Agenda item: 6
Report title: Guidance for doctors practising on a temporary and occasional basis
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Action: To consider

Executive summary
The new provisions of the Mutual Recognition of Professional Qualifications Directive 2013/55/EU (‘the Directive’) require us to make it possible for European doctors to make an electronic declaration of their intention to provide services on a temporary and occasional basis. While we have been registering a small number of doctors under this provision for a number of years, we do not currently provide information about this route to registration on our website.

The publication of information about this route to registration will ensure that we are meeting the principles of good regulation by being open and transparent about the options available to doctors. This may however cause an increase in the number of doctors seeking this type of registration.

We have drafted guidance for doctors on what we consider to be temporary and occasional service provision, and our criteria for assessing the nature of the services they intend to provide. The guidance is at Annex A, and subject to the Board’s approval, we intend to publish this on the external website.

Recommendation
The Strategy and Policy Board is asked to approve the guidance for doctors, Temporary and occasional registration: Your declaration of intended medical service provision for publication in January 2016 as part of our online guidance on temporary and occasional practice.
Guidance overview

1. The Directive entitles certain professionals to provide services in Member States other than their Home State on a temporary and occasional basis. From January 2016, the competent authorities in each Member State, such as the GMC, are required to provide eligible professionals with an opportunity to declare their intention to work in the UK on a temporary and occasional basis easily, remotely and electronically. In the interests of transparency, and in order to facilitate doctors making declarations to us as required, we intend to make guidance about the temporary and occasional provision of services in the UK available. Previously these doctors have only been able to make declarations by paper submission, and information about temporary and occasional service provision has not been available online. We anticipate that awareness of this route, and consequently the number of doctors declaring their intention to practise on a temporary and occasional basis, will rise.

2. The GMC has not until now had guidance on what we consider to be practice on a temporary and occasional basis. Developing guidance and principles to inform the making of this decision in the context of the medical profession in the UK is necessary because of the limitations the Directive places on our ability to request information from doctors making a declaration. These doctors do not need to pay a registration fee or revalidate, and we need to ensure that no one practises on this basis when they are not eligible to do so. Our policy has sought to balance compliance with legislation (e.g. the Directive and Medical Act) with our statutory duty to protect patients.

3. The guidance at Annex A explains the factors we will consider when assessing whether the nature of a doctor’s intended practice is temporary and occasional. There is no definition of temporary and occasional service provision within the Directive but some, albeit limited, assistance from case law. In writing this guidance we are aiming to:

- be transparent about what we consider to constitute temporary and occasional service provision
- encourage doctors to make a declaration of intention to practise on a temporary and occasional basis only when appropriate
- help doctors provide us with the information we need to make our assessment.

4. The Directive requires us to assess eligibility on a case-by-case basis, with reference to the duration, frequency, regularity and continuity of the intended practice. As part of their declaration we will be asking doctors to provide us with details of their intended practice, in line with these criteria.
5 The guidance outlines how we will use these criteria, and provides an indication of what pattern of practice we would consider temporary and occasional under each individual criteria. Our interpretation of the criteria is likely to be more stringent than that of many other professions as we must, first and foremost, consider and uphold patient safety.

6 The guidance also explains other factors we will take into consideration. These factors are generally concerned with the type of practice a doctor intends to undertake, and whether this shows any evidence of establishment.

7 In cases where we still do not have sufficient information to make a full and considered assessment, we may follow up by alternative means such as contacting potential employers.

8 We will be monitoring data relating to doctors who hold temporary and occasional registration, to identify where we believe a doctor has become established. For example we will review the information we hold from the NHS Electronic Staff Record, and our data on connections to a Designated Body. We may also seek information from employers of doctors with temporary and occasional registration. We will be reviewing and updating this guidance as we gain experience and learn more about the types of doctors practising on a temporary and occasional basis. Where a doctor decides to renew their declaration after their initial 12 month registration period ends, we will be asking for further information about their intended practice for the following 12 months.

9 We have considered the equality and diversity implications of the policy on what we consider to be practice on a temporary and occasional basis. We are unaware of any groups of doctors with protected characteristics that might be adversely affected by our process for assessing temporary and occasional practice. This is partly due to the very small number of doctors practising on this basis and the limited information we hold on these doctors as a result. We will be monitoring the demographics of doctors practising on a temporary and occasional basis, to identify whether any equality and diversity concerns arise.

10 Subject to the Board’s agreement, this guidance will be published on the external website alongside more general guidance on temporary and occasional practice, establishment, and instructions on how to complete a declaration of intention to provide services on a temporary and occasional basis.
6 - Guidance for doctors practising on a temporary and occasional basis

Temporary and occasional registration: Your declaration of intended medical service provision

1. If you are intending to provide services in the UK on a temporary and occasional basis, you may be eligible for temporary and occasional registration.

2. You must be registered and licensed with us to treat patients in the UK. Registration with a licence to practise is required for a diverse range of medical practice, from direct clinical practice to educational and management roles, and it applies also to practice on a temporary and occasional basis.

3. We can register eligible doctors on a temporary and occasional basis where they have an entitlement under the Mutual Recognition of Professional Qualifications Directive (‘the Directive’), which assists the free movement of professionals between EU Member States. The Directive entitles certain professionals to provide services in Member States other than their Home State, on either an established or temporary and occasional basis.

4. We will need to assess the temporary and occasional nature of your intended provision of services to check that you are entitled to practise on this basis. We do this on a case by case basis. We will ask you to make a declaration about the duration, regularity, continuity and frequency of your intended practice.

5. We assess the information you give us in your declaration. If we conclude that your intended practice is not temporary and occasional in nature, you will not be eligible for temporary and occasional registration. This does not necessarily mean you cannot be registered with us. We will be able to provide you with information about alternative options to register with us.
Your eligibility for temporary and occasional registration

6 To be eligible for temporary and occasional registration with us you must:

   a be a national of a Member State of the European Economic Area or Switzerland, or benefit for these purposes from an enforceable Community right

   b be established in another Member State, by which we mean that you meet all the conditions for practising medicine in another Member State, including that you:

      i are currently registered (and licensed if necessary), and

      ii have no restrictions or prohibitions (including temporarily) on your practice.

   c be intending to provide temporary and occasional services (and willing to make a declaration as such)

   d be physically in the UK when providing the service(s).

7 You cannot be both established and providing services on a temporary and occasional basis in the same country.

8 If your intended practice is not both temporary and occasional in nature then you will not be eligible for this type of registration.

9 You must submit a declaration of your intention to provide medical services in the UK on a temporary and occasional basis, together with the necessary supporting documents.

10 In line with the Directive, we will assess your eligibility by considering the duration, frequency, regularity and continuity of your intended practice.

11 Read more about how to submit your declaration for the provision of services on a temporary and occasional basis.

Your declaration

12 In order to assess the temporary and occasional nature of your intended practice fairly and consistently, we will ask you to supply verifiable information about the services you intend to provide in the UK.

13 You should give as much information as you can about the post, grade, and start and end dates of each role you intend to undertake. Please tell us about the frequency and regularity with which you intend to practise in the UK, including how long you intend to be physically present in the UK (as opposed to merely providing practice dates).
14 We make our assessment on the basis of the information you give us so if you are unable to give us the specific information we have asked for, it is important that you tell us as much as you can about your reasons for declaring your intention to provide temporary and occasional services. We may need to follow up with you to seek further information, for example if what you have provided us with is unclear.

15 Your entitlement to provide services on a temporary and occasional basis ends after a year but can be renewed if you remain eligible. Read more about how to submit a renewal declaration. When renewing, your declaration of intended practice should be informed by your previous experience. You may be able to indicate the duration, frequency, regularity and continuity of your practice based on previous work.

Assessing the temporary and occasional nature of your practice

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

17 We use the criteria to inform our assessment about whether your intended practice is temporary and occasional in nature. No one criterion will be considered in isolation from the others. We take an overall view of the nature of your intended practice.

Duration

18 Duration refers to both the length of time that:

   e a specific individual role lasts, and

   f all the roles to be undertaken within a year will last when combined.

19 We consider the start and end dates of your intended practice for each role, as well as the total period that you will spend practising in the UK. If there is a difference between the period of time you will be physically present in the UK and the period of time you will be practising, and it is possible to distinguish between these, you should do so. We only consider the period of time you will be practising.

20 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 specialist doctor visiting the UK on two separate teaching posts during the year, who is in the UK for a month or longer each visit, but only practising/teaching for a few days within this time, would be likely to be considered by us to be providing temporary and occasional services for the purposes of duration.
Strategy and Policy Board, 1 December 2015

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**Frequency**

21 Frequency is:

a how often you will undertake the intended practice, and/or

b may also be calculated by the interval between occurrences, over the period of the registration year.

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

23 Three days per month or less (or equivalent, i.e. approximately 10% of available working time) would be likely to be considered temporary and occasional practice.

**Example**

We are likely to consider that a doctor 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**

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

25 Anything irregular, with no discernible pattern, is likely to be considered temporary and occasional. Any occurrence taking place more than three times on the same time/day/week would indicate regularity, so would be likely not to be considered temporary and occasional practice.

**Example**

A doctor is scheduled to perform a number of specialised surgeries 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

26 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 rugby team doctor visiting the UK with their team for five matches during the rugby season (and potentially a few extra visits, depending on the team's success), who will be practising for approximately a full day on each occurrence, will likely fall within our parameters for temporary and occasional practice for the purposes of regularity and continuity (as the team's fixtures are unlikely to be regular, and there is no continuity with practice only constituting a day each time).

Type/nature of practice

27 We also consider the following factors, related to the particular nature of your intended practice, in assessing whether you are eligible to provide temporary and occasional services.

   a Where possible we consider who your employer is. For example, whether it is a UK organisation, a private organisation within the UK, or whether you remain solely employed by your Home State.

   b We consider any relevant contract and the conditions of employment, if any exist.

   c We look at whether you intend to be in direct contact with patients, and if so on what scale.

   d We consider whether you will be subject to supervision. For example, are you undertaking a training role?

   e Details about the type of patients involved in your intended practice are also relevant, for example whether they are UK citizens or only citizens of your Home State.

   f In some cases it may be appropriate for us to consider your practice over the course of several years (that is, where you have renewed your 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

28 You will no longer be eligible to practice on a temporary and occasional basis if your intended practice is, or actual practice has become, established.

29 We are unlikely to consider your practice is of a temporary and occasional nature if:

a you are permanently employed

b you are participating in the economic life of the UK on a stable and continuous basis

c your practice constitutes the actual pursuit of an economic activity, through a fixed establishment, for an indefinite period

d you are practising on a stable and continuous basis and holding yourself out to UK nationals from an established professional base.

30 You are able to be established in more than one Member State at a time (meaning that establishment in another Member State does not in itself exclude us from determining that you have become established in the UK).

31 Having an office within the UK does not necessarily mean that you are established in the UK as it is recognised that you may equip yourself with the infrastructure necessary for the purposes of practising.