



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

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HSE HR Circular 012/2007

**To: Each National Director, HSE
Each Hospital Network Manager
Each Assistant National Director of Human Resources.
CEO each Voluntary Hospital/Agency**

Re: Consultant Appointments

Dear Colleague,

I refer to the issue of Consultant appointments.

As you are aware, the Health Service Executive has been negotiating a new consultant contract with the Irish Hospital Consultants Association and the Irish Medical Organisation under the independent chairmanship of Mr. Mark Connaughton, S.C. A new Consultant contract is pivotal to the reform programme. As highly skilled clinicians who occupy key leadership roles within the service, the working arrangements for Consultants have a critical bearing on both the quality and efficiency of how medical care is delivered. The Government has re-affirmed that the new contract should support equality of access to public hospitals for all patients, flexibility in working arrangements, Consultant delivered services, team-working by Consultants, clinical directorships and a clear commitment to the public hospital system.

The Health Service Executive is prepared within the context of the overall contract to agree some flexibility for Consultants to treat private patients. Such private practice must, however, be structure in a way which does not compromise public patient's access to services. Private practice must also be compatible with an equitable and efficient allocation of public funds. It is for these reasons that the Health Service Executive ceased offering Category 2 contracts (where the Consultant may travel away from the public hospital to work in private hospitals or clinics off-site, while contracted to work in the public hospitals).

The negotiations with the IHCA and the IMO stalled on 16th April 2007. While the independent Chairman issued proposals for a framework agreement to the parties after the break down of talks and the parties responded positively to it, to date it has not yet proved possible to establish a basis for conclusion of the negotiations on revised contractual arrangements.

In the interim the health service can not, indefinitely, suspend the recruitment of Consultants, which is vital to health service provision. Nonetheless, the permanent appointment of Consultants on outdated contractual provisions cannot be countenanced.

The Health Service Executive therefore advertised for 68 Consultant posts on 19th April 2007. These and any subsequent Consultant appointments will be on the terms and conditions of the new contracts, which include inter alia:

- Type A (€180k - €205k per annum plus performance related pay but no private practice)
- Type B (€160k - €185k per annum with private practice on the public hospital site only)

It is appropriate to clarify the position on a number of issues which have been raised with the National Human Resource Directorate:

(a) Permanent Consultant posts approved prior to 19th April 2007

A number of new or replacement Consultant posts were approved and advertised prior to 19th April 2007, and are currently at various stages in the recruitment / selection process. These posts may be filled on the basis of the Category 1 contract provided for in the 1997 Consultant Contract. Any such permanent posts not advertised prior to 19th April 2007, fall to be advertised and processed for filling under the new Type A or Type B contract, as appropriate.

(b) Temporary Consultant appointments

Temporary Consultants are employed on a limited fixed term or specified purpose basis to cover a vacancy (approved and funded post which is not incurring a payroll cost). The vacancy may have arisen for a number of reasons, e.g. retirement of the substantive post holder, the development of a new specific initiative, career break, etc. The temporary Consultant is the only individual in receipt of pay in respect of the post.

Temporary Consultants posts will fall to be filled on the basis of the new Type A and Type B contracts, i.e. the same terms and conditions which would apply if the vacant post was filled on a permanent basis. This is to ensure the principle of non-discrimination, i.e. the temporary Consultant is treated no less favourably than the comparable permanent Consultant should the post be filled in a permanent capacity. However, in the light of the requirement to maintain service levels and continuity and in current circumstances the HSE is satisfied to facilitate the filling of a limited number of urgent Temporary posts on the basis of the Category 1 1997 Contract. In any such case the fixed term nature of such contract must specify a termination date no later than 6 months from commencement of the contract. Obviously, should revised arrangements be agreed with the IHCA / IMO in relation to permanent posts the situation, including the salary situation, in relation to temporary posts will be re-examined.

(c) Locum Consultants

Consultants who are employed in a locum capacity are defined as those employed to provide cover for the substantive post holder who is on paid leave or statutory leave. This includes for example, sick leave, annual leave, statutory leave such as maternity leave, parental leave, etc. Locum Consultants are employed in situations which gives rise to two individuals being in receipt of salary in respect of the same post during a period of paid leave or the locum Consultant being in receipt of the salary while the substantive post holder is on statutory unpaid leave.

Locum status does **not** include situations where a locum Consultant is employed to provide cover for career break or other unpaid leave such as long term sick leave or to temporarily fill a vacant post.

Locum Consultants do not have designated substantive posts (there is a substantive post holder in place on a form of paid leave) In the limited circumstances where a Locum Consultant is employed indefinitely, i.e. they provide locum services on a continuous basis without a predetermined timeframe, such individuals **must** be issued with contracts which reflect the 'relief' / 'if and when' nature of their ongoing (i.e. indefinite duration) employment.

Locum Consultants should generally benefit from the same terms and conditions of employment as the substantive post holder in order to ensure the application of the principle of non-discrimination, i.e. locum workers are treated no less favourably than the comparable permanent workers, i.e. the current substantive post holders.

(d) Consultants securing permanent status under the Protection of Employees (Fixed Term Work) Act 2003

The objective of the Protection of Employees (Fixed Term Work) Act 2003 is:

- to improve the quality of fixed term work through the application of the principle of non-discrimination by ensuring that fixed term / temporary workers are not treated less favourably than comparable permanent workers
- to prevent abuse arising from the use of successive fixed term employment contracts by regulating the use of fixed term / temporary employment contracts, and providing for a maximum duration of successive fixed term contracts after which they are deemed to be permanent contracts.

The Labour Court has found that domestic legislation provisions cannot in themselves provide objective reasons for not complying with the provisions of the Act. For example, it cannot be argued that the requirement to fill the post through the Public Appointments Service is an objective ground for retaining the employee continuously on a fixed term basis. To avoid the successive use of fixed term contracts, i.e. continual contract renewals, employees must be issued with a single specified purpose contract. This type of contract will cover the situation regardless of how long the appointment process takes.

Emerging case law is giving rise to situations where Consultant fixed term / temporary contracts of employment are being deemed to be contracts of indefinite duration under the provisions of the Protection of Employees (Fixed Term Work) Act 2003. Where this occurs the legislation provides that the 'offending' term (i.e. the fixed term or temporary section) is severed from the contract, thus altering its status from one of definite duration to one of indefinite duration. All other contractual terms and conditions remain the same, i.e. reporting relationship, duties, salary, etc. Thus, a Consultant securing a post under the legislation at this time will fall to be appointed in accordance with the provisions of the 1997 Consultant Contract. Any Consultant level post filled on this basis is considered an addition to the national stock of Consultant posts. The issue of whether it has previously been 'approved' or 'regulated' is inconsequential in these circumstances.

All Consultant and related posts, new or replacement, permanent or temporary can be advertised only when properly approved in accordance with the National Service Plan, the HSE's 2007 Employment Control Framework, approval at NHO/PCCC national level and by the Consultants Appointments Unit.

Yours sincerely,



Martin Mc Donald,
National Director of Human Resources.