

Assessing what constitutes temporary and occasional practice

We assess each case individually. The Directive requires us to have regard to the duration, regularity, continuity and frequency of the intended pharmacy practice. These criteria are common across all professions covered by the Directive.

We use the criteria to inform our assessment about whether the intended practice is temporary and occasional in nature. No one criterion is considered in isolation from the others in order to ensure that we take an overall view of the nature of the intended practice.

Duration

Duration refers to both the length of time that:

- a specific individual role lasts, and
- all the roles to be undertaken within a year will last when combined.

We therefore consider the start and end dates of the intended practice for each role, as well as the total period that the pharmacy professional will spend practising in the UK.

A total period of practice of less than one month in a year, when all roles are combined, would be likely to be considered temporary and occasional practice (i.e. the sum of the duration of all intended roles should be less than one month).

Example

A pharmacist visiting the UK on two separate occasions during the year, but only practising for a few days each time, would be likely to be considered by us to be providing temporary and occasional services for the purposes of duration.

Frequency

Frequency is:

- how often the pharmacy professional will undertake the intended practice, and/or
- may also be calculated by the interval between occurrences, over the period of the registration year.

We ask for details about the frequency of the intended practice. The pharmacy professional should tell us whether the practice is a one-off occurrence, the number of hours or days they intend to work, and/or how much time there will be between visits.

If a European pharmacy professional has a permanent part-time contract to provide pharmacy services this in our view would constitute establishment. We would not consider any practice undertaken on a permanent basis to be temporary and occasional.

Three days per month or less would likely be considered temporary and occasional practice. This aligns with the guidance on the Directive issued by the European Commission, which used three days' practice per month as an example of temporary and occasional practice.

Example

We are likely to consider that a pharmacy professional undertaking three posts in the course of a year, lasting for around three days each time, was providing temporary and occasional services for the purposes of duration and frequency (as this constitutes less than a month's total practice, and is around, or less than, 10% of available working time in a month).

Regularity

We need to consider how regularly or irregularly the planned pharmacy practice will be undertaken. For example whether it is likely to be constant, at fixed intervals, seasonal, or with reference to a repeating pattern.

Anything irregular, with no discernible pattern, is likely to be considered temporary and occasional for the purposes of regularity. Any occurrences of practice that follow an obvious pattern on the basis of a specific day of the week, or date or week of the month, or other period of time in the year, would indicate regularity and not be likely to be considered temporary and occasional practice.

Example

A pharmacy professional is engaged to provide locum pharmacy services over the course of three days, on the basis of a repeating pattern throughout the year e.g. on the first week of every month. We are likely to consider that this practice shows regularity (and would therefore be likely to **not** be considered temporary and occasional).

Continuity

We expect temporary and occasional practice to be sporadic, for example a few hours or days interspersed through the year. Continuous practice for more than three days in a row would indicate continuity, so would be likely not to be considered temporary and occasional practice. This refers to each role undertaken separately.

Example

A pharmacy professional visiting the UK to provide pharmacy services to an athletics team competing in a series of athletic fixtures throughout the sporting season, who will be practising for approximately a day or two on each occurrence, will likely fall within our parameters for temporary and occasional practice for the purposes of regularity and continuity (as the fixtures are unlikely to be regular, and there is no continuity with practice only constituting a day or two each time).

The above criteria will all be considered together, so no one factor will determine absolutely how we view the intended practice. We will take a holistic case-by-case approach to our assessment of the intended practice. For this reason it is important that pharmacy professionals intending to provide temporary and occasional services provide us with as much information as possible.

Type/nature of practice

The nature of the intended practice may affect how broadly the criteria will be applied, and whether temporary and occasional registration is appropriate. Some factors that we may consider when assessing the nature of the intended practice include:

- Who the employer is. For example, whether it is a UK organisation, a private organisation within the UK, or whether the pharmacy professional will remain solely employed by their Home State.
- Whether a contract of employment exists and what the conditions of employment are.
- The nature of the pharmacy services to be provided and whether there is to be direct contact with patients.

In some cases it may be appropriate for us to consider the pharmacy practice over the course of several years (that is, where the pharmacy professional has renewed their registration a number of times). A practice that we might consider temporary and occasional in nature for the first year of practice may develop more of a pattern when examined over the course of several years.

Becoming established

A pharmacy professional will no longer be eligible to practice on a temporary and occasional basis if their intended practice is, or actual practice has become, established.

We are unlikely to consider the pharmacy practice is of a temporary and occasional nature if the pharmacy professional:

- is permanently employed
- participating in the economic life of the UK on a stable and continuous basis
- their practice constitutes the actual pursuit of an economic activity, through a fixed establishment, for an indefinite period
- they are practising on a stable and continuous basis and holding themselves out to UK nationals from an established professional base.

A pharmacy professional is able to be established in more than one Member State at a time. This means that establishment in another Member State does not in itself exclude us from determining that a pharmacy professional has become established in the UK.