvement in the delivery of care.

3.4 Consultants may agree to be available to be rostered in a wider time-frame, namely between 8.00 am and midnight (Monday to Saturday). A consultant who agrees to this wider time-frame for rostering will, in return, receive a "twilight premium" (time plus 1/6th) for hours worked

- (a) between 8.00 pm and midnight (Monday to Friday) and
- (b) between 6.00 pm and midnight (Saturday).

3.5 The HSE and the consultants' representative bodies have discussed a set of rostering principles that will ensure that rostering is done in a way that is fair and effective.

Numerous amendments were made to the draft rostering principles in order to reflect the considerations raised by consultants' representative bodies.

4. Key difference 3: remuneration

- 4.1 Many consultants will see a significant increase in their basic remuneration under the 2023 contract.
- 4.2 Basic pay will be on a six-point scale. The default position is that consultant's will commence their employment as consultant on the first point of the scale, €214,113. The sixth point of the scale is €257,193. Where a consultant believes they should commence employment on appoint other than the first point, the standard rules relating to incremental credit, and any other rules relating to putting people on the correct point of the scale, will apply.
- 4.3 Consultants will continue to receive additional remuneration for on-call duties.
- 4.4 As described above, a "twilight premium" of time plus 1/6th will be available for certain twilight hours (8.00 pm and midnight, Monday to Friday; 6.00 pm to midnight, Saturday) where such hours are worked **within** the 37-hour core commitment.
- 4.5 In certain limited circumstances, where needs of the service require it and the HSE and the consultant agree that overtime is required, overtime may be payable for hours worked **in excess of** the 37-hour core commitment during the periods 8.00 pm and midnight, Monday to Friday, and 6.00 pm to midnight on Saturday.

5. Key difference 4: enhanced financial provision for continuing medical education and innovative research and innovation projects

- 5.1 The 2023 contract makes provision for a consultant to draw down up to €20,000 per annum (in aggregate) for continuing medical education and for innovative research and innovation projects. This is a very significant increase on the €3,000 that was available for continuing medical education under the 2008 contract.
 - (a) Continuing medical education is education undertaken by the consultant to maintain and update their own skills and professional competence. Funding of €12,000 per annum will be available to cover vouched expenditure by the consultant.
 - (b) Innovative research and innovation projects are projects undertaken by the consultant (preferably in conjunction with colleagues). There will be €8,000 under a new innovation fund which can be individual or pooled by groups of consultants in a specialty or service. Expenditure under this heading is aimed at supporting areas such as research and for instance it may be used to cover the salary and related costs of researchers, and other relevant project costs – ie this payment will not be paid directly to (or for the personal benefit of) the consultant.
- 5.2 In certain circumstances, a consultant will be permitted to apply an unused portion of their continuing medical education allowance towards innovative research projects and vice versa, provided that the aggregate amount does not exceed €20,000 in any year.

6. Key difference 5: commitment to flexible working arrangements

- 6.1 The contract 2023 will, to the greatest extent possible, be a flexible contract that enables consultants opt for a variety of different work patterns including less than whole time; work sharing; compressed hours; and flexible start and finish times.
- 6.2 The provision of a variety of flexible working arrangements will be an important element in making the 2023 contract attractive to applicants. Attracting applicants is vital, given

that the public health service is committed to recruiting an additional 1,000 consultants as part of the Sláintecare commitment to radically improve the scope and quality of public health provision in Ireland.

7. Key difference 6: new disciplinary and grievance procedures

7.1 The disciplinary procedures provided by the 2023 contract are significantly different to the procedures that applied under previous contracts. The new procedures provide strong protections for the rights of consultants, including in respect of fair procedures in investigation, disciplinary, and appeals processes. The new procedures are clearer and designed to be more straightforward from an operational point of view than previous procedures.

7.2 The grievance procedures set out in the 2023 contract retain some key features of the 2008 contract's grievance procedure. In particular, the role of the independent external mediator/arbitrator in the resolution of grievances is retained.

8. Key difference 7: reduced probationary period

8.1 The probationary period for new entrants will be reduced

(a) from the current period of 12 months (which can be extended up to a total of 18 months)

(b) to a shorter period of 6 months (which can be extended up to a total of 12 months, and will also be extended if the consultant is absent due to being on statutory leave, such as maternity leave, during the probationary period.)

8.2 No probationary period will apply to consultants who have already completed probation (at the level of consultant) in the public service.

9. Various other differences

9.1 The core principles of the contract and the mutual obligations of the parties remain the same or similar as in the 2008 contract, but they are set out in different locations in the 2023 contract.

9.2 The 2023 contract contains express obligations on the consultant to comply with various ethical and regulatory obligations, such as by abiding by the Code of Conduct for Health and Social Service Providers.

9.3 The 2023 contract contains enhanced provisions for the protection of patients and the employer, including insofar as consultants will be obliged to disclose criminal offences that occur during their employment and that are material to their role as consultants.

9.4 The 2023 contract provides that the employer will review the consultant's performance during their employment at a minimum once a year in line with corporate policy.

9.5 The 2023 contract modernises a range of provisions in the contract relating to matters such as patient confidentiality, data protection, health and safety, access control to buildings, monitoring of the use of equipment, etc.

9.6 The 2023 contract provides for changes that will take place over time to roles and titles in the employer's organisation. It allows the employer to amend the contract to comply with national public service collective agreements of changes in legislation.

10. Other key provisions of the 2023 contract (unchanged from the 2008 contract or with minor changes)

- 10.1 Significant benefits apply to the role of consultants including: 30 days annual leave; benefits in relation to Sunday work and work on public holidays; and the provisions of the public service sick pay scheme.
- 10.2 If the consultant is absent from work, their clinical director will determine the need for locum cover and make necessary arrangement based on clinical need. Where either sufficient cover cannot be provided or appropriate locum cover obtained, the clinical director may request the existing employees to undertake the urgent and emergency work of an absent colleague, having regard to such employee's own work commitment.
- 10.3 The 2023 contract continues to provide consultants with a clinical indemnity against the cost of meeting claims for personal injury arising out of bona fide actions taken in the course of their employment under this contract only.
- 10.4 Consultants may advocate on behalf of patients in line with their professional obligations. Advocacy should take place firstly within the employment context but the right of the consultant to advocate for patients in public (eg through the media) in a professional and appropriate manner is also clearly set out. Consultants are requested to provide reasonable notice of public comments to their employer and required to comply with social media and communications policies.
- 10.5 The 2023 contract maintains the significance of the Clinical Directorate Service Plan. It provides templates for the preparation of the components of the plan that are relevant to the consultant.