



## PART A – GUIDANCE ON THE “EXTERNAL WORK” CLAUSE OF THE PUBLIC-ONLY CONSULTANT CONTRACT 2023

### 1. Introduction

- 1.1 Clause 24 of the *Public-only Consultant Contract 2023* sets out an innovative approach towards implementing the State’s public health objectives, including those set out in the *Sláintecare* policy.
  - (a) This clause facilitates private practice (and other forms of external work) outside of the consultant’s public-service commitment subject to certain objectively justified restrictions.
  - (b) This clause prohibits each consultant who accepts the contract from engaging in private practice during their public work commitment, or in public hospitals (or other locations operated by the HSE) except with the permission of the consultant’s employer.
- 1.2 The clause complies with Article 9 of the *Directive 2019/1152 on transparent and predictable working conditions in the European Union* (“**the Directive**”) and with the Irish legislation that transpose Article 9 into Irish law. The transposing Irish legislation is section 6E of the *Terms of Employment (Information) Act 1994* (“**the Act of 1994**”), which was inserted by the *EU (Transparent and Predictable Working Conditions) Regulations 2022*, SI 686 of 2022. These instruments provide that an employer should, in general, permit an employee to engage in external work (outside of the employee’s work schedule with the employer) and should only restrict such external work where it is objectively justified to restrict it.
- 1.3 Section 6E of the Act of 1994 provides that:
  - (a) An employer shall not prohibit an employee from taking up employment with another employer, outside the work scheduled established with the first employer, or
  - (b) An employer shall not subject an employee to adverse treatment for taking up employment with another employer, outside the work scheduled established with the first employer.
- 1.4 This clause of the contract follows section 6E of the Act of 1994 closely. The clause provides clear objective justification for the limited circumstances in which an employer would restrict a consultant from engaging in external work.
  - (a) The main restriction is the prohibition (subject to exceptions where express permission is given) of doing private work in public hospitals.
  - (b) Limited other restrictions would include situations where, for example, excessive amounts of private work could lead dangers to patient health and safety (eg because of potential fatigue on the part of the consultant) or a conflict of interest between public and private practice.

- 1.5 The clause provides for a fair process for deciding whether or not external work will be permitted, restricted or refused in any case, including provisions for appeal.
- 1.6 The purpose of this guidance document is to:
- (a) provide clarity to consultants about the circumstances in which external work will be permitted, restricted or refused so that consultants are informed about the principles and procedures that will apply to any application they may wish to make and
  - (b) provide guidance to Clinical Directors and Executive Clinical Directors who will be the decision-makers in respect of applications by consultants under this procedure.
- 1.7 This guidance is not a contractual document. It does not amend any consultant's contract. In case of any inconsistency between this guidance document and a consultant's contract, then the contract (not this guidance) will apply.
- 1.8 This guidance is also subject to the law. In case of any inconsistency between this guidance document and any law, then the law (not this guidance) will apply. In particular, this guidance does not affect the application of section 6E of the Act of 1994.
- 1.9 This guidance includes (among other things) the procedure for handling and facilitating requests by consultants for permission to engage in external work, further to clause 24.5 of the *Public-only consultant contract 2023* relating to such guidance. This Guidance will apply to both the HSE and to other public-health service employers that employ consultants.
- 1.10 This guidance applies to all consultants who have accepted the *Public-only consultant contract 2023* and whose employer under that contract is the HSE. In this guidance, references to work done by a consultant for the HSE includes all work done by that consultant further to their contract with the HSE. If, under the consultant's contract with the HSE, the consultant does some work for a second public health service that is not part of the HSE (such as a voluntary hospital), then the work done for that second public health service is also work done further to their contract with the HSE.
- 1.11 This guidance is divided into the following parts
- (a) Part A – Guidance on the “external work” clause of the *Public-only consultant contract 2023*.
  - (b) Part B – Procedure for handling and facilitating requests by consultants for permission to engage in external work.
  - (c) Part C – Appendices, forms and templates.
- 1.12 It is likely that this guidance will be updated from time to time to reflect ongoing experience with the application of clause 24 and to provide further practical examples in respect of decisions that have been made under the procedure at Part B. Before updating this Guidance, the HSE will consult consultants' representative bodies about any proposed changes. This guidance (and future revisions of it) will help to ensure that the decision-making process is fair, transparent and consistent.
- 1.13 Expressions that have been given specific definitions in the *Public-only consultant contract 2023* have the same meaning in this guidance.

## **2. What does “external work” mean?**

2.1 The expression “external work” means any:

- (a) clinical or non-clinical
- (b) employment or gainful occupation (including self-employment)
- (c) outside the scope of the consultant’s contract of employment.

2.2 The expression includes employment by a second employer, separate to the consultant’s employment under their contract to work as consultant in the public health service. The expression also includes self-employment, such as when the consultant wishes to provide clinical services as an independent contractor in a private medical facility. It also includes any other form of gainful employment, such as agency work or work unrelated to clinical activity, such as work with a family business.

2.3 Work that is carried out inside the scope of the consultant’s employment is not “external work”. If a consultant’s letter of appointment and contract provide that the consultant will provide services in multiple services (for example, if half the consultant’s work will be in a HSE hospital and half will be in voluntary hospital) this clause will not affect the consultant’s work in any of those services.

## **3. Overarching principle – obligation to meet public service commitment**

3.1 The consultant is obliged to meet their public service commitment further to their contract of employment within the work schedule established by the HSE and set out in the consultant’s work plan. Permission will only be given to a consultant to engage in external work if the consultant’s clinical director is satisfied that the external work will not impede the consultant from meeting their public service commitment.

3.2 If permission is given for the consultant to engage in external work, the consultant should ensure that full performance of all their contractual obligations is not adversely affected by the external work. If the consultant’s clinical director forms the view that the consultant’s external work is impeding the consultant from meeting the consultant’s public service commitment, the clinical director can review the situation in accordance with the review provisions (See Part A, section 23, of this guidance).

## **4. Who needs to use this guidance document to apply for external work?**

4.1 This guidance document is relevant to

- (a) any medical or dental consultant
- (b) who has signed the *Public-only consultant contract 2023*
- (c) and who wants to engage in any external work outside of the scope of that contract.

4.2 As a general rule, any such consultant must obtain the permission of their clinical director before engaging in such external work. This guidance sets out (among other things) the procedure for applying for such permission.

4.3 There are some exceptions to the general rule. There are some types of external work that a consultant can do without seeking or receiving permission. These exceptions are discussed in Part A, section 6, of this guidance.

## **5. Who will decide whether or not a consultant will get permission for external work?**

5.1 Applications for permission to engage in external work should be made to the consultant's line manager. In the great majority of cases the consultant's line manager will be a clinical director or, in the psychiatric services, an executive clinical director. In a small number of cases, another person (other than a clinical director or an executive clinical director) may be acting in that role. The consultant's contract makes provision for their line management.

5.2 In this guidance the expression "clinical director" is used for brevity, to mean "clinical director, executive clinical director, or other person acting as the consultant's line manager as the case may be".

## **6. What type of external work is exempt from the requirement to seek permission?**

6.1 Four types of external work are exempt from the requirement to seek and receive permission. They are as follows.

- (a) The treatment of any patients on behalf of the HSE providing that neither the consultant nor any person not a party to this contract charges any fees for such treatment.
- (b) The provision of professional/medical/dental practice carried out for or on behalf of the Mental Health Commission, the Medical Council, the Dental Council, a coroner, or such other bodies expressly approved by the HSE for the purpose of this item.
- (c) The provision of expert medical/dental opinion relating to insurance claims, preparation of reports for the courts and court attendance. Such expert opinions can be on behalf of people who were the consultant's public patients or on behalf of other people.
- (d) The provision, outside of the consultant's work schedule for the HSE, of medical services in respect of which no charge (other than reasonable travel and subsistence expenses) is paid. This includes the provision by the consultant of voluntary or *pro-bono* services to or on behalf of any community, charitable or sporting organisation.

6.2 There is one condition that applies to this exemption. The condition is that carrying out the listed types of work must not impede the consultant's discharge of their duties under this contract. If carrying out the listed types of work would impede the consultant's discharge of their duties under this contract then the consultant would be obliged to seek and receive permission before carrying out the listed types of work.

6.3 So, for example, a consultant does not need permission to provide voluntary medical services to a local sports club on the consultant's days off work. However, if the consultant wanted to provide such services during the consultant's scheduled work time, the consultant would be required to seek and receive permission from their clinical director. If the consultant did not seek and receive permission, then the consultant would not be allowed to provide such services during the consultant's scheduled work time.

## **7. How will the HSE ensure compliance with the "dual employment" provisions of the *Organisation of Working Time Act 1997* ("OWT Act")?**

7.1 The OWT Act contains provisions that ensure that employees

- (a) do not work excessive numbers of hours and
  - (b) get breaks from work each day and week.
- 7.2 Section 33 of the OWT Act provides for "dual employment" (ie where an employee works for two different employers). The effect of section 33 is that in cases of dual employment each of the employers must ensure that the employee gets adequate breaks, and does not work excessive hours, even when the employee's working time for the two employers is added together.
- 7.3 Clause 24.3 of the *Public-only consultant contract 2023* addresses the dual employment issue. It is likely to have limited effect because the great majority of consultants who engage in external work do so on a self-employed basis. Clause 24.3 will not have effect in those cases because the dual employment provisions of section 33 of the OWT Act only have effect where work is done for "another employer".
- 7.4 In the small number of cases in which a consultant engages in external work as an employee of another employer, the HSE will need to be satisfied that the consultant's working hours in the course of the external work, when added to the consultant's working hours under the consultant's contract, will:
- (a) allow sufficient rest breaks during the working day;
  - (b) allow a sufficient daily rest period and weekly rest period; and
  - (c) not add up to more than 48 hours per week on average over a reference period.
- 7.5 Therefore, when a consultant seeks permission for external work as an employee of another employer, the consultant's clinical director will normally (subject to Part A, section 8 of this guidance) need to be satisfied that the consultant's total working time (adding the consultant's work schedule for the HSE to the proposed work schedule with the proposed second employment) will comply with the following requirements:
- (a) The consultant will receive a daily rest period of not less than 11 consecutive hours in each period of 24 hours.
  - (b) The consultant will receive a weekly rest period that is normally than 24 consecutive hours in each period of 7 days. This weekly rest period must commence immediately after a daily rest period. This means that the daily rest period plus the weekly rest period must add up to a total rest period of 35 consecutive hours each week.
  - (c) In any working day, the consultant will not work more than 4.5 hours without a break of at least 15 minutes or for more than 6 hours without a break of at least 30 minutes.
  - (d) The consultant will not work more than an average of 48 hours per week. The average is taken over the relevant averaging period, which is 4 months unless a longer period is set in accordance with the OWT Act<sup>1</sup>.

---

<sup>1</sup> Clinical directors will be notified in the event that a longer averaging period is set in accordance with the OWT Act. No such longer averaging period is anticipated at the time of writing this guidance.

7.6 If the permission sought by the consultant for dual employment would not result in a breach of the foregoing requirements then clause 24.3 will not be used as a basis for refusing or restricting the consultant from engaging in the proposed dual employment.

7.7 If the permission sought by the consultant for dual employment would be likely to result in a breach of the foregoing requirements then the HSE could not lawfully grant the permission that has been sought. However, this will not necessarily mean that permission would be refused. Instead, the consultant and the clinical director should seek to establish if an alternative work schedule with the second employer can be achieved that would allow the consultant to take up the second employment without either:

- (a) infringing on the consultant's work schedule with the HSE or
- (b) being in breach of the OWT Act.

## **8. Aren't consultants exempt from these provisions of the OWT Act?**

8.1 In the case of consultants who are not dual employees (in common with many other medical professionals and certain other categories of employees), there is a degree of flexibility about how statutory provisions about rest breaks and working time rules are applied. This is because many medical professionals are subject to certain general exemptions from the strict application of the OWT provisions. These exemptions exist because of the need to provide continuity of service to patients and service users.

8.2 However, even employees who are subject to general exemptions must get adequate rest. In cases of dual employment, the exemptions may not always apply. Whether or not the exemptions apply will depend on the nature of the second employment.

8.3 There are also some provisions in the OWT Act, separate to the provisions relating to exemptions, that allow other types of flexibility.

8.4 If the consultant seeks permission to engage dual employment and if granting the permission would require application of any flexibility that may be provided for in the OWT Act or through the regulations that provide for exemptions, the clinical director should first take advice from relevant colleagues in the HSE's HR structures to establish whether any flexibility can be applied. The clinical director will be as flexible as is practicable, but subject always to the need to ensure compliance with the OWT Act.

## **9. The consultant's obligation to periodically provide information to the clinical director**

9.1 If the consultant is given permission to engage in dual employment then the consultant is obliged to periodically provide their clinical director with information about the dates and times that they have worked for the second employer. This obligation to make periodic reports is limited to the provision of information regarding work done for a second employer, not work done on a self-employed basis.

9.2 This information should be provided on a quarterly basis, not more than one week after the end of the quarter in which the work was done. The information provided must reflect the actual time that was worked in the second employment (ie not rostered/scheduled time but the actual time worked, excluding break times).

9.3 If the information that the consultant provides to their clinical director indicates that there has been, or there may be, a breach of the OWT Act arising from the dual employment,

then the clinical director will initiate a review of the permission to engage in external work. See Part A, section 23 of this guidance for details of this review.

**10. The factors that must be considered by the clinical director when the consultant seeks permission for external work that**

10.1 The Public-Only Consultant Contract 2023 is designed to allow flexibility to consultants to engage in external work. That flexibility is subject always to the overarching obligation for the consultant to comply with their public service commitment under their contract with the HSE.

10.2 If the consultant's proposal to engage in external work will not impede the consultant from complying with their public service commitment, the HSE's ability to refuse or restrict such external work is limited. The HSE may refuse or restrict permission for external work only if the clinical director is satisfied that such refusal or such restrictions are reasonably required for one of a specified list of reasons, as follows:

- (a) the protection of patient health and safety and the health and safety of persons other than patients, including other persons receiving care from the health service;
- (b) safeguarding productive and safe working conditions;
- (c) the protection of the integrity of the public health service and the administration of vital public health service functions;
- (d) the avoidance of conflicts of interest;
- (e) compliance by the HSE and/or the consultant with any applicable statutory or regulatory obligations;
- (f) compliance by the Employee with any professional standards for the time being in force in respect of the Employee;
- (g) implementing and achieving the State's objectives of the promotion of public welfare by improving public health, the removal of inefficiencies and inequalities in the delivery of healthcare services, and assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs.

10.3 This list of reasons (the "objective grounds") are based of the objective grounds adopted by Ireland in its transposition of the Directive. These are grounds that allow an employer to restrict an employee from engaging in external work.

10.4 Subsequent sections of this guidance provide examples of considerations that would apply in respect of each of the objective grounds. It is important to note that these examples are not definitive directions. They are factors to be considered in the consideration of the whole question.

- (a) There may be cases in which one of the examples below might (if taken in isolation) suggest that permission should be refused but the clinical director (having considered all of the circumstances) could still grant permission.
- (b) There may also be cases in which one of the examples below might (if taken in isolation) suggest that permission should be granted but the clinical director (having considered all of the circumstances) could still refuse permission.

## **11. Restriction as an alternative to refusal**

- 11.1 When considering whether or not any of the objective grounds might have relevance to a consultant's application for permission to engage in external work, the clinical director should bear in mind that there are more than two possible outcomes to any application. Granting permission and refusing permission are two outcomes, but there is a third potential outcome, namely the granting of permission with restrictions.
- 11.2 In any case in which a clinical director (after consideration of an application for permission and discussion with the consultant) believes that the application cannot be because of concerns that arise from the objective grounds, the clinical director should consider if it might be appropriate to grant the permission subject to certain restrictions. If the application of restrictions could address the concerns, then the permission should be given, but the permission should be made subject to the restrictions. Restrictions may relate to:
- (a) the amount of external work to be carried out;
  - (b) the type of external work that can be carried out;
  - (c) the location of the external work; and/or
  - (d) the hours during which such work is carried out.
- 11.3 Examples of how restrictions might be applied are set out in the following sections as part of the consideration of the practical application of the objective grounds.
- 11.4 Other circumstances in which restrictions might be applied would be where the clinical director considers that restrictions are necessary in order to ensure that the external work does not impede the consultant's work schedule for the HSE. For example:
- (a) if the combination of the proposed schedule of the external work and the location at which it will take place is likely to impede the consultant being able to get to their HSE work location in good enough time to complete their duties for the HSE on the same day;
  - (b) then the clinical director could impose restrictions on the finishing time of the external work;
  - (c) such that the consultant will be required to complete their external work in good enough time to travel safely to their HSE work location and be ready to complete their duties in line with their public commitment.
- 11.5 Restrictions might similarly be applied in respect of the start time of the external work on any day on which the consultant has a public service commitment. A restriction might provide that external work may only commence late enough such that the consultant will have time to fully complete their public service commitment and then travel safely to the location of their external work before the external work commences.

## **12. The objective ground of the protection of patient health and safety and the health and safety of others**

- 12.1 The protection of patient health and safety, and the health and safety of others, is a fundamental concern for the HSE. Permission for external work would never be given if



the grant of the permission might reasonably be expected to give rise to a concern that the effect of granting that permission could compromise a person's health and safety.

12.2 An example of how a request for permission might give rise to a concern about patient health and safety would arise where the consultant requests permission to engage in external work for a total number of hours per week that would be excessive and could lead to the consultant being fatigued when completing their public service commitment. In determining this question, the clinical director should consider:

(a) the number of hours that the consultant would normally be required to work as part of their public service commitment, including both core weekly working hours and any additional working time, such as on-call work; and

(b) the number of hours that the consultant expects to work as part of the external work.

12.3 There may be circumstances in which a concern about patient health and safety arises not from the total number of hours that the consultant proposes to work, but instead from the times at which the external work is proposed to occur. For example, if the external work is likely to take place late in the night, or early in the morning, before the consultant's scheduled working time with patients of the HSE, then a concern would arise about patient health and safety because the consultant might not receive adequate rest before their scheduled working time.

12.4 In many cases, concerns about the protection of patient health and safety will be capable of being addressed by granting permission subject to restrictions rather than refusing permission. For example, if a consultant applies proposes to engage in external work for a large or unspecified number of hours, the clinical director could (at the end of the relevant procedure) grant permission to do the external subject to

(a) the restriction that the consultant may only engage in the external for work a certain numbers of hours per week (on average), or

(b) the restriction that the consultant may only engage in the external work on days on which the consultant does not have a public service commitment.

12.5 This objective ground does not only relate to patient health and safety. It relates to the health and safety of other persons, including persons other than patients who are receiving care from the health service. These could include service-users in intellectual disability settings. The same considerations apply for other persons as apply to patients – namely that permission for external work can only be given where giving permission is consistent with the protection of such person's health and safety.

### **13. The objective ground of providing and maintaining safe and efficient working conditions.**

13.1 The provision and maintenance of safe and efficient working conditions for staff members – including both the consultant and their co-workers – is another fundamental concern of the HSE/employer.

13.2 Many of the same considerations about fatigue that are addressed in the section that relates to the protection of patient health and safety also arise in consideration of safe and efficient working conditions for staff members. The same potential resolution of those concerns – including by means of the clinical director granting the permission with

restrictions rather than refusing permission – applies in respect of this objective ground as it does in respect the objective ground of protection of patient health and safety.

**14. The objective ground of the protection of the integrity of the public health service and the administration of vital public health service functions.**

14.1 Restrictions will be imposed in any circumstance where doing so is necessary for the protection of the integrity of the public health service and/or the administration of vital public health service functions. It is not expected that this ground will be of relevance in many cases. In any case in which this ground may be of relevance, clinical directors are advised to seek advice from their HR support.

**15. The objective ground of the avoidance of conflicts of interest**

15.1 A consultant will not be permitted to engage in external work where doing so would give rise to a conflict of interest. This could arise where, for example, a consultant might seek permission for external work in which the consultant would advise a pharmaceutical company that was in the processes of seeking approval for a medicine for which the HSE might be a customer; or where the consultant might advise the pharmaceutical company in respect of pricing strategy.

15.2 One specific area of potential conflict of interest is the referral of public patients to private practice, or treatment of public patients in private practice. This issue is expressly addressed in the *Public-Only Consultant Contract 2023*. (See Part A, section 20, of this guidance for further detail).

**16. The objective ground of compliance by the HSE and/or the consultant with any applicable statutory or regulatory obligations.**

16.1 Medical and dental consultants are employed in professions that are regulated by statutes that are amended from time to time. A consultant will not be permitted to engage in external work where doing so would give rise to a breach of any applicable statutory or regulatory obligations, whether those are obligations to apply to employees generally or to medical and dental consultants specifically.

16.2 One particular potential breach would be breach of dual employment obligations under the *Organisation of Working Time Act 1997*. That potential breach is expressly addressed in the *Public-Only Consultant Contract 2023* (See Part A, section 7 of this guidance for further detail).

**17. The objective ground of compliance by the consultant with any professional standards for the time being in force in respect of the consultant.**

17.1 Medical and dental consultants are subject to regulation by statutory professional bodies that set professional standards that are amended from time to time. A consultant will not be permitted to engage in external work where doing so would give rise to a breach of any applicable professional standards that apply in respect of the consultant.

**18. The objective ground of implementing and achieving the State's objectives of the promotion of public welfare by improving public health, the removal of inefficiencies and inequalities in the delivery of healthcare services, and assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs.**

- 18.1 A specific example of how the achievement of the State's public healthcare objectives might lead to refusal of permission for certain external is set out in the *Public-Only Consultant Contract 2023*. This is the prohibition (without express permission) on a consultant who has accepted such a contract from engaging in any private medical practice at any public hospital. (See Part A, section 19, of this guidance for further detail).

## **19. Prohibition on private practice in public hospitals**

- 19.1 The *Public-Only Consultant Contract 2023* provides that a consultant may not (except as expressly permitted by the HSE) engage in any private medical practice at any location operated by the HSE. For brevity this guidance uses the expression "public hospital" to mean "at any location operated by the HSE" but the expression "public hospital" should be understood to also extend to other settings operated by the HSE, such as community healthcare settings.

- 19.2 This general prohibition (subject to limited exceptions as set out in this guidance) is justified on a number of objective grounds, including the following.

- (a) The objective ground of implementing and achieving the State's objectives of the promotion of public welfare by improving public health, the removal of inefficiencies and inequalities in the delivery of healthcare services, and assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs..
- (b) There can be circumstances in which providing private medical services in public hospitals could impede the delivery of the consultant's public service commitment within the consultant's work schedule set by the HSE.

- 19.3 There are some exceptions to the general prohibition. One exception is set out in Appendix 9 of the *Public-Only Consultant Contract 2023*. Appendix 9 sets out transitional arrangements for consultants who are transitioning from an earlier template contract to the *Public-Only Consultant Contract 2023*. During the prescribed transition period, transitioning consultants do not need to apply for permission under the procedure that is set out in this document; the terms of their previous contract (in respect of provide practice) will apply during the transition period.

- 19.4 Another exception is where express permission is given to an individual consultant under the terms of the *Public-Only Consultant Contract 2023*. Having regard to the State's public healthcare objectives, it is unlikely that such permission will often be granted in the context that currently exists. Permission could be given in light of specific circumstances or future developments in the State's public healthcare objectives.

## **20. Prohibition on referring public patients to private practice or treating public patients in private practice**

- 20.1 Except with the permission of the clinical director, a consultant is not permitted
- (a) to refer any of their current public patients to any private medical practice in which the consultant has an interest or
  - (b) to provide any of their current public patients with medical care in any such private medical practice.

- 20.2 Where appropriate, a clinical director may grant permission on in respect of a category of patients or referrals (rather than giving permission on a patient-by-patient basis). Examples of when this might be appropriate are set out in paragraph 20.5.
- 20.3 This prohibition relates to any private medical practice in which the consultant “has any interest or commercial relationship (whether as owner, director, employee, independent contractor or otherwise)”. This includes, for example, the consultant’s own private practice as a self-employed specialist.
- 20.4 The reasons for this prohibition are to prevent conflicts of interest between a consultant’s private practice and their public service commitment; and to promote the public healthcare objectives.
- 20.5 There are circumstances in which it is reasonable for a consultant to refer public patients to private practice, or to treat public patients in their private practice. In such cases, permission will not be unreasonably withheld. The following are examples of circumstances in which permission may be given for such referrals or practice:
- (a) If the HSE does not provide a particular medical service but the service is available in a private practice, then 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. In such cases permission would not need to be given on a case-by-case basis – permission could apply to all patients who are referred to a specific private practice for specific types of treatment.
  - (b) There may be cases in which treatment of public patients in private practices is expressly facilitated by the public health system, for example further to the operation of the National Treatment Purchase Fund. If a consultant is given permission to engage in external work to participate in such treatment then the permission would normally be expected to extend to treating public patients in private practice.
- 20.6 This clause of the contract does not prevent a consultant from treating (in private practice) a person who was formerly, but is no longer, a patient of the consultant in the consultant’s public practice.

## **21. Timescale for decisions**

- 21.1 When a request for permission is made by a consultant for permission to engage in external work, a decision should be made by clinical director in a timely matter and in any event not longer than one month from the date of the initial request.

## **22. Reasons for decisions**

- 22.1 If a clinical director grants permission to a consultant engage in external work, the decision of the clinical director should be communicated to the consultant in writing. The decision should contain a summary of the clinical director’s reasons for granting permission. The template application form (set out at Appendix 2) contains space for the clinical director’s reasons to be given.
- 22.2 If the permission that is granted is made subject to restrictions, those restrictions should be clearly set out in the permission. The clinical director should set out, in the decision section of the application form, a summary of the clinical director’s reasons for imposing the restrictions. The reasons should be based on the objective grounds.

22.3 If a clinical director refuses permission to a consultant engage in external work, the decision of the clinical director should be communicated to the consultant in writing. The clinical director should set out, in the decision section of the application form, a summary of the clinical director's reasons for refusing permission by reference to the objective grounds. These reasons should summarise the consideration the clinical director gave to whether – as an alternative to refusal – permission could have been given subject to restrictions. Permission should only be refused if:

- (a) granting the permission would not be consistent with one or more of the objective grounds and
- (b) the objective grounds in question could not be met in a manner that had a more limited impact on the consultant, such as by granting permission subject to restrictions.

### **23. Review of grant or refusal of permission or imposition of restrictions**

23.1 If a consultant receives permission to engage in external work, the permission it will remain in effect unless and until it is revoked, modified or amended or a new decision is made after a review of that permission.

23.2 Any grant of permission, restriction or refusal of permission for external work will be reviewed by the HSE in one of the following circumstances.

- (a) If permission has been given (with or without restrictions) and the consultant has been engaging in the external work for a period of time, the permission can be reviewed if either the clinical director or the consultant identifies a need for a review or a change in circumstances.
- (b) If permission has been refused, or if permission was given with restrictions, the consultant may request a review promptly after the decision and in any event not later than one month after the decision.

23.3 In either case, the review will be conducted by the clinical director. This review is separate from the appeal that is described in Part A, section 24, of this guidance. The objective of a review is to achieve a mutually satisfactory outcome, if such is possible, and both parties will engage with each other in good faith with that in mind.

23.4 This review is a reconsideration of the application for permission. The clinical director should give the consultant the opportunity to provide any relevant information in respect of the review and should consider any such further information that the consultant may provide. The outcome of the review will be a new decision, which may be:

- (a) a grant of permission (with or without restrictions, any of which may be new restrictions) or
- (b) the refusal of permission (including termination of a previous permission).

23.5 The decision will be made by reference to the objective grounds. The clinical director will provide the consultant with written reasons for the review decision.

## **24. Appeal to tripartite committee**

- 24.1 The *Public-Only Consultant Contract 2023* provides for an appeal from decisions in respect of applications for permission to engage in external work.
- 24.2 An appeal can be against a refusal of permission or against any restrictions that were made in respect of a grant of permission.
- 24.3 Except where the following paragraph applies, an appeal may be made by a consultant only after:
- (a) the consultant has applied to their clinical director for permission to engage in external work;
  - (b) the permission has been refused or has been granted subject to restrictions;
  - (c) the consultant has requested their clinical director to review the decision; and
  - (d) the consultant is dissatisfied with the outcome of the clinical director's review.
- 24.4 If a clinical director fails or refuses, one month of the date on which a request for permission is made, to make a decision in respect of that request, then the permission will be considered to have been refused and the consultant may make an appeal. The said period of one month can be extended if there are reasonable grounds for such an extension (eg the absence through illness of the clinical director).
- 24.5 An appeal shall be considered by an independent appeals panel. Each such panel shall be composed of three people selected as follows:
- (a) A chairperson who will be a member of a panel of chairpersons agreed from time to time by management of the HSE and consultants' representative bodies.
  - (b) A person who is a member of a panel of persons nominated by the management of the HSE.
  - (c) A person who is a member of a panel of persons nominated by consultants' representative bodies.
- 24.6 Independent appeal panels shall set their own procedures for the fair hearing and decision of appeals. These procedures will provide that an appeal should, where possible, be determined within one month of having been submitted to the secretariat.
- 24.7 The HSE will provide staff for a unit that will serve as a secretariat for the independent appeals panels (and that may have other functions as well). This secretariat will receive appeals; assemble independent appeal panels to hear each appeal (in accordance with the provisions set out above); send and receive correspondence on behalf of each independent appeal panel; and provide any other necessary administrative support to each independent appeal panel.

## **25. HSE central support for management**

- 25.1 The HSE provides centralised support and guidance for managers, clinical directors and other managers who are involved in decisions in respect of applications by consultants to engage in external work.

## 26. Record retention

- 26.1 The following retention periods will apply to data processed in respect of external work. Data will be deleted / destroyed after the end of the relevant data retention period unless a longer period is required in the event that the external work in question is the subject of any actual or anticipated litigation, inspection, regulatory or enforcement (or similar) procedure(s). In that event the data shall be retained only for so long as it's reasonably required to address such a procedure(s).
- 26.2 The expression "date of final refusal" has the following meaning.
- (a) If permission is refused by the consultant's clinical director (after an initial decision or, as the case may be, after a review) and that refusal is not appealed by the consultant, the "date of final refusal" is the date the clinical director communicated the refusal to the consultant.
  - (b) If permission is refused by the consultant's clinical director; that refusal is appealed by the consultant to the independent appeals panel; and the independent appeals panel also refuses the application, the "date of final refusal" is the date the independent communicated the refusal to the consultant.
- 26.3 A permission, once granted, remains in effect until revoked or until the consultant's employment terminates for any reason. The expression "duration of the permission" will be interpreted accordingly.

Type of record	Relevant retention period
Data related to an application for permission to engage in external work.	If permission is granted (with or without restrictions) the data will be retained for the duration of the permission plus two years.  If permission is refused, the data will be retained for two years from the date of the final refusal.
Working time records relating to employment with a second employer.	Two years from the date the record was provided to the consultant's clinical director.

## **PART B – PROCEDURE FOR HANDLING AND FACILITATING REQUESTS BY CONSULTANTS FOR PERMISSION TO ENGAGE IN EXTERNAL WORK**

### **1. Before making an application**

- 1.1 A consultant who is considering making an application for permission to engage in external work should consider the provisions of clause 24 of their contract. The consultant should also review this guidance.
- 1.2 The consultant should confer with their clinical director informally before making an application. Where possible, any issues, concerns or queries should be resolved informally before the consultant submits their formal application.

### **2. Making the application**

- 2.1 The consultant should complete the application form and submit it to their clinical director. A template application form is provided at Appendix 2. This template form covers the standard application (an application for permission to engage in external work outside the consultant's work schedule). If the consultant wishes to seek permission for any matter that is not encompassed by the standard application form this can be done by means of the consultant completing the application form and also attaching a letter to the application form that contains any further information that is relevant to the application.
- 2.2 The application form should be submitted electronically (not in hardcopy) in a format that will allow the clinical director (after consideration of the application) to enter their decision and the reasons for their decision in the form.
- 2.3 The clinical director should acknowledge receipt of the application promptly.
- 2.4 Consideration of the consultant's application may be facilitated at the same time as discussions regarding the consultant's work-plan.

### **3. Considering the application for permission**

- 3.1 The clinical director should consider the application for permission promptly. The clinical director should have regard to clause 24 of the consultant's contract and to this guidance. The clinical director may consult with appropriate colleagues who can provide assistance with interpreting those documents (eg the medical manpower manager or other appropriate colleagues in the HR function) before making a decision but the decision is for the clinical director to make.
- 3.2 The clinical director may request further information or clarification from the consultant in connection with the application. If requested, the consultant will provide such further information promptly. Any delay in the provision by the consultant of such further information may result in an extension of the period in which the clinical detector will be expected to make decision (which is normally one month).
- 3.3 The key items for consideration are as follows.
  - (a) Is the clinical director satisfied that the relevant external work (ie the external work for which permission has been applied) will not interfere with the consultant's work schedule with the HSE?



- (b) Is the clinical director satisfied that the relevant external work can be completed in a way that does not compromise the protection of patient health and safety, or the health and safety of other persons?
- (c) Is the clinical director satisfied that the relevant external work can be completed in a way that does not compromise the provision of productive and safe working conditions?
- (d) Is the clinical director satisfied that the relevant external work can be completed in a way that does not compromise integrity of the public health service or the administration of vital public health service functions?
- (e) Is the clinical director satisfied that the external work can be completed in a way that does not give rise to any conflict of interest?
- (f) Is the clinical director satisfied that the external work can be completed in a way that does not compromise the compliance by the HSE and/or the consultant with any applicable statutory or regulatory obligations?
- (g) Is the clinical director satisfied that the external work can be completed in a way that does not compromise the compliance by the consultant with any professional standards for the time being in force in respect of the consultant?
- (h) Is the clinical director satisfied that the external work can be completed in a way that is consistent with implementing and achieving the State's objectives of the promotion of public welfare by improving public health, the removal of inefficiencies and inequalities in the delivery of healthcare services, and assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs?

3.4 If, having regard to the criteria set out in paragraph 3.3, the clinical director is satisfied that the permission can be granted, then permission should be given in writing. It is important that permission should be limited to the external work which the consultant applied for. Permission should not be given "to engage in external work" generally. The permission should be given in writing using the relevant section of the application form.

3.5 The clinical director shall have regard to clause 24.6 of the *Public-only Consultant Contract 2023*. This clause provides that permission shall not be unreasonably withheld.

3.6 If the answer to any of the items (a) to (h) in paragraph 3.3 above is "no" then the clinical director should not grant the permission. The clinical director should consult with the consultant about any concerns that the clinical director may have. If the consultant can assuage these concerns by providing clarifications or by limiting the scope of the permission that is applied for, then any such clarification or limitation should be recorded in writing. If, having regard to the criteria set out in paragraph 3.3 and any clarification or limitation provided by the consultant, the clinical director is satisfied that the permission can be granted, then permission should be given in writing.

#### **4. Restrictions**

4.1 If, following consultation with the consultant, the answer to any of the items (a) to (h) in paragraph 3.3 is still "no" then the clinical director should next consider whether the concerns that arise in respect of any of those items could be addressed by imposing

restrictions on the permission that may be granted. Granting permission with restrictions should be preferred over refusing permission, if that is practicable.

4.2 Restrictions imposed by the clinical director may relate to the following matters (or other matters):

- (a) the amount of external work to be carried out;
- (b) the type of external work that can be carried out;
- (c) the location of such external work; and/or
- (d) the hours during which such external work is carried out.

4.3 If the clinical director gives permission with restrictions, then this should be given in writing in a document that contains the permission, the restrictions and the reasons for the restrictions. Ideally section 2 of the application form should be used for this purpose, but a supplementary letter may also be used if necessary.

## **5. Refusal of permission**

5.1 If, following consultation with the consultant, the answer to any of the items (a) to (h) in paragraph 3.3 is still “no” and if the clinical director is satisfied that there is no restriction that they could apply to a permission that would make it appropriate for permission to be given, then the permission should be refusal. The refusal should be given in writing in a document that contains the reason(s) for the refusal, ideally in section 2 of the application form.

## **6. Review of decisions**

6.1 There are several points in time at which reviews of decisions can be requested.

6.2 The earliest point in time is promptly (or at latest within one month) after an application for permission has been refused, or has been granted subject to restrictions. At this point in time, the consultant can request the clinical director to review the decision, in light of any additional information the consultant may provide. The purpose of a review at this point in time is to provide an opportunity for the consultant and the clinical director to resolve any outstanding issues without the need to refer the matter to a formal appeal.

6.3 The later point in time is after permission has been granted. If, further to such permission, the consultant is engaging in the external work, then either the consultant or the clinical director can review the permission at any time.

- (a) The consultant may wish to initiate a review because (eg) the consultant believes that a restriction that was placed on the permission is not required and should be removed, relaxed or replaced.
- (b) The clinical director may wish to initiate a review because (eg) concerns have arisen about the external work (having regard to the criteria listed a items (a) to (h) in paragraph 3.3) and the clinical director believes that permission may potentially need to be revoked or made subject to (new or different) restrictions.

6.4 Irrespective of the reason for a review, following any such review a new decision (to grant or refuse permission or to impose, modify or renew restrictions) will be made by the clinical director. Such a new decision will be in writing and will set out the reasons for the decision.

In the decision, the clinical director should inform the consultant of the consultant's right to appeal this decision.

- 6.5 Minor amendments to a permission may be agreed between the consultant and their clinical director without the need for the consultant to complete the entire application form. However, any such minor amendments will only be effective if they are recorded in writing and kept with the original grant of permission that has been amended.

## **7. Appeal**

- 7.1 If, after a review, the consultant is still not satisfied with the clinical director's decision, that decision may be appealed to the independent appeals committee established for this purpose. Appeals should be directed to the secretariat that the HSE has established to assist the independent appeals panel carry out its functions. Procedures for the referral of appeals will be set out by the secretariat. This appeal procedure applies to all consultants employed in the public health service under the Public Only Consultants Contract 2023 – it is not limited to consultants employed by the HSE.

- 7.2 In the event an appeal is lodged, all relevant records (including the application for permission; any grant of permission; any refusal of permission; any application for review of a grant or refusal of permission; any decision further to a review; and any supporting documents provided by the consultant during any part of the process) should be provided to the independent appeals panel.

- 7.3 Appeals should be sent to POCC23 Independent Appeals Panel, National Employee Relations, National Human Resources, 63-64 Adelaide Road, D02 FR50, email [info.t@hse.ie](mailto:info.t@hse.ie).

## **8. Time scale for decisions**

- 8.1 Decisions under this procedure should be made by the clinical director as soon as possible, and normally within one month of the submission of the application.

## PART C – APPENDICES, FORMS AND TEMPLATES.

### Appendix 1 – clause 24 of the *Public-only consultant contract 2023*

#### 24 EXTERNAL WORK

- 24.1 The Employee may engage in clinical or non-clinical employment or gainful occupation (including self-employment) outside the scope of this contract (collectively described as “**external work**”) subject to the provisions of this contract including in particular this clause 24.
- 24.2 The Employee is obliged to:
- (a) meet their commitment further to this contract within the work schedule established by the Employer from time to time; and
  - (b) ensure that full performance of all the Employee’s contractual obligations is not adversely affected by any external work.
- 24.3 If the external work relates to the Employee being an employee of another employer, permission for the Employee to engage in such external employment will be granted only to the extent that such external employment will not result in a contravention of the provisions of section 33 of the Organisation of Working Time Act 1997. The Employee will provide the Employer with accurate particulars of the times during which the Employee works during any such external employment.<sup>2</sup>
- 24.4 Subject to paragraph 24.14, the Employee may engage in external work only if and when the Employee requests and the Employer grants permission for such external work. The Employer may refuse permission for external work, or grant permission for external work subject to restrictions, only if the Employer is satisfied that such refusal or such restrictions are reasonably based on the following objective grounds:
- (a) the protection of patient health and safety and the health and safety of persons other than patients, including other persons receiving care from the health service;
  - (b) safeguarding productive and safe working conditions;
  - (c) the protection of the integrity of the public health service and the administration of vital public health service functions;
  - (d) the avoidance of conflicts of interest;
  - (e) compliance by the Employer and/or the Employee with any applicable statutory or regulatory obligations;
  - (f) compliance by the Employee with any professional standards for the time being in force;
  - (g) implementing and achieving the State’s objectives of the promotion of public welfare by improving public health, the removal of inefficiencies and inequalities in the
-

delivery of healthcare services, and assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs.

24.5 The Employer will introduce a system, code or procedure<sup>3</sup> for handling and facilitating requests by the Employee for permission to engage in external work and such requests will be decided on in a timely and efficient manner (normally within 1 month) by the Clinical Director/Executive Clinical Director/line manager. Ideally, this would be facilitated in discussions regarding the Employee's work-plan.

24.6 Any such system, code or procedure will provide that permission will not be unreasonably withheld.

24.7 Without prejudice to paragraph 24.4 the restrictions to any permission given to the Employee may relate to:

- (a) the amount of external work to be carried out;
- (b) the type of external work that can be carried out;
- (c) the location of such external work; and/or
- (d) the hours during which such external work is carried out.

These restrictions may vary from time to time as required and different restrictions may apply to different employees or categories of employee.

24.8 Any permission granted (whether or not subject to restrictions) may be revoked, modified or amended by the Employer from time to time on the grounds referred to in paragraph 24.4. Once permission is given, it will remain in effect unless and until it is revoked, modified or amended or a new decision is made after a review further to paragraph 24.12.

24.9 Without prejudice to paragraph 24.4 permission for external work will only be granted if (and only to the extent that) the Employer is satisfied that any such external work will:

- (a) be consistent with the discharge of the Employee's duty as an Employee of the Employer under this contract, including obligations relating to on-call working arrangements and work scheduling;
- (b) be compatible with the objective grounds set out in paragraph 24.4.

24.10 Without prejudice to the foregoing, the Employee may not (except as expressly permitted by the Employer):

- (a) engage in any private medical practice at any location operated by the Employer or another part of the public health service; or
  - (b) refer any patient or service-user to whom the Employee is providing care within the public health service to any private medical practice (being any medical practice that is not part of the public health service) in or with which the Employee has any interest or commercial relationship (whether as owner, director, employee,
-

independent contractor or otherwise) or provide medical care to any such patient or service user in any such medical practice.

- 24.11 Where the Employer decides under this clause 24 to:
- (a) refuse permission; or
  - (b) to grant permission subject to restrictions, the Employer will provide to the Employee written reasons for any such decision.
- 24.12 Any grant of permission, restriction or refusal of permission under this clause 24 will be reviewed by the Employer in the event that either the Employer or the Employee identifies a need for the matter to be reviewed or where a change in circumstances requires such a review. Following any such review a new decision (to grant or refuse permission or to impose, modify or renew restrictions) will be made by the Employer. If, after such review, the Employee is still not satisfied with the Employer's decision, that decision may be appealed to an independent appeals committee established for the purpose of considering such decisions. This will be a committee comprised of:
- (a) a member of a panel of persons nominated by consultants' representative bodies;
  - (b) a member of a panel of persons nominated by HSE management; and
  - (c) a chairperson who will be a member of a panel of independent chairpersons agreed by consultants' representative bodies and HSE management.
- 24.13 This appeals process is in lieu of the operation of the Grievance Procedure provided at Appendix 6. A matter that has been reviewed and/or appealed under paragraph 24.12 will not also be raised through the Grievance Procedure.
- 24.14 The Employee is not precluded by this clause 24 from engaging in any external work that consists of the activities listed at items (a) to (d) of this paragraph. The Employee does not require permission to engage in external work that consists of such activities, provided (and only to the extent that) such activities are completed outside of their work schedule established by the Employer and do not otherwise impede the Employee's discharge of their duties under this contract.
- (a) The treatment of any patients on behalf of the Employer providing that neither the Employee nor any person not a party to this contract charges any fees for such treatment.
  - (b) The provision of professional/medical/dental practice carried out for or on behalf of the Mental Health Commission, the Medical Council, the Dental Council, a coroner, or such other bodies expressly approved by the Employer for the purpose of this item.
  - (c) The provision of expert medical/dental opinion relating to insurance claims, preparation of reports for the courts and court attendance on behalf of persons including (but not limited to) patients to whom the Employee has provided care further to this contract.
  - (d) The provision, outside of the Employee's work schedule for the Employer, of medical services in respect of which no charge (other than reasonable travel and

subsistence expenses) is paid, including the provision by the Employee of voluntary or *pro-bono* services to or on behalf of any community, charitable or sporting organisation.

- 24.15 The Employee will provide the Employer (on request by the Employer) with full and complete information about any external work engaged in and any confirmation reasonably required by the Employer in respect of external work.

**Appendix 2 – Template form for application for external work outside of the consultant's HSE work schedule (available as a stand-alone document but reproduced below)**



**Public-Only Consultants' Contract 2023  
Application to undertake external work**

This form is to be used by consultants who are working, or intend to work, under the *Public-Only Consultant Contract 2023* and wish to apply to undertake external work in accordance with that Contract. The procedure regarding such applications is available at <https://www.hse.ie/eng/staff/resources/hr-circulars/hr-circular-008-2023-public-only-consultant-contract-2023.html>

To ensure compliance with legal and other objectives (in particular section 33 of the *Organisation of Working Time Act 1997*) an employee must provide their employer with details of any work for another employer in which they are engaged.

A current and proposed work-plan, which details the employee's public commitment and public on-call commitment, must be submitted with this application. In the case of people who are not yet consultants who are applying for permission to engage in external work because as part of the process leading to appointment as a consultant – and who for that reason do not yet have a work plan – the application can be submitted before the completion of a work-plan but permission can only be granted after a work-plan has been completed.

Applications and resulting decisions may be made either prior to the employee taking up the *Public-Only Consultant Contract 2023* or at any time after the employee takes up the contract.

**Section 1: To be completed by the employee**

Surname:	First name:
Personnel no:	PPS no:
Post Title:	Post reference code:
Primary location:	Hospital Group/CHO Area:
Contact phone no:	Email address:
Current weekly working hours:	Current days of attendance:
I confirm that I have reviewed the <i>Guidance on the "external work" clause of the Public-only consultant contract 2023</i> before making this application.	Yes No
<b>Application for work to be undertaken externally to HSE/section 38 agency following acceptance of the <i>Public-only consultant contract 2023</i>:</b>	
Location(s):	Day(s) and time(s) of the week:
If weekly hours vary, provide details:	
Details of services provided:	
Will the external work be on a self-employed basis?	Yes No



<p>If the external work is not on a self-employed basis:</p> <p>(a) Provide the name and address of the employer, agency or other person for whom I wish to work:</p> <p>(b) I confirm that I will comply with the provisions of clause 24.3 of my contract of employment in respect of dual employment.</p>	<p style="text-align: center;">Yes                      No</p>
<p><b><i>If you intend to work in a number of locations please provide the above details on a separate sheet for each location</i></b></p>	
<p><b>Confirmations</b></p>	
<p>This external work will be entirely outside my work schedule under my contract with the HSE</p>	<p style="text-align: center;">Yes                      No</p>
<p>If I am granted permission to engage in this external work and if I engage in the external work, then in relation to the external work:</p> <p>(a) I will continue to discharge my contractual duties as an employee of the HSE, including obligations relating to on-call working arrangements and work scheduling;</p> <p>(b) I will not be in breach of any of my statutory and/or regulatory obligations and;</p> <p>(c) I will not be causing the HSE to be in breach of any of its statutory and/or regulatory obligations;</p> <p>(d) the external work will not adversely impact on the health and safety (including in respect of quality of medical care) of patients or services users who are likely to receive care from me further to my contract with the HSE;</p> <p>(e) the external work will not impact on the safety, health and welfare of other persons (including me) who are employed by (or otherwise working on behalf of ) the HSE.</p>	<p style="text-align: center;">Yes                      No</p> <p style="text-align: center;">Yes                      No</p> <p style="text-align: center;">Yes                      No</p> <p style="text-align: center;">Yes                      No</p> <p style="text-align: center;">Yes                      No</p>
<p>I undertake to provide such further information about the external work as the Clinical Director/Executive Clinical Director may from time to time reasonably require.</p>	<p style="text-align: center;">Yes                      No</p>
<p>I accept and will comply with the provisions of clause 24 "external work" of my contract of employment</p>	<p style="text-align: center;">Yes                      No</p>

Declarations	
<p><i>I declare that the above information is true and complete in all material aspects. Should any of the above information change in any material respect I understand that I am obliged to submit a new application.</i></p> <p><i>I accept that any approval that is granted to me is an approval that is limited to the application that I have made and not to any other external work.</i></p> <p><i>I understand that any approval that may be granted to me may be reviewed from time to time.</i></p>	
Current and proposed work-plans attached:	Yes                      No
Signed:	
Date:	

Section 2: To be completed by the Clinical Director/Executive Clinical Director	
---	--

Surname:	First name:
Personnel no:	Hospital Group/CHO Area:
Contact phone no:	Email address:
I confirm that I discussed this application with the applicant on:	Date:
This application is:	Approved                      Approved with restrictions Refused
If approved, please provide details why:	
If not approved, please provide details why:	
If approved with restrictions, please provide details why and details of restrictions:	

Declaration	
-------------	--

<p><i>I declare that the above information is true and complete in all material aspects.</i></p>	
Signed:	
Date:	

Note: this form is provided to assist consultants in making standard applications for permission for external work outside the consultant's work schedule with the HSE. If a consultant wishes to apply for permission for a matter covered by clause 24 of the consultant contract that is not encompassed by this form, such an application can be made by way of a letter to the consultant's clinical director. In that event, the clinical director may seek such information as is reasonably required to allow the clinical director to assess the application.

### Appendix 3 – useful templates

1. The following are examples of template text that a clinical director might use to explain decisions in section 2 of the application form.

2. Example of reasons for approval:

*The application was to provide sessions in a private clinic on one day week, only on days you are not scheduled to perform duties under my contract for the HSE. Permission is granted subject to your continued compliance with your contractual commitments.*

3. Example of a grant of permission to refer public patients to a private clinic because the private clinic offers services that the HSE does not provide:

*The application was for permission to refer public patients under your care to the XXX clinic, which is a private clinic in which you are the part-owner. The XXX clinic offers certain procedure that are not provided by the HSE, such as YYY and ZZZ. I have decided to grant the permission that you have requested, subject to your continued compliance with your contractual commitments.*

4. Example of a grant of permission subject to a restriction:

*The application was “to provide sessions in my private clinics, amounting to not more than 6 hours per week”. Further to our discussions, I have decided to grant the permission that you have requested, subject to the following restriction.*

- *You may only provide such private sessions on days that you not scheduled to perform duties under your contract for the HSE.*

*The reason for this restriction is that, on days that you not scheduled to perform duties under your contract for the HSE, you may be required to carry out duties both inside and outside your core working hours. It is not possible to predict how long in advance of the commencement of your core working hours your duties may commence, or how long after the end of your core working hours your duties may end. The requirement to work hours outside our core working hours is a contractual commitment. The only way to ensure that you are available to carry out your contracted duties is to make sure that your private sessions are restricted to days when you do not have a commitment to the HSE.*

*This permission is subject to your continued compliance with your contractual commitments.*

5. Example of a refusal of permission:

*The application was “to work as Clinical Director of the Healthhub Private Hospital as an employee of that Hospital”. During our discussions, you indicated that this is a role that can be done outside your contractual commitment to the HSE, and that the time commitment for the Healthhub role would be 20 hours per week. I pointed out that your core working hours for the HSE are 37 hours per week and that you have some additional commitments to the HSE on top of that core commitment (including working a 1:3 on call rota). I asked if you could take on the role with Healthhub with a lower time commitment but you said that this time commitment is non-negotiable.*

*I have decided to refuse the permission that you have requested, for the following reasons.*

- *The time commitment that you would have in the role would be likely to result in a breach of section 33 of the Organisation of Working Time Act 1997. The total time commitments between your two contracts would be far greater than 48 hours per week on average and you would also be in danger of not being able to take adequate daily and weekly rest.*
- *The time commitment for the Healthhub role would not be consistent with the protection of patient health and safety because your excessive aggregate working hours would put you at risk of being fatigued during time when you are treating patients.*
- *The time commitment for the Healthhub role would not be consistent with providing and maintaining safe and efficient working conditions for you and your colleagues in the HSE, also because your excessive aggregate working hours would put you at risk of being fatigued during time when you are treating patients.*

*I considered granting you permission to take the Healthhub role subject to the restriction that your aggregate working hours would be compliant with the Organisation of Working Time Act 1997. However, you indicated that it would not be possible for you to take this role with anything less than a 20 hours per week commitment. Therefore, there is no restriction that would address my concerns, and I believe that the appropriate decision is for me to refuse your application.*