



PUBLIC ONLY CONSULTANT CONTRACT 2023

EXPLANTORY MEMORANDUM

INTRODUCTION

The implementation of a new Public Only Consultant Contract was proposed in the Sláintecare Report and recommended by the De Buitléir Group. It is a commitment in the Programme for Government. 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.

This is a template contract that will be used by various public health service employers and employers of academic consultants. 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).

Some text in certain clauses of this contract is specific to the HSE. Such text may be amended where the employer is a different public health service employer.

This Explanatory Memorandum provides a broad outline of the contents of the Public Only Consultant Contract 2023. It does not affect the legal interpretation of any individual's contract of employment.

1. TITLE AND GLOSSARY

This clause provides definitions for certain key terms that are used in the contract, as well as providing some other guides to interpreting the contract. It includes provisions that mean that the word "consultant" is limited to doctors who are on the specialist register of the Medical Council (or the equivalent register for dentists). This definition is necessary because the word "consultant" is not a statutory term. The definition also ensures that public health consultants come within the definition of a consultant.

This clause contains different definitions for the terms "clinical director" and "executive clinical director". In the great majority of cases, the consultant's line manager will be either a "clinical director" (if the consultant is not working in the mental health services) or an "executive clinical director" (if the consultant is working in the mental health services).

2. CORE PRINCIPLE

This clause makes clear that the core principle upon which the employment relationship is founded is mutual trust and respect between the employer and the employee.

3. APPOINTMENT

This clause sets out the service – or services – to which the consultant is being appointed. It provides clarity about roles and responsibilities, especially in cases where the consultant is contracted to work in multiple services. This can happen where, for example, the consultant may spend some of their weekly working hours at a HSE service and the remainder in a voluntary (non-HSE) hospital. Such consultants still have one employer; that is the organisation described as "the Employer" in this contract. The clause makes clear how many hours per week the consultant will

work the other services (ie the services that are not operated by the Employer). However, those other services are not the consultant's employer.

The details of the service(s) to which the consultant is being appointed is provided for in the Letter of Approval for the post. This Letter of Approval will be issued by the HSE in advance of the making of the contract and will be attached to the contract as Appendix 1.

If the consultant is working in a single service, the clause simply sets out the name of that service.

4. SCOPE OF ROLE

This clause sets out the scope of the role of the consultant, including in respect of clinical duties toward patients, regulatory requirements and organisational obligations (eg in relation to team-working).

5. COMMENCEMENT DATE AND TYPE OF CONTRACT

This clause sets out the type of contract that the consultant has. There are four options in the template contract, but only one option will appear in the contract that is given to any individual consultant. The options are as follows.

- (a) A permanent contract for newly-appointed consultants.
- (b) A permanent contract for existing consultants, who will exchange their former contracts for new contracts, subject (in some cases) to some transitional provisions. These transitional provisions are set out in Appendix 9.
- (c) A specified-purpose contract, which would apply where the consultant is not permanent but is, for example, covering a period of maternity leave for an existing consultant (or some other contingency whose end date is not certain).
- (d) A fixed-term contract, which would apply where the contract is for a prescribed period (such as "one year").

6. REGISTRATION WITH MEDICAL COUNCIL AND NECESSARY QUALIFICATIONS

This clause sets out the requirement for the consultant to have specific qualifications (which relate specifically to the role) and to be on the relevant specialist register(s) of the Medical Council (or the equivalent register applicable to dentists). Specialist registration is a requirement for all consultant appointments.

7. PROBATIONARY PERIOD

This clause sets out a probationary period for newly-appointed consultants. The probationary period will be 6 months, a period that can be extended by up to a further 6 months at the discretion of the employer. Probation will also be extended if the consultant is absent from work on statutory leave (such as maternity leave) during the probationary period.

Consultants who have already completed probation as a consultant in the public health system and who enter into this contract will not have a probationary period under this contract.

8. LOCATION

This clause sets out the location(s) at which the consultant will work, and provides for circumstances in which the location(s) may be changed, where it is reasonable and necessary to change the location of work and where certain other conditions are met.

Public service agreements about changing the normal location of work of public service employees will apply if the consultant's location of work ever changes. For example, the current public-service agreement provides for flexibility within a radius of 45 kilometres of the employee's original location of work.

9. REPORTING RELATIONSHIPS

This clause identifies the consultant's line manager. This is normally a clinical director or (in the case of mental health services) an executive clinical director. There are a very small number of roles for which a different person (ie not a clinical director or executive clinical director) is a consultant's line manager.

10. DUTIES

This clause makes clear that the details of the consultant's appointment (as set out in the HSE Letter of Approval and the job description) are a part of the contractual relationship. These two documents are attached to the contract as Appendix 1 and Appendix 2. The duties of the post may change from time to time, but only within the extent of what is reasonable for the consultant with the same clinical speciality.

11. APPLICABLE CODES OF CONDUCT ETC

This clause requires each consultant to comply with professional codes of conduct, ethics, standards and similar codes published by the Medical Council and other relevant professional bodies (if any).

12. POLICIES, PROCEDURES AND LEGISLATION

This clause provides that the consultant will comply with applicable legislation, policies, procedures and regulations. It recognises existing collective consultation processes in the public health service. These consultation processes will apply before changes are made to an employer's policies and procedures.

This clause requires the consultant to cooperate with:

- any investigations/reviews/statutory inquiries and
- any statutory and mandatory training.

13. HOURS OF WORK

This clause makes provision for the consultant's hours of work. The standard full-time working week is 37 hours. However, the public health service is committed to being as flexible as practicable in providing reduced working hours for consultants provided the purpose of seeking such reduced working hours is to support family and caring arrangements. Flexible and family-friendly working arrangements will be a major aspect of the future configuration of the public health service.

The consultant's working hours will be scheduled to occur within a specified time range. In most cases, this range is between 8.00 am and 10.00 pm on rostered Mondays to Fridays and between 8.00 am and 6.00 pm on rostered Saturdays.

Where the needs of a particular service merit doing so, it is open to the consultant to agree to have their core weekly working hours scheduled during a longer time range than the normal range. This longer range would be between 8.00 am and midnight on rostered Mondays to Saturdays. (Clause 14 provides that any consultant who agrees to have their core weekly working hours spread over this longer range will receive a twilight premium for work done during the hours that are specified as "twilight working" hours.)

Because of the seniority of consultants, they will not normally receive overtime premiums for working a number of hours that is in excess of their contracted weekly hours. However, the contract provides that there are some very limited circumstances in which overtime may be worked and, in those circumstances, overtime payments may be made. This clause provides that, where the needs of a particular service merit doing so, the consultant can be offered the opportunity to work overtime (which will be hours in excess of the consultant's core weekly working hours). (Clause 14 provides that, if the consultant works such overtime, they will be paid the standard overtime premium).

The provision for work to be scheduled within longer ranges than were provided for in earlier contract templates will significantly improve the delivery of medical care to patients. It will help to ensure that consultant-delivered services are available for a greater range of hours than was the case in the past.

Within the specified ranges, the employer will schedule the consultant's work in accordance with certain principles that are designed to ensure that the consultant will not be scheduled to work excessive hours and will receive adequate rest each week. These principles include a set of rostering principles that are set out in document that is separate to the contract.

Scheduling will also be arranged reasonably (while balancing the needs of the services) such that (for example) individual consultants will not be scheduled to work an onerous number of evenings, weekends or public holidays. The public health service is committed to increasing the total number of consultants within the system so as to ensure that adequate resources are available to provide a greater volume of consultant-delivered services during the wider ranges of hours envisaged by this contract.

This clause also provides that the consultant is required (in addition to working their core working hours each week) to work on-call, in line with the needs of the service. Details of the on-call requirement for each consultant post are to be set out in the advertisement for each post.

14. REMUNERATION

This clause provides for a very significant salary for consultants. On the introduction of this contract, the approved basic salary scale for a starting full-time non-academic consultant is €214,113 per annum (subject to the application of incremental credit). This salary rises incrementally to a final point of €257,193 per annum.

In addition to basic salary, certain other specific payments are available, including the following:

- (a) payments for on-call working;

- (b) a “twilight premium” for work done during twilight working hours provided the consultant has agreed to be scheduled for twilight working as part of their core weekly working hours;
- (c) overtime payments for certain agreed overtime work done outside of the consultant’s core weekly working hours; and
- (d) Sunday and public holiday premiums in line with norms in the public health service.

15. RETIREMENT AND SUPERANNUATION

This clause sets out standard provisions in respect of pension arrangements and retirement ages for consultants, in line with provisions that apply across the public service. Three different options apply depending on when the consultant commenced employment; this reflects changes that have occurred over the years in legislation.

- (a) People who joined the public service before 1 April 2004 are “non-new entrants”. They are members of pre-existing pension schemes (with specific rates of contribution and levels of benefits) and have a compulsory retirement age of 70.
- (b) People who joined the public service on or after 1 April 2004 but before 1 January 2013 are “new entrants”. They are members of pre-existing pension schemes (with specific rates of contribution and levels of benefits) and do not have a compulsory retirement age.
- (c) People who joined the public service on or after 1 January 2013 are members of the Single Public Service Pension Scheme (with specific rates of contribution and levels of benefits) and have a compulsory retirement age of 70.

This clause provides for a number of specific circumstances, including where the consultant has previously retired from a public-service scheme (and therefore is subject to pension abatement) or where the person has breaks in service.

16. TRAVEL AND SUBSISTENCE

This clause provides that standard arrangements for work-related expenses apply to the consultant.

17. CONTINUING MEDICAL EDUCATION/CONTINUING PROFESSIONAL DEVELOPMENT

This clause provides supports that reflect the importance of facilitating consultants in maintaining and developing their clinical competency and participating in innovative research projects that will improve the public health service.

This clause therefore provides for a significant increase in professional competence supports for consultants. Consultants who accept the new contract are entitled to a vouched annual allowance of €12,000 per annum to support professional development.

This clause also creates a new provision for financial supports to help foster innovation in patient care by consultants. These new supports will be made available in support of innovative research and innovation projects undertaken by the consultants (normally in conjunction with other colleagues) and will not be payable directly to (or on behalf of) the consultant. Up to €8,000 per

annum will be made available to each consultant who holds the public-only consultants' contract in respect of such projects. Funding can be accessed, for example, through the Spark Innovation Fund.

Both of the payments under this clause are subject to guidelines and conditions. In certain appropriate circumstances, unspent money under one of these two headings can be spent under the other heading. The aggregate amount cannot exceed €20,000 in any year.

18. TELECOMMUNICATIONS

This clause provides that the consultant will be provided with a mobile phone (or equivalent) and that the consultant will cooperate with the ongoing development of eHealth initiatives and the use of information technology in the provision of medical care to patients and service users.

19. ARRANGEMENTS IN RESPECT OF LEAVE

This clause provides for:

- (a) 30 days of annual leave for full-time consultants (and pro-rata entitlements for part-time consultants);
- (b) time off for 10 public holidays;
- (c) sick leave;
- (d) family-related leave;
- (e) other types of leave for special circumstances, such as voluntary service in developing countries; and
- (f) leave to participate in continuing medical education and training, for example to attend clinical conferences and other training/education.

20. LOCUM COVER

This clause provides for the provision of locum cover in certain circumstances in which the consultant is absent on a scheduled or unscheduled basis. Every reasonable effort will be made by the employer to ensure that there is cover provided where required and available. In exceptional circumstances, where either sufficient cover cannot be provided or appropriate locum cover obtained, the employer may request existing employees to undertake the urgent and emergency work of an absent colleague.

21. PERFORMANCE REVIEW

This clause provides that the employer will review the consultant's performance during their employment at a minimum once a year in line with corporate policy. Such reviews will normally involve structured discussions between the consultant and their line manager in relation to their performance and conduct.

22. PROFESSIONAL COMPETENCE

This clause provides that the consultant will maintain their professional competence and will be facilitated by the employer in doing so.

23. CODE OF CONDUCT FOR HEALTH AND SOCIAL SERVICE PROVIDERS

This clause provides that the consultant is required to abide by the Code of Conduct for Health and Social Service Providers.

24. EXTERNAL WORK

This clause significantly changes the relationship that exists between public and private practice of consultants in the public health service. Until now, a range of different contracts has been available, some of which have facilitated consultants conducting private practice in both private and public facilities.

This clause (in the main) facilitates consultants engaging in private practice in private facilities provided such private practice is conducted outside of the consultant's public service work schedule. However, this clause prohibits the consultant from engaging in private practice during their public service commitment, or in public facilities (except with the permission of the employer).

This clause complies with the provisions of section 6E of the *Terms of Employment (Information) Act 1994*, which was inserted by the *EU (Transparent and Predictable Working Conditions) Regulations 2022*. This section limits the circumstances in which an employer can restrict an employee from engaging in work outside the employee's work schedule with the employer. This clause strikes the balance that is required by the law. The clause requiring the consultant to prioritise their public commitment and to protect important interests (like patient safety) but otherwise allowing the consultant to engage in private practice outside of public facilities and outside of the consultant's public service commitment.

Detailed guidelines will be developed that will assist in the interpretation and implementation of this clause.

25. MEDICAL EDUCATION TRAINING AND RESEARCH

This clause makes provision for how the consultant will contribute to the education, training and supervision of students, non-consultant hospital doctors and trainee professionals.

26. ADVOCACY

This clause provides for the role of the consultant to advocate on behalf of patients, service users or persons awaiting access to services in line with their professional obligations. In the first instance advocacy should take place 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.

27. GRIEVANCE PROCEDURE

This clause provides a Grievance Procedure (set out at Appendix 6) for the amicable resolution of grievances.

28. DISCIPLINARY PROCEDURE

This clause provides a Disciplinary Procedure (set out at Appendix 7) 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.

29. HEALTH AND SAFETY

This clause provides for policies, practices and procedures by which the employer and consultant can meet their respective obligations to ensure protect the safety, health and welfare of all of the members of the employer's staff.

30. ACCESS CONTROL

This clause provides for access control (eg swipe cards) necessary for such purposes as health and safety, physical security or staff, patents and service-users, security of medications and/or property; and performance and attendance.

31. CONFIDENTIALITY

This clause provides for obligations of the employee to protect the confidentiality of patient records.

32. RECORDS / PROPERTY

This clause provides that the consultant will not remove any records or information belonging to the employer from the employer's premises at any time without proper authorisation, while permitting the consultant to properly use IT systems (eg for the purposes of remote access) and for the appropriate transfer of records between different work locations.

33. INTELLECTUAL PROPERTY

This clause provides that intellectual property generated by the consultant in the course of their employment will be in the ownership of the employer. This is standard for employees. The clause also provides that due regard will be given to national policies, in particular any such policy developed by the HSE and national codes of practice. This will help to facilitate, in future, mechanisms by which employers and employees in the public health service can share the benefits to intellectual property created by employees (such as an innovative research initiatives).

34. CLINICAL INDEMNITY

This clause provides that the consultant will be provided with an 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. It also provides for some obligation on the consultant, including obligations to comply with the employer's risk management frameworks and incident reporting processes.

35. CONFLICT OF INTEREST AND ETHICS IN PUBLIC OFFICE

This clause provides that the consultant must refrain from knowingly engaging in any outside matter that might give rise to a conflict of interest. It also provides for compliance by the employee with their obligations under the *Ethics in Public Office Acts 1995 and 2001* and the *Standards in Public Office Act 2001*, including by making appropriate declarations and returns in respect of their interests.

36. NOTICE

This clause provides that the parties can terminate the contract by giving the other party three months' written notice (or payment in lieu of notice) except in the case of termination for serious misconduct.

37. DATA PROTECTION

This clause provides compliance by each of the parties with their respective obligations under the GDPR.

38. CRIMINAL PROCEEDINGS

This clause provides that the consultant must inform the employer if the employee is charged with or convicted of a criminal offence that is sufficiently serious that it would have an impact on the employment relationship. This will allow the employer to consider what, if any, measures that it may need to take in respect of the offence (or alleged offence).

39. MONITORING

This clause provides for compliance by the consultant with the employer's IT acceptable use policies, and allows the employer to monitor IT systems for such compliance.

40. GOVERNING LAW

This is a standard clause to provide that Irish law applies to the contract and Irish courts have jurisdiction over the contract.

41. AMENDMENT

This clause provides that the contract may be amended by the employer to implement national public service collective agreements and or changes in legislation.

42. TITLES AND JOB FUNCTIONS WITHIN THE EMPLOYER'S ORGANISATION

This clause provides that where this contract provides for any function to be exercised by a person holding any position, grade or title the employer may nominate a different person to exercise that function.

43. TERMS OF EMPLOYMENT (INFORMATION) ACT 1994

This clause provides for compliance with the *Terms of Employment (Information) Act 1994*.

44. EMPLOYEE WARRANTIES AND ACCEPTANCE OF CONTRACT

This clause is one in which the consultant provides a series of warranties to the effect that the consultant is not the subject of one of a number of itemised types of investigation or regulatory processes and that the consultant is legally entitled to work and practice medicine in Ireland.

If the consultant cannot provide such warranties (eg if the consultant is currently the subject of a regulatory process or one of the other types of processes listed) the consultant will not necessarily be precluded from being employed by the employer. In such a case the consultant will disclose the relevant facts to the employer and the employer will record in Appendix 5 the disclosures and any

measures that have been put in place to protect the consultant, the employer and (most importantly) patients in respect of the matters that have been disclosed by the consultant.

APPENDIX 1 – LETTER OF APPROVAL FOR THE POST

This appendix is the letter of approval for the filling of the consultant's post.

APPENDIX 2 – JOB DESCRIPTION FOR THE POST

This appendix is the job description for the consultant's post. The appendix provides guidance about the type of information that may be included in the job description.

APPENDIX 3 – CLINICAL DIRECTORATE SERVICE PLAN

This appendix sets out provisions for clinical directorate services plan. This plan is part of work-schedule planning for consultants, which fits within the planning for overall service delivery. This appendix also sets out template schedules that can be used for scheduling the work of individual consultants.

APPENDIX 4 – PROVISIONS SPECIFIC TO ACADEMIC CONSULTANTS

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.

APPENDIX 5 – RECORD OF DISCLOSURES THAT THE EMPLOYEE MAY HAVE MADE IN RESPECT OF WARRANTIES

In this appendix, the employer records any disclosures that the consultant has made in respect of the types of investigation or regulatory that are addressed in clause 44 of the contract. This appendix records any measures that have been put in place to protect the consultant, the employer and (most importantly) patients in respect of the matters that have been disclosed by the employee, or any matters that may have been disclosed further to Garda vetting.

APPENDIX 6 – GRIEVANCE PROCEDURE

This appendix is a procedure for the resolution of workplace grievances.

APPENDIX 7 – DISCIPLINARY PROCEDURE

This appendix is a disciplinary procedure in respect of the consultant. 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.

APPENDIX 8 – SPECIAL LEAVE PROVISIONS FOR CONSULTANTS IN NON-HSE EMPLOYMENT

This appendix is included in contracts for consultants employed by non-HSE employers. It provides parity, in certain respects, between HSE-employed and non-HSE employed consultants. It permits certain types of paid leave in specific circumstances, such as leave certain types of work done on behalf of the State; leave on the serious illness or death of a near relative; and leave to attend interviews for public appointments.

APPENDIX 9 – PROVISIONS FOR CONSULTANTS WHO ARE TRANSITIONING FROM AN EARLIER TEMPLATE CONSULTANT’S CONTRACT

This appendix provides for a transition for a consultant who currently has an earlier template consultants’ contract that permits private practice during their public work schedule. When they sign this new template contract, they will be allowed to keep their former arrangements in respect of private practice for a transition period. The transition period will be until the end of 2025 (for consultants who sign the new contract before the end of 2023) or for six months (for consultants who sign the new contract after the end of 2023).