IMO Summary and Guide on the Proposed New Consultant Contract

In May 2021 Government announced its intention to "consult" with the IMO on the terms of a new consultant contract which was issued at that time. The IMO strongly opposed this "consultation process" and steadfastly defended the negotiating rights of members. Following this a "Terms of Reference" for actual negotiations were agreed and an independent chair appointed, and negotiations began in Autumn 2021. The IMO negotiating team was made up of consultants on various types of contracts – pre and post 2012 and a trainee representative – and covered various specialties.

The positions taken by, and the terms proposed by the State in the May 2021 draft contract were wholly unacceptable, unworkable and unrealistic. The IMO engaged extensively with consultants and trainees across all specialties including those overseas. Following this it was clear that the crisis in recruitment and retention would be considerably worsened if those terms were introduced and the draft contract was overwhelmingly rejected.

During the initial phases of the negotiations the State attempted to:

a) Exclude consultants from the restoration of hours across the public service and
b) Renege on consultant entitlements for the full reversal of FEMPI cuts

Again, the IMO opposed the State's position in this regard and insisted that these legitimate entitlements be confirmed before talks could recommence. The restoration of hours to 37 hours a week, in line with the provisions of public sector agreements and the restoration of salary were confirmed and talks recommenced in June 2022.

With a backdrop of more than a decade of inequitable and toxic pay policy leading to the deepening crisis in consultant recruitment, along with the need to take High Court proceedings to vindicate consultant contractual terms the negotiations were extremely challenging.

While the State sought to pursue ideology over reality, the IMO focused on:

- the need to develop a contract that is capable of recruiting sufficient numbers of consultants to safely deliver patient care
- addressing the inequitable two tier pay system

The State's opening position contained proposals that would have seen consultants:

- Providing a 24/7 routine service in addition to on call commitments
- Delivering those services at any location other than your place of employment at the complete discretion of management
- Being compelled to work additional hours at the discretion of management and receiving no pay for any additional hours that the service required
- Working under very restrictive policies in terms of advocating for patients and services
- Having limited rights to their own Intellectual Property
- Barred from practising medicine other than in public locations as directed by the employer

Your IMO Team has committed significant time and effort to the negotiations and while some of the more grievous clauses have been removed or protections put in place, we do wish to highlight the significant changes that are incorporated in the new contract.

HOURS OF WORK AND PRINCIPLES OF ROSTERING

Summary of Contract Provisions

Hours of work are dealt with under Section 13 of the proposed contract and should be read in conjunction with the Principles of Rostering

- Core hours are 37 hours per week

- Core hours can be rostered over
  Monday to Friday between the hours of 8am and 10pm and
  Saturday between the hours of 8am and 6pm

- Where the consultant is requested by the employer to provide hours in addition to their core hours beyond 10pm Monday to Friday and 6pm Saturday then overtime rates will apply in line with prevailing rates. (Time and a half Monday to Saturday – Double Time Sunday and Bank Holidays)

- Only with express agreement of employee can core hours be rostered beyond 10pm Monday to Friday and beyond 6pm Saturday – up to midnight. Where these are core hours rostered with the agreement of the consultant, they will NOT incur overtime payments as they will be within the 37 core hours per week. However, where such rosters are agreed the hours between 8pm and midnight (Monday to Friday) and 6pm and midnight (Saturday) will be regarded as "twilight working" and attract the prevailing rate for such hours (Time and one sixth). So, for example if you work 6 of your core hours during this period you will receive extra hours pay on top of your 37.

- Rosters will be completed in accordance with a work plan. Any change will be subject to a 3-month notification period by the Employer.

Summary of Principles of Rostering

The Principles of Rostering, while not an appendix to the contract, may be used to bring a grievance in relation to unfair or inappropriate rostering.

The key principles to note are as follows:

- Work scheduling, including core working hours, any on-call commitments and /or additional scheduled commitments, will aim to achieve equitable distribution of schedules so far as is reasonably practicable. This will include a reasonable and fair distribution of work at weekends, on public holidays and in late evenings.
- Rosters will be designed to ensure that there are sufficient and appropriately skilled staff roster to work and other resources are available, in order to provide appropriate high-quality patient care and to meet anticipated service demands.
- Rostering processes should ensure that consultants who are employed on the basis of the 2022 contract are rostered fairly when considered in relation to colleagues who are employed on the basis of previous contracts.
- Rosters will make appropriate provision for adequate personal CME, CPD and medical training of medical students and NCHDs, multidisciplinary team meetings, committees etc.
- Rostering practices should be base don cooperation in order to promote fairness in rostering and to deliver appropriate care to patients.

- Rostering practices should ensure that rostered hours and on-call commitments are aligned.
- Except in urgent and emergency circumstances, it is the intention that rosters will be scheduled for at least a 12-month period. Should rosters need to be changed, a minimum notice period of 3 months will apply.
- In order to maximise capacity, the health service will move towards a six-day working week as resources allow. This move will be incremental, and its implementation will follow recruitment of sufficient numbers of consultants on the 2022 contract.
- To facilitate this innovation consultants will be rostered on Saturdays as part of their 37-hour week. Rosters involving Saturday working will be implemented after a) the signing of 2022 contracts by a sufficient number of consultants and b) as ancillary services and staffing are put in place to support these new working arrangements.
- There will be at least 2 consecutive days each week on which the consultant is not rostered to work.
- Consultant will not be rostered for split shifts or for more than 12 hours in one shift.

IMO COMMENTS:

While the employer sought core hours of 39 per week and the ability to roster core hours 24/7, the above does represent significant change to working patterns of consultants. When considering whether to switch contract or take up a post in the health services it is important that each individual understands the employer obligations in relation to rostering in line with the contractual provisions and the principles of rostering.

Specifically:

Current contract holders will have a right to receive an indicative rostering plan in advance of taking up the new contract.

In terms of posts for new applicants the employer will include the number of proposed indicative rostered Saturdays in the Job Description. At the time of signing the contract the employer will outline the number of rostered Saturdays and details regarding evening and on-call commitments that the consultant will be reasonably expected to undertake in the job plan.

Rosters are required to be developed on the principle of fairness in relation to the balance of those on the new or older contracts so as to ensure that onerous hours are not unfairly worked by those on the new contract.

Rostered hours must ensure that there are sufficient numbers of consultants, other staff and services available so as the consultant is rostered at times that enable them to do their job.

Given the workforce crisis and the number of vacant posts it will be important for individuals to agree their rosters in line with the reality of the service capability including the need to have other staff available.

Under clause 14.3.4 where additional hours are requested by management, over and above your 37 hours that these will attract overtime.

The IMO Team are there to assist you with in terms of guidance and advice both in terms

LOCATION

Summary of Contract Provisions

Location is dealt with in Section Eight of the contract.

- From the commencement date the consultant's place(s) of work will be detailed.
- Places of work may be in the Community Care Service, Primary Care Service, Hospitals or Other Locations but must be in line with the HSE letter of approval.
- Where the consultant role is split between two or more locations all those locations will be listed in the contract.
- The consultant agrees to work in multiple sites in acute and/or community settings or to change their normal place(s) of work:
    - further to transfers of services between places, the relocation of care to the community having regard to clinical programmes, models of care and reformed care pathways and/or other structural changes in the manner in which the Employer's services are delivered, provided that such changes will be effected after the Employer engages in its normal consultation processes with bodies representative of consultants; and/or
    - on an individual basis based on service needs provided that the Employer will consult the Employee before giving effect to any such change on an individual basis; and/or
    - for short periods of time (up to a small number of weeks) and in exceptional circumstances, as decided by the Employer having regard to the needs of the services.

HOWEVER

- The Employer will have regard to the Employee's individual circumstances before changing the Employee's normal place of work further to the preceding paragraph.
- The Employer will comply with public service agreements that are for the time being in effect and that relate to changing the normal place of work.
- The Employee will be available to respond readily to clinical or service needs at the places specified in this clause.

IMO COMMENTS:

The original intent of the State was to mandate consultants to relocate at the sole discretion of the employer. Notwithstanding the protections that have been negotiated it will be important to strictly monitor attempts by the employer to make unreasonable demands on consultants.

Any long-term change to other services will require a consultation process with consultants and must take into account the individual circumstances of the consultant and impact of any change.

Short term relocation can only be exceptional in nature and for short defined periods of time no more than a small number of weeks – such relocation cannot be routine in nature.

Travel time to other locations must be incorporated into core hours.

Distance and payment of travel arrangements are in line with prevailing public service agreements.

Maximum limit for redeployment is currently 45Km.

REPORTING RELATIONSHIPS

Summary of Contract Provisions

Reporting Relationships is dealt with under Section Nine of the contract however has an impact on many other areas of the contract including work plans, rostering, performance reviews, relocation, locum cover, granting of permission for external work and advocacy.

- The consultant will report to a line manager who will be a Clinical Director or Executive Clinical Director

- Where there is a vacancy for the role or a change in structure the role must be filled by a person who is:

  (1) Qualified to fill the relevant clinical director role or
  (2) The CEO of the relevant hospital group, or the chief officer of the relevant CHO or such a person who holds an analogous role as the chief officer.
  (3) Where the location is not a HSE site then the CEO of the site

IMO COMMENTS:

The original position of the State was to have the consultant reporting to whomever the employer mandated at any given point in time.

Clearly this was unacceptable given the nature of the role of the consultant and the obligations of both the consultant and the employer contained within this contract.

Importantly within this contract the consultant will have a primary reporting line notwithstanding how many sites they work across. While it is always beneficial that any issues around resourcing and staffing can be agreed locally it will be the responsibility of the Reporting Clinical Director to resolve issues.

Given the ongoing restructuring of the health services the contract provides for a suitable line of reporting.

LOCUM COVER

Summary of Contract Provisions

Locum Cover is dealt with under Section Twenty of the contract.

- Where there are planned or unscheduled absences of consultants the Clinic Director/Executive CD/Line Manager will determine the requirement for locum cover and make the necessary arrangements based on clinical need.

- Every effort will be made by the employer to ensure there is cover provided.

- In exceptional circumstances (meaning circumstances that are unusual and that pertain for a limited duration) where either sufficient cover cannot be provided or appropriate locum cover obtained, the CD may request existing consultants to undertake the urgent and emergency work of an absent colleague. This request will have regard to such consultant's own work commitment.

IMO COMMENTS:

The State's expectations in this regard ignored the number of vacant consultant posts within the system, the onerous service requirements and the scarcity of suitably qualified locums.

While noting protections within the contract it is, in the view of the IMO, wholly unacceptable to place additional and significant clinical responsibility upon consultants except in very limited situations.

The State will not pay for consultants who are covering for colleagues and any attempt to burden consultants within the service with additional work and in the absence of serious efforts to find and fund locum cover will be challenged.

Unless such cover is required for a very short period of time the IMO believe there is always a requirement to source and fund a locum.

Additionally, in considering the ask of colleagues to cover even for urgent and emergency work of an absent colleague the workload of that consultant and the impact on their own patients must be considered.

EXTERNAL WORK

Summary of Contract Provisions

External Work is dealt with under Section Twenty Four of the contract. This is a complicated section and where a consultant wishes to avail of this provision it requires detailed consideration of all the clauses within this section. In summary:

- Under the terms of this contract all contract holders will have a right to seek permission for external work (work undertaken in sites not operated by the employer).
- Any permission will not be unreasonably withheld.
- The process of granting permission will be within 3 months of the application by the consultant to the Clinical Director.
- The consultant is obliged to meet all commitments under the new contract including rostered ours, on call commitments etc and ensure that the performance of all contractual obligations is not adversely affected by external work.
- The employer may grant, refuse or restrict such external work only if the employer is satisfied that such refusal or restrictions are reasonably required under a range of headings including
    - the protection of patient health and safety;
    - providing and maintaining safe and efficient working conditions;
    - the protection of the integrity of the public health service;
    - the avoidance of conflicts of interest;
    - compliance by the Employer and/or the Employee with any applicable statutory or regulatory obligations;
    - compliance by the Employee with any professional standards for the time being in force in respect of the Employee;
    - implementing and achieving the State's public healthcare objectives as established from time to time, including the delivery of Sláintecare and a universal healthcare service in which patients are treated on the basis of health needs; and the mitigation or avoidance of inefficiencies and inequalities in the delivery of public healthcare services.
- Such permissions may be modified or revoked.
- The consultant may not (except as expressly permitted by the Employer):
    - engage in any private medical practice at any location operated by the Employer; or

- 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.

- Decisions in relation to the granting, restricting or refusing of permission for external work may be appealed to an Independent Appeals Committee comprised of:
    - a member of a panel of persons nominated by representative bodies (IMO and IHCA)
    - a member of a panel of persons nominated by HSE management and
    - an independent Chair from a panel nominated by the representative bodies (IMO and IHCA) and HSE.

- The appeals process is in lieu of the Grievance Procedure and once the matter has been addressed by the appeals process it may not then be subject to a further hearing under the Grievance Procedure.

The following activities do not require permission under the above process:

(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.

IMO COMMENTS:

The State's opening position in relation to external work was completely unrealistic in terms of the prohibitive restrictions to be imposed on the practice of medicine by consultants. Such a position would have impacted negatively:

- **On the potential for the HSE to recruit or retain consultants to work in the public system.**
- **On the skills mix and range of services available to patients across the system both public and private.**
- **On the ability of either system to have a sufficient complement of consultants to deliver services to patients given the global shortage and the reliance of the public system to purchase care from the private system given the underfunding of our health services.**

Such restrictive practices by the State would also, in our view, have contravened European law which is due to be brought into legislation in Ireland.

In negotiations the State have been clear in their position that once the consultant has delivered their contract obligations there should be no impediment to the granting of permission for external work. However, there are processes yet to be agreed and a range of criteria on which the employer can rely in the process in terms of granting, restricting or refusing.

Important features of this contract, particularly given the very challenging process for change of contract type in the current contract, are:

- **The seeking of permission for external work is made and decided locally by the Clinical Director**
- **In the event of restrictions, modifications, withdrawal or refusal the consultant has the right to appeal that decision**

The IMO strongly recommend that all consultants, considering switching contract or those applying for posts as new consultants, who wish to avail of external work, make such applications and agree the nature of external work provisions before switching/signing contract.

The IMO will provide advice through all stages of this process from application up to and including representing consultants who wish to appeal the nature of any decision.

PROVISIONS FOR CONSULTANTS WHO ARE TRANSITIONING FROM AN EARLIER TEMPLATE CONSULTANT'S CONTRACT

Summary of Contract Provisions

Transition arrangements are dealt with in an Appendix to the Contract and the following are the key points to note:

- All current contract holders are eligible to seek transition to the new contract but there is no obligation to do so.
- Where the new contract is signed on or before 31 December 2023 the transitional period will be until 31st December 2025.
- The starting salary will be set at the point of the scale applicable to the current contract e.g.
    - if the Employee was being paid on the first point of the scale applicable to the preceding contract, then the Employee will, from the date of making of this contract, be paid on the first point of the scale applicable to this contract;
    - if the Employee was being paid on the second point of the scale applicable to the preceding contract, then the Employee will, from the date of making of this contract, be paid on the second point of the scale applicable to this contract; and so on.
    - The next incremental date will be the date that would have been the next incremental date under preceding (current) contract

- In circumstances where the consultant has current on-site private practice rights the following will apply from the date of signing the contract, if signed before 31st December 2023, until 31st December 2025:
    - The volume of on-site private practice in which the Employee is entitled to engage by the end of 2024 may not exceed 10% of the Employee's workload in any of their clinical activities, including in-patient, day-patient and out-patient.
    - The volume of on-site private practice in which the Employee is entitled to engage by the end of June 2025 may not exceed 5% of the Employee's workload in any of their clinical activities, including in-patient, day-patient and out-patient.
    - The Employee must cease all on-site private practice by the end of 2025.
    - Throughout the transitional period the Employee will take appropriate steps to ensure an orderly wind-down of such of their on-site private practice.

- In circumstances where the consultant signs the new contract after 31st December then the private on-site private practice must decrease to zero before 31st December 2025.

- If, during the period of 12 months immediately following the making of this contract, the Employee suffers a financial loss in respect of their B and C factor on-call payments arising from the restructuring of their working times, as a result of transitioning from the preceding contract to this contract, they will be entitled to a payment equal to 1.5 times the value of that loss during that period. This will be a once-off payment and will be subject to tax and other statutory deductions. The amount of the payment will be calculated by the Employer in line with established public sector norms.

- Where the consultant has applied for but not availed of historic rest days under current contract those entitlements will be retained and may be availed of during the term of the new contract.

- By signing the new contract, the consultant warrants (without prejudice to the obligation of the Employer to comply with the provisions of this Appendix) that, except as expressly notified to the Employer prior to signing;

a) the Employee has no outstanding claims or disputes with the Employer (whether in the form or litigation or otherwise) arising from the preceding contract and
b) the Employee is not aware of any circumstances on which any such claim or dispute
c) could be based.

IMO Comment:

The IMO advised the State that we have serious concerns around the time limitations on the transitioning arrangements not least of which is the continuity of patient care and the replacement of lost private income to the public system.

When making a decision in relation to switching to the new contract, current contract holders need to assess the impact of these transition arrangements along with all other matters including hours of work, location, viability of external work etc.

The IMO Team strongly recommend you avail of our individual assessment service so as to examine all aspects of transitioning particularly in circumstances where consultants hold current on-site private practice entitlements.

CONTINUOUS MEDICAL EDUCATION/CONTINUING PROFESSIONAL DEVELOPMENT

Summary of Contract Provisions

This is dealt with under clause 17 of the Contract.

The principal change is an increase in the level of funding available for this, from €3,000 per annum to €12,000.

There is the introduction of a new fund of €8,000 per annum pr consultant for innovation research and projects. This funding can be pooled by consultants to work together on projects.

There is provision for the increasing of the CME funding by taking the funding from the innovation funding and vice versa, but always subject to an annual limit of €20,000 and the express approval of the Employer.

IMO COMMENTS:

The State had no initial proposals around changes to Continuous Medical Education.

The IMO sought an increase in the funding available to reflect the actual costs Consultants incur in maintaining and developing their skills and noting no increases had been applied to the allowance since 2008.

When the concept of innovation funding was introduced, the IMO sought the greatest level of flexibility for consultants, concerning both its usage and its interaction with CME funding.

Further clarification is required as to updating the CME policy as to what is claimable, and details of the proposed policy for the innovation funding.

REMUNERATION

Summary of Contract Provisions

This is dealt with under clause 14.

The salary scale in place for this contract is as follows:

1	€214,113
2	€225,686
3	€237,904
4	€244,334
5	€250,763
6	€257,193

The clinical academic scales are as follows:

Professor	
1	€263,167
2	€277,402
3	€292,407
4	€300,316
5	€308,225
6	€316,133
Associate Professor	
1	€246,877
2	€261,113
3	€274,308
4	€282,217
5	€290,125
6	€298,034
Lecturer	
1	€230,662
2	€244,898
3	€256,291
4	€264,200
5	€272,108
6	€280,018
College Lecturer	
1	€226,314
2	€240,550

3	€251,460
4	€259,369
5	€267,277
6	€275,186

Consultants will progress up this scale on an annual basis. For Consultants currently in the system, they will be employed based on their increment point, so for example someone on point 3 of the 2008 or 2012 scale will be appointed at point 3 of this.

Additionally, those holding a consultant post in other jurisdictions will be provided with credit based on years of service upon appointment.

IMO COMMENTS:

As noted above regarding hours, under clause 14.3.4 where additional hours are requested by management, over and above your 37 hours that these will attract overtime.

ON-CALL PAYMENTS AND BENEFITS

Summary of Co7ntract Provisions

This again is primarily dealt with under 14.5.

The B Factor rates for those taking this contract are now as follows:

B factor	
Flat annual payment	€10,200
In addition to the flat annual payment as per rota:	
1 in 3	€2,958
1 in 2	€8,364
1 in 1	€11,016

This is an increase both from the 2008 rates and the post 2012 rates.

The C Factors are as follows:

C Factor (call out):	
Per call out (hourly rate or part thereof)	
First 30 call-outs	€109.85
31 – 120 call-outs	€164.78
121 calls or more	€219.70
If the call out occurs after midnight	
First 30 call-outs	€137.31
31 – 120 call-outs	€205.97
121 calls or more	€274.63
Annual limit	€38,760

The principal change here is the increase in the annual limit.

There are no changes to the Rest Day arrangements which apply to those on an on-call commitment of 1:4 or more onerous.