



## **FAQs on Public Only Consultants Contract 2023 for Medical Manpower Departments**

**Please note that this is an explanatory guide and not a legal interpretation of the contract. Where any conflict arises between this document and the Public Only Consultants Contract 2023, the provisions in the contract take precedence.**

### **Offering the Public Only Consultants Contract 2023**

#### **1. What is the implementation date of the Public Only Consultants Contract 2023?**

The implementation date of the Public Only Consultants Contract 2023 (POCC23) is March 08, 2023. **All** new contractual offers made to Consultants from this date will be on the basis of 2023 contract.

In circumstances where the 2008 contract has been offered/issued prior to the implementation date, the Consultant is entitled to accept the 2008 contract offered or accept the POCC23 instead. In the event they do not accept the POCC23, all efforts should be made to finalise the original offer as quickly as possible. This will require proactive follow up and management of contracts by employers.

If an existing permanent Consultants accepts an offer of employment in another Employer (HSE or Section 38) after the implementation date, they will be offered the POCC23.

#### **2. When can existing consultants on an earlier (2008/Buckley) contract make an application to change to new POCC23?**

Applications from existing Consultants to transition to the new contract may be made from March 08, 2023. In such circumstances they will transition to the corresponding point on the new salary scale, and will retain their existing incremental credit date (if any).

The POCC23 contract will only apply to consultants who sign it. Consultants who choose to remain on their existing contract (either the 2008 contract or the Buckley contract) will continue to be subject to the terms and conditions provided in their own contract – and none of the provisions of the 2023 contract.

#### **3. Is this the same process for both permanent and locum consultants?**

The application process to switch contract will be the same for all contract holders.

#### **4. If a locum consultant contract is due for extension / renewal do we offer new POCC23 or extension of 2008 contract and from what date does this apply?**

Existing temporary and locum consultants will remain contracted on their current contract. However like all Consultants, they will be offered the opportunity to switch to

the POCC23 from the implementation date. If there is a service need, particularly to support rostering to support an extended day, the Clinical Director/ Executive Clinical Director may engage with temporary and locum Consultants to seek their agreement to change contracts. Where a locum or temporary Consultants decides to transition to the POCC23, the expiry date of their existing fixed-term (temporary) contract and / or its specified purpose should be incorporated into their new contract.

If however they choose not to switch, they will remain on their existing contract.

In circumstances where their fixed-term contract expires and their Employer wishes to renew their appointment, the Consultant will be contracted on the new POCC23 from the renewal date.

**5. Can a consultant who is coming up to retirement age avail of the new contract, and if so will their pension be based on the new salary scale?**

All consultants can avail of the new contract. They will remain a member of their current pension scheme and normal pension scheme rules for calculation of pensionable remuneration will apply.

**6. What are the incremental credit arrangements for Consultants moving to Ireland from equivalent posts abroad?**

Consultants will normally start on the 1<sup>st</sup> point of the salary scale. For Consultants with prior relevant experience at Consultant level, incremental credit is given in respect of time worked in this/these equivalent post(s) (i.e. at Consultant level). For Consultants moving to Ireland to take up a post, incremental credit is given in respect of time worked in an equivalent post (i.e. experience in a role equivalent to the role of Consultant).

**7. What happens to private clinics on public hospital sites**

Those who take up the POCC23 will only undertake public work on site. Serving consultants who take up the POCC23 will be subject to the transition provisions therein.

**8. What happens if a consultant wants to stay on a Type B contract – how does the hospital ensure that they are facilitated with the 20% private work if the hospital is public?**

Employers should offer the new contract; however existing permanent Consultants are not obliged to transition to the new contract. If a consultant remains on the 2008 contract, s/he may continue to engage in privately remunerated professional medical/dental practice as heretofore, as determined at Section 21 of their current Type B contract, and the limits specified therein continue to apply.

**9. If a person has previously held a permanent contract within the HSE and that contract terminated more than 26 weeks previously, are they required to repeat a probationary period?**

A Consultant will be required to complete probationary period for any new appointment, unless: -

- The Consultant currently holds a permanent consultant appointment with the Employer or another public health service provider and they have satisfactorily completed probation in that role.
- The Consultant previously held a permanent consultant appointment with the Employer or another public health service they have (a) satisfactorily completed probation in that previous appointment and (b) the duration of the period of time between the termination of that previous appointment and their new appointment is less than 26 weeks.
- Where the Consultant has, for a period of at least 12 months, held their post (i.e. the post to which their contract relates) on a temporary basis pending the filling of this post on a permanent basis and the commencement date of their permanent contract is not more than 26 weeks after the termination of their temporary contract. Experience as an Agency Locum is not in this regard.

**10. Implementation of the contract will result in increased remuneration. Will additional funding be provided to services?**

The Department of Health have confirmed that funding will be provided in respect of the increased remuneration for those Consultants who transition to / accept the POCC23.

**11. Is there a Checklist for offering the POCC23 for recruitment purposes?**

A checklist which is designed for use by those responsible for recruitment and contracting of new consultants to the health service will issue.

**Changes to Location and Duties:**

**12. A number of questions have arisen in respect of potential changes to a consultant's normal place of work, particularly under the provisions of Section 8.2 of the Contract. Please explain what this clause means?**

The POCC23 makes clear provisions in respect of work location(s) for Consultants. The template contract contains two different options, one for a single location and another for where there are multiple locations. Each consultant will have one individual contract and one individual letter of approval for their post – these will set out their location(s) of work.

A contract of employment is made at a point in time but can remain in effect for decades. It needs to be designed with enough flexibility to allow it to encompass changes over time, without the need to be renegotiated to address every changing circumstance. Regarding location, it may be the case that locations of work can change over time, particularly as Slaintecare is implemented. The 2023 contract provides fair and balanced mechanisms for such changes. There are a number of layered safeguards that will make sure that a changes will only happen when it is fair and reasonable. Changes will only happen **after** consultation occurs (either individually

or with the consultant's union or professional association) except in exceptional and infrequent circumstances where a change might be for a small number of weeks.

Before any change in location of work takes place, the employer will have regard to the individual's circumstances, so any decisions that are made will be fair.

**13. Questions have arisen in respect of how potential changes to the scope and role of Consultant post including the allocation of additional duties should be managed under the terms of the Contract.**

Similarly, duties can change over time, however Clause 10.1 of the contract expressly provides that any changes to a consultant's duties will be the subject of consultation before they occur.

The contract at Clause 10.2 also provides that any additional duties will be consistent with the role of the consultant as set out in the letter of approval, and with the consultant's clinical speciality.

In a field like medicine, where advances can move quickly, it would be inconceivable to say that a consultants duties would be written on the date they sign their contract and could never change again. This would not be in the interests of the consultant or the services they work in.

**14. Will any other changes apply to the terms of the Contract?**

An Employer cannot unilaterally change the Consultant contract. However changes that align to changes in the law or national public service collective agreements will apply and these changes don't need to be individually negotiated. Of course such changes only happen after detailed legislative and collective bargaining processes in which all affected parties' representatives have their say. In the public sector environment, where unions and associations represent their members, it is normal for collective agreements to be given such standing.

Similarly, the POCC23 does not need to be renegotiated every time the consolidated salary scaled are changed. Such changes can happen several times in the same year. Instead, the 2023 contract provides that consultants will be paid on the basis of the consolidated scales – when the scales change, so will the salary, without the need for consultants to sign new contracts.

Clause 12.2 of the 2023 contract recognises that the public health service has well-established consultation processes through which policies and procedures are developed by management in consultation with organisations representative of staff (or, where appropriate, representative of specific grades, groups or categories of staff) affected by such policies and procedures. Before it introduces any new policies and procedures and/or amends any existing policies and procedures the employer will work within the scope of established consultation processes.

The contract recognises that there may be changes in policies, procedures and codes that have been reflected in the contract but have changed over time. For example, the

contract provides that consultants must comply with the Medical Council's code of ethics. That code of ethics changes over time – clause 1.5 recognises that the contract changes over time, and requires the consultant to comply with the version of the code of ethics that applies at the relevant time, not the version that applied on the date the consultant signed their contract.

### **Line Manager:**

#### **15. Who is the Consultant's Line Manager?**

For the vast majority of consultants, the line manager is the Clinical Director (CD), or in Mental Health Services the Executive Clinical Director (ECD). The CD reports to the General Manager/CEO in a hospital setting.

In a small number of cases, a Consultant may be required to report to a defined General Manager or Service Manager or another person.

#### **16. The role of Associate Clinical Director (ACD) is used in some hospital groups – is that the same as Clinical Director (CD) which is a hospital group wide responsibility?**

The CD will provide overall clinical leadership for the hospital / hospital group and will have significant clinical input to their Services. They are responsible for all medical services including resources for same (budget, staffing etc). They are a member of the Executive Management Board and will report to the CEO of the Hospital.

Where an ACD structure exists in a hospital, it is a matter for the CD to delegate authority in line with standard practice. For the sake of consistency it is preferable to align job titles to the pre-existing nationally agreed job titles.

#### **17. Who should undertake Performance Reviews?**

Performance reviews should be carried out by the Consultant's Line Manager, i.e. the CD/ECD. Consultants are covered by the performance achievement templates and the clinical directorate service plans or equivalent. Training will be provided for the CD/ECD in this regard. <https://circulards.gov.ie/pdf/circular/hse/2009/03.pdf>. While it is a matter for CD/ECD to determine how performance reviews are organised, administrative support for the CD/ECD in this regard will be a matter for each HG / CHO.

Where a Consultant works across two sites their line manager in their primary site is responsible for undertaking the Performance Review. The Line Manager should liaise with their counterparts in the other site(s) regarding performance.

#### **18. What are the implications for a consultant who does not work according to their letter of approval?**

In circumstances where a Consultant does not work in accordance with their letter of approval the normal performance management process applies. The Consultant's

Line Manager is responsible for managing this process, however each site should ensure that the letter of approval is being complied with.

### **Working Arrangements and Premium Payments / Overtime:**

#### **19. Please clarify the working hours for Consultants?**

The full-time core weekly working hours continues to be 37 per week. These can be scheduled between 8.00 am and 10.00 pm Mondays to Fridays and between 8.00 a.m. and 6.00 pm on Saturdays. These working hours can be scheduled to best meet service needs. Any external work must take place outside of these scheduled working hours.

#### **20. Who is responsible for determining the Consultant's roster/work plan?**

The CD/ECD will ensure that each Consultant has a detailed Work Plan in place that supports the Service Plan and will monitor compliance of these Work Plans. The necessary administrative, business and secretarial support will be a matter for each HG / CHO to support the CD/ECD in this regard.

Following extensive engagement with the Representative Bodies, rostering principles were developed. These principles are designed to be fair whilst ensuring that there are sufficient and appropriately skilled staff rostered to work in order to provide appropriate high-quality patient care and to meet anticipated service demands. The principles aim to achieve equitable distribution of schedules so far as is reasonably practicable and promote a family-friendly and supportive workplace. They recognise the need for employers to be compliant with working time and other health and safety legislation,

These rostering principle are recognised in clause 13.1 and 13.7 of the contract. These may change over time, but before any changes are made, the contract specifically provides that there must be "appropriate consultation with consultants' representative bodies."

#### **21. Will existing Consultants who transition to the new POCC23 need to agree a new Work Practice Plan with their Clinical Director/Line Manager in advance of the contract being prepared and issued?**

Yes a new Work Practice Plan (and external work approval) will be prepared in advance of the new contract being issued.

#### **22. Please clarify the "twilight hours" for consultants which could attract twilight premiums?**

As per clause 13.4 of the Contract, where a patient service need exists, e.g. in an A&E Department, an Employer may request the Consultant to schedule their core 37 weekly working hours between 8.00 am and midnight from Mondays to Saturdays. If the Consultant agrees to this arrangement, core working hours carried out during the hours of 8.00 pm and midnight (on Mondays to Fridays) and 6.00 pm and midnight (on

Saturdays) will be regarded as “**twilight working**”. A twilight premium of an additional 1/6<sup>th</sup> of the Consultant’s hourly rate of pay will apply in these circumstances.

**23. Will there be negotiation with all other grades for the extended working day and Saturday working?**

8am to 8pm working has been covered under a range of public service agreements since 2009. Since December 2008, contracts for all new employees (and promoted employees) of the HSE, including those on renewed temporary contracts, have had the added stipulation that the particular employee will be liable to work such roster and on call arrangements as may be necessary to fulfil service needs on a 24/7 basis, including hours outside of 9 – 5 (generally 8am to 8 pm) and at weekends. The roster arrangements will be those that are required at the time of their employment or at the time of renewal of their contract, and any subsequent rosters as are agreed from time to time at local or national level, and are liable to change, with due notice. This also applies to the voluntary hospitals. Pre 08 staff who have not been promoted can work the extended working week on a voluntary basis.

**24. What are the overtime arrangements attaching to this contract:**

As one of the most senior grades in the public health sector, it may be necessary for Consultants, from time to time, to work additional hours to meet the needs of patients. The Consultant will **not** be entitled to be paid either normal salary or premium rates in respect of such additional hours.

*Where there is a patient service need* Consultants may agree to work overtime during periods when they are not otherwise scheduled to work or rostered to be on-call, between the hours of 10.00 pm and midnight on Mondays to Fridays and 6.00 pm and midnight on Saturdays where:

- (a) the Employer requests the Consultant to work such overtime and they agree, or
- (b) the Consultant requests to work such overtime and the Employer agrees.

The normal health sector overtime rate will apply for such agreed overtime. Overtime will not be payable during any period of time for which on-call payments or twilight premium is payable.

It is worth reiterating that overtime in these circumstances **should only be approved on an exceptional basis**. Where there is an on-going need for these hours to be covered, twilight working should be considered.

Exceptional circumstances may also arise whereby the Employer may request the Consultant to undertake overtime to address a specific service need. If agreed, the Consultant will receive overtime payments at the normal public health services overtime rates.

Part-time Consultants who work additional hours, i.e. hours over and above their contracted hours on a pre-arranged basis, will be paid at their normal hourly rates until the standard weekly working hours for the grade have been worked. Part-time



Consultants are entitled to earn overtime payments once they have worked over and above the standard weekly working hours of the whole time equivalent in the given week.

Structured overtime does not apply to Consultants appointed under the terms of the POCC23.

**25. What is the difference between twilight and overtime arrangements?**

Twilight working would apply where there is an on-going patient service need for a longer extended working day. Paid overtime will apply in exceptional circumstances only.

**26. Will other premium payments will apply?**

Where a Consultant works on a public holiday as part of their core weekly working hours (37), s/he is entitled to receive normal public holiday premium payments in respect of hours worked.

**27. Are Consultants now required to comply with swipe in/out?**

There is no general provision in the contract for consultants to clock in/clock out. However, this arrangement should be managed locally.

**28. On-Call Rotas clarification:**

An on call rota relates to the number of people on the roster and not the frequency of the call. The frequency of on call that informs whether or not the roster is deemed onerous or not.

In respect of compensatory rest, if this is not claimed by the Consultant within 7-weeks, they will receive payment in lieu of the compensatory rest. Employers need to advise employees at their clinical sites what process is to be followed for this.

**29. What impact do these new arrangements have on annual leave calculation?**

Where a Consultant on the POCC23 is working shifts of varying lengths as part of core working week, the 30 days annual leave entitlement should be converted into hours. This is done by multiplying the number of annual leave days by 7.4 hours, e.g. 30 annual leave days x 7.4 hours = 222 hours. Each time a consultant takes annual leave, the number of hours they were scheduled on the day(s) is used to determine the amount of annual leave taken.

**Locum Cover**

**30. What are the “Locum Cover” arrangements in the POCC23?**

The arrangements relating to locum cover are outlined in Clause 20 of the contract. The CD/ECD/Line Manager will determine the requirement for locum cover and make necessary arrangements based on clinical need. S/he will work with the Consultant to develop and execute such arrangements as required.



Every reasonable effort will be made to ensure that there is cover provided where required and available. In exceptional circumstances (meaning circumstances that are unusual and that pertain are for a limited duration), where either sufficient cover cannot be provided or appropriate locum cover obtained, the Clinical Director/Executive Clinical Director/line manager may request the existing employees to undertake the urgent and emergency work of an absent colleague. This request will have regard to such employee's own work commitment. The requirement is clearly identified as being subject to clinical need.

There is no provision which provides for additional payment in respect of this work in the contract.

- 31. In the contract under 'Appointment of Consultants' it states the details of the service to which the consultant is being appointed is provided for in the letter of approval for the post. In the event that a locum is required for maternity leave, extended sick leave, should they be issued with the letter of approval applicable to the permanent post?**

Yes, in line with current practice, the original letter of approval should be appended to the contract.

#### **Other Terms and Conditions:**

- 32. Are travel & subsistence arrangements the same as for all grades of staff?**

Yes travel & subsistence arrangements under the POCC23 are in line with other grade and covered by the relevant NFR 05 or equivalent policies in Section 38 agencies.  
<https://www.hse.ie/eng/staff/resources/financial%20regulations/nfr-05-travel-and-subsistence-v5.pdf>

- 33. Regarding telecommunications, if the Consultant wants to use their own personal phone can Employers continue to pay telephone allowance to them of €12.89 taxable and €12.89 non-taxable per month?**

Yes consultants may still be reimbursed for their own phones if they do not have HSE/employer provided devices.

- 34. What number of educational leave days are Consultants employed under the POCC23 entitled to?**

The Employer may, at its discretion and in accordance with applicable circulars, policies and procedures, grant leave with pay for the following:

- (a) participating in continuing education and/or attendance at clinical meetings of societies appropriate to the Employee's speciality, provided such participation and attendance (excluding travel time) does not exceed seven days in any one year;
- (b) attendance at courses, conferences, etc. that the Employer is satisfied are relevant to the work on which the Employee is engaged;

The Employer must be satisfied that these conferences clinical meetings etc. are relevant to the work which the Consultant is engaged in.

**35. Has the Disciplinary Procedure for Consultant's changed?**

Appendix 7 provides a Disciplinary Procedure for Consultants. It sets out a comprehensive range of fair procedures in respect of investigation, discipline and appeals. As well as addressing issues arising from misconduct, the procedure also addresses issues such as probation, underperformance and incapacity. The Appendix was the subject of very significant change during the process of negotiation of the contract in order to address points raised by the consultants' representative bodies, and the resulting procedure is fair and effective. It mirrors the Disciplinary Procedures across the HSE.

**Academic Appointments:**

**36. Is there any change to the pay scale for Full Professor posts that are 50/50 split with a university? Are there separate new scales for those posts?**

Yes, updated salary scales for the roles of Academic Professor, Academic Associate Professor Academic Lecturer will be included in the Consolidated Salary Scales.

**37. For Academic Posts which are split 50/50 with Hospitals - do two contracts need to issue? Will there be two separate approval letters, will they have two paymasters?**

In the case of an Academic appointment there will be two Employers, and two separate contracts of employment, one from the public health service employer and one from the academic institution. **Health employers will issue a version of the contract containing a complete Appendix 4.** This appendix is only be included in contracts for holders of academic consultant posts. It provides a number of provisions that relate to the duties of an academic consultant and the interaction between the academic consultant, the employer and the relevant university. There is no requirement for more than one approval letter in respect of such posts. The health service employer will be responsible for paying the consultant for the relevant contracted hours to the public health service.

**38. If an employee does .2wte for University undergraduate training and is remunerated for those specifically, then does their work schedule reflect 39 hrs as distinct to 37?**

The full-time working hours for Consultants are 37 per week. The consultant work practice plan specifies the hours the consultant will be engaged in public work and training.

**Topics for which separate guidance will issue:**

**39. Is there a time limit in relation to the approval of External Work?**

The contract is clear that public consultants who sign this contract will

- normally be permitted to engage in off-site private practice in private facilities, but
- normally not be permitted to engage in on-site private practice.

There are some exceptions and clause 24 of the contract sets out a mechanism by which those exceptions can be addressed. New laws came into effect in December that regulates the circumstances in which employers can refuse employees access to outside employment. These are quite detailed, being the transposition of an EU Directive into Irish law. Clause 24 is modelled on the law to ensure compliance, which means that it is necessarily detailed. Management has committed to produce guidelines that will make it easier to navigate the details of clause 24.

Separate guidance documentation about how Consultants may apply and be permitted to undertake External Work will issue in a short number of weeks following consultation with the Consultant representative bodies.