

Consultant Contract Implementation

**Guidance to health service management on
the implementation of Consultant Contract
2008**

25th July 2008

Purpose of guidance

Please note that this guidance is to health service management only. It is intended to clarify a range of issues associated with the transition to a new Consultant Contract and will be amended as is necessary over coming weeks.

This guidance does not in any way supersede the terms and conditions of Consultant Contract 2008.

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1. Entitlement to offer of Consultant Contract 2008

Consultant Contract 2008 should be offered to all Consultants in employment on or after the 1st June 2008, including permanent, temporary or locum Consultants. Consultants on historic rest days on or after 1st June 2008 and Consultants who retired on or after 1st June 2008.

The offer must be documented and the required form (attached to this guidance) must be returned to the HSE Consultant Appointments Unit – ideally by email to consultant.applications@hse.ie.

2. Consultant Contract 2008 only contract to be offered

All permanent Consultant posts approved since April 2007 have been offered on new contract terms. From 25th July 2008, all locum, temporary or specific purpose posts are to be offered on Consultant Contract 2008 only.

Locum and Temporary Consultant posts will be structured as Type A or Type B. Type B* is a contract type only available to holders of Consultant Contract 1997 and will not apply to locum posts.

3. No amendment of terms of contract

The terms and conditions set out in Consultant Contract 2008 apply to all Consultants accepting an offer of the Contract – whether new entrants or existing employees. The terms and conditions of Consultant Contract 2008 cannot be amended by local agreement.

4. Joint appointments

The HSE will continue to structure joint appointments under Consultant Contract 2008 and regarding replacement posts, will work to ensure that the funding is allocated to the employer with the majority scheduled commitment.

5. Job descriptions

Job descriptions applying to posts approved under Consultant Contract 2008 must be consistent with Section 12 of the Contract – ‘Standard duties and responsibilities’. They may, however be more specific than Section 12.

The provisions of Consultant Contract 2008 supersede existing Job Descriptions – so should a Consultant accept an offer of Consultant Contract 2008 it may be necessary to amend the existing Job Description accordingly.

6. Acceptance of a Consultant post by a set date

Following an advertisement and recruitment process, an employer may offer a Consultant post subject to the successful candidate's taking up duty by a set date. Were the candidate not to take up duty, the offer may be considered void as the date for taking up duty is one of the terms of the offer.

7. Review of Probation

Section 3 (g) of Consultant Contract 2008 provides for a formal review of the Consultant's probationary period. This should be carried out by the Clinical Director or, if not in place, the Employer with clinical advice from Consultants in the relevant speciality.

8. Verifying the delivery of contractual commitments

Section 12 (a) of the Contract requires the Consultant to "participate in development of and undertake all duties and functions pertinent to the Consultant's area of competence, as set out within the Clinical Directorate Service Plan and in line with policies as specified by the Employer". This is a general provision which points to the Clinical Directorate Service Plan as the key tool for documenting the Consultant's commitments.

Additionally, the Contract make explicit provision for verification / validation arrangements at Section 4 (b) "Both the Consultant and the Employer shall co-operate in giving effect to such arrangements as are put into place to verify the delivery of the Consultant's contractual commitments" and at Section 12 (l) where the Consultant's standard duties include "To participate in and facilitate production of all data/information required to validate delivery of duties and functions and inform planning and management of service delivery".

These provisions allow that employer to introduce such arrangements as are necessary to verify the delivery of contractual commitments.

9. Reporting relationships

Section 6 of the Contract deals with reporting relationships. This section applies to all Consultants – whether permanent, locum or temporary. It states that the Consultant reports to the CEO / General Manager / Master via the Clinical Director – where such is in place. In the absence of a Clinical Director, the Consultant reports directly.

Consultant Psychiatrists report both to the Clinical Director and the Local Health Manager.

The Hospital Network Manager or Assistant National Director HSE PCCC Directorate may require the Consultant to report to him/her from time to time.

Appendix IV of the Contract states that "Clinical Directors report to (in a voluntary hospital or agency: the Chief Executive; under the Health Service Executive: the Hospital Manager, the Hospital Network Manager, the Local Health Manager or the Assistant National Director, HSE PCCC Directorate, as appropriate."

10. Number of Clinical Directorates and appointment of Clinical Directors

The number and specialty / sub-specialty configuration of Clinical Director posts is being discussed at national level at the current time and further guidance will issue in the coming weeks.

The Clinical Director role set out in Consultant Contract 2008 differs from existing clinical directorate and related roles. The relationship between new and existing roles and positions is also being addressed at national level.

Consultants must accept Consultant Contract 2008 if they are to be appointed as Clinical Directors.

11. Converting Sessions into hours under Consultant Contract 2008

A table attached to this Guidance details the conversion of existing sessions under Consultant Contract 1997 into hours under Consultant Contract 2008.

12. Structured commitments in excess of 37 hours

Section 7 (c) ii of Consultant Contract 2008 provides that

“the Consultant rostered on-call may be required to provide a structured commitment on-site of up to 5 hours on a Saturday and / or 5 hours overtime on a Sunday and / or 5 hours on a public holiday. Consultants on onerous on-call rosters¹ shall not be expected to deliver the upper end of this requirement as determined by the Clinical Director. The Consultant’s liability for on-call outside such structured or other scheduled overtime hours will continue to apply.”

The Employer is the sole decision-maker as to whether such structured commitments are required. In the absence of agreement from the Employer to such structured overtime, normal on-call or emergency cover arrangements apply.

It should be noted that while the Employer may request the Consultant to provide additional structured commitments in addition to the 5 hours on Saturdays, Sundays or public holidays, the Consultant is not required to provide such services.

13. Payment for other work in excess of 37 hours

Section 7 (b) of the Contract states that “If the time worked consistently and significantly varies from the scheduled commitment, there will be a review of the commitment to ensure that the Consultant is not working regularly in excess of or less than the 37 hour weekly commitment.” A review is required – not payment.

Section 7 (b) states that “where the commitment is being unavoidably exceeded for reasons of a temporary nature, local arrangements will be made to compensate the Consultant concerned”. In such temporary, unavoidable, circumstances, payment may be made.

This closely follows a provision of the 1997 contract (at Section 2.11.4 of the Memorandum of Agreement): “If the time actually worked on a scheduled session consistently and significantly varies from the notional three hour commitment, there will be a review of the scheduled commitment to ensure that the consultant is not working regularly in excess of or less than his weekly scheduled commitment. Where the commitment is being unavoidably exceeded for reasons of a temporary nature, local arrangements shall be made to compensate the consultant concerned.”

However, unlike the 1997 Contract, Section 7 (b) should be read in conjunction with Section 7 (d), which states “As a senior professional employee, the Consultant may be required, from time to time, to work beyond his/her rostered period in line with the exigencies of the service. The employer will endeavour to ensure that this will be an exceptional rather than a standard requirement.”

In summary, if the 37 hour scheduled commitment is regularly exceeded a review is required. If, for temporary reasons, the commitment is unavoidably exceeded – local

¹ Only on-call rosters of 1:4, 1:3, 1:2 or 1:1 are regarded as onerous.

arrangements can be made to compensate the Consultant. Due regard must be given to clause 7 (d) in this context.

14. Duties and responsibilities relating to NCHDs

Section 12 (h) of Consultant Contract 2008 states that one of the Consultant's standard duties is "to ensure in consultation with the Clinical Director that appropriate medical cover is available at all times having due regard to the implementation of the European Working Time Directive as it relates to doctors in training.

Section 12 (i) requires the Consultant "to supervise and be responsible for diagnosis, treatment and care provided by non-Consultant Hospital Doctors (NCHDs) treating patients under the Consultant's care"; and Section 12 (k) requires participation "as a right and obligation in selection processes for non-Consultant Hospital Doctors and other staff as appropriate."

This section commits the Employer to providing training as required. The nature of such training is at the Employer's discretion.

15. Consultative structures

Section 17 of Consultant Contract 2008 deals with consultative structures – including medical boards and the role and support for same. It makes no provision for remuneration for those individuals holding such representative or consultative roles.

16. Rest days

Section 18 (j) of Consultant Contract 2008 states that:

"Rest days should be taken as soon as possible following the on-call liability to which they relate. Where service demands do not permit them to be taken immediately, rest days may be accumulated:

- for a maximum of six months from the earliest date of the on-call liability to which they relate and at that point they must be availed of or forfeited, or
- for a maximum of three months from the earliest date of the on-call liability to which they relate. If it is not possible to avail of them at the end of the three-month period the Consultant may seek to be compensated for them at a rate equivalent to the daily rate for the type of post which (s)he occupies."

In any case, rest days not taken at the end of a six month period from the earliest date of the related on-call period are forfeit.

The purpose of rest days is to compensate for the provision of on-call, emergency services to the hospital / agency, over and above the scheduled hours.

By definition, when the Consultant is on leave (annual, sick, parental, study or otherwise), no on-call or emergency duties are undertaken and no compensatory requirement regarding terms of rest days or C factor payments applies.

Employers should therefore ensure that Consultants are provided with rest days on a pro-rata basis taking account of leave taken in the relevant period.

Regarding joint appointments or instances where the Consultant has a commitment to two or more sites, rest day entitlements should be applied on a pro-rata basis to the

Consultant's on-call rota in each site. For example, where a Consultant has commitments to two sites – where a 1:4 rota applies to their 7 sessions on one site and a 1:3 rota applies to their 4 sessions on the other – the rest day entitlement should be calculated on a pro-rata basis to the number of sessions on each site and related on-call rota.

17. Public holiday entitlement and related labour court decision

Section 18 (d) of the Consultant Contract 2008 addresses public holiday entitlements. When calculating such entitlements, employers should have regard to the decision of the Rights Commissioner in Case no. WT16546/03/MR (available on request).

18. Annual leave

Section 18 (c) of the Consultant Contract 2008 notes that the Consultant's annual leave entitlement is 31 working days per annum and as determined by the Organisation of Working Time Act 1997.

The Organisation of Working Time Act 1997 allows for the calculation of annual leave on the basis of hours, weeks (where a working week is equivalent to the number of days an employee usually works during a week) or portions of a week.

Employers should make provision for annual leave to be calculated in hours where possible.

19. Special, Course, Conference leave

Section 18 (g), (h) and (i) deal with various types of leave which may be granted to the Consultant at the employers discretion.

20. Cross vs. locum cover

Section 19 of the Contract deals with cross and locum cover. The factor distinguishing cross from locum cover is the extent to which the Consultant requested to provide cover is required to undertake the scheduled duties of the absent Consultant.

Should the Consultant be required to undertake the scheduled duties of another Consultant during their absence this may be regarded as 'locum cover'.

21. Salary increments

Section 23 (a) to (d) of Consultant Contract 2008 set out salary arrangements. The increment relating to salaries for new appointees should be paid on an annual basis.

22. Telecommunications

Section 23 (h) of Consultant Contract 2008 states that the "Consultant shall be reimbursed either the cost of home or mobile phone rental". Where possible, the employer should make provision for same on a corporate basis.

23. Existing remuneration arrangements

When offering Consultant Contract 2008, the employer may exercise discretion as to whether the Consultant is requested to continue providing services additional to their contractual commitments or whether to continue with payments additional to standard salary and other payments made under Consultant Contract 1997.

24. The volume of private practice

Section 20 of the Contract provides that the volume of private practice may not exceed the (ratio of 80:20 or 70:30 of public:private practice depending on whether the Consultant held the Consultant Contract 1997) in any of the Consultant's clinical activities including inpatient, day-patient and outpatient..

The volume of practice refers to patient throughput adjusted for complexity through the casemix system.

The volume of practice does not include non-clinical activities, nor does it apply to time.

25. Entitlement to private practice during scheduled 37-hour week

The 37 hours represents the salaried commitment to the public health service.

Consultants entitled to private practice may:

- attend private inpatients in the public or co-located private hospital during this period.
- attend private daycases in the public or co-located private hospital during this period
- attend private outpatients in private rooms on the public hospital campus or in locations off the public hospital campus outside the 37 hour period – with regard to two sections of the contract:
 - Section 7 (a) of the Contract provides that the Consultant is not obliged to work more than 8 hours in any one day and that this be delivered in a single, continuous episode. This should preclude attendance at private rooms during this scheduled 8-hour period.
 - Section 21 of the Contract provides that Consultants entitled to private practice in locations outside the public hospital campus may engage in such private practice subject to them “fully discharging their aggregate 37-hour weekly standard commitment as required by the Employer”.

26. Employer to make provision for off-campus facilities for outpatient private practice

The Contract states (at Section 21, Consultant Contract Type B, c)) that “Where a Consultant holding Contract Type B cannot be provided with facilities on the hospital campus for outpatient private practice the employer shall make provision for such facilities off-campus, on an interim basis, pending provision of on-campus facilities.” The nature of such provision is unclear and will require further discussion at national level. Nevertheless, it will involve the employer supporting, in some way, the provision of facilities off-campus if on-campus facilities are not available.

27. Charging for use of public facilities

The Employer should have a policy regarding the use of public facilities by staff pursuing private business interests. While such a policy could provide for charges, the employer should be consistent in its application of charging – it should apply to staff equally and from a set date.

28. Application of ethics in public office requirements to existing Consultants

Section 30 (e) of Consultant Contract 2008 does not apply to those existing postholders who were appointed under Consultant Contract 1997 or prior to 29th October 2007.

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Consultant Contract 1997 sessions converted to Consultant Contract 2008 hours

Consultant Contract 1997 Sessions	Consultant Contract 2008 hours & minutes rounded to nearest half hour	Consultant Contract 1997 Sessions	Consultant Contract 2008 hours & minutes rounded to nearest half hour	Rounding to nearest half hour means:
1	3 hours, 30 minutes	10	33 hours, 30 minutes	minor commitment gains 8 minutes,
2	6 hours, 30 minutes	9	30 hours, 30 minutes	minor commitment loses 14 minutes,
3	10 hours	8	27 hours	minor commitment loses 5 minutes,
4	13 hours, 30 minutes	7	23 hours, 30 minutes	minor commitment gains 3 minutes,
5	17 hours	6	20 hours	minor commitment gains 11 minutes
5 1/2	18 hours, 30 minutes	5 1/2	18 hours, 30 minutes	no change
6	20 hours	5	17 hours	minor commitment gains 11 minutes
7	23 hours, 30 minutes	4	13 hours, 30 minutes	minor commitment gains 3 minutes
8	27 hours	3	10 hours	minor commitment loses 5 minutes
9	30 hours, 30 minutes	2	6 hours, 30 minutes	minor commitment loses 14 minutes,
10	33 hours, 30 minutes	1	3 hours, 30 minutes	minor commitment gains 8 minutes,
11	37 hours	0	0 hours, 0 minutes	no change