

Section 6

Regulations and guidance relating to practice

Council statement on engaging in public practice

(Effective from 1 January 2008)

1 If you engage in public practice in the United Kingdom (which, for this purpose, includes the Channel Islands and the Isle of Man) or the European Community (which is the European member states and Iceland, Liechtenstein and Norway) you must hold a practising certificate. If you are in public practice in the United Kingdom or the Republic of Ireland you must comply with the Professional Indemnity Insurance Regulations. A practising certificate holder is also subject to practice assurance as set out in the Practice Assurance Regulations.

2 In order to clarify the scope of public practice, Council has produced this statement and guidance which seek to define when you are, and are not, considered to be engaging in public practice and so in need of a practising certificate. You should consider the contents of the statement and the annexes (annex 1 – public practice and annex 2 – accountancy services) before concluding whether a practising certificate is needed. Your considerations should also cover all the roles that you have as a practising certificate may be needed for any of them.

3 You should read this statement in conjunction with the Continuing Professional Development Regulations and the Learning and Professional Development Regulations set out in the *Members' Handbook*.

4 Definitions used in the statement:

accountancy services	<ul style="list-style-type: none">● the preparation of financial records, returns, statements or information; or● the provision of consultancy or advice concerning accounting, auditing, insolvency or taxation matters; or● the provision of a service that requires a specific licence that the Institute can provide (even if the licence is not obtained from the Institute); or● the representation of a client to/before third parties in matters concerning accounting, auditing, insolvency or taxation
entity	a sole practice, partnership, limited liability partnership, company, other corporate body or any other entity used to provide accountancy services
group	a parent undertaking and its subsidiary undertakings where the undertaking is a body corporate, partnership or an unincorporated association
principal	an individual in sole practice, a person who is a partner (including both salaried and equity partners), a member of a limited liability partnership, a director or a trustee regardless of the role of the member as a principal in that entity or any individual who is held out as being a principal
public practitioner	an entity which provides accountancy services to clients in anticipation of reward where: <ul style="list-style-type: none">● a substantial part of the activities of that entity is the provision of such services; and● if the entity is part of a group, a substantial part of the activities of the group is the provision of such services
substantial part	more than 10% of the total annual turnover of the entity or the group
client	a body or person to whom an accountancy service is provided, except if the accountancy service is provided to another entity in the same group

5 A member is engaged in public practice if he is a principal in:

- a public practitioner; or
- the parent entity of a public practitioner; or
- an entity which is a principal of a public practitioner.

6 A member must hold a practising certificate to be a responsible individual in an audit firm under the Institute's audit regulations or to be a licensed insolvency practitioner who accepts appointments.

Exemptions

7 A member employed by a public practitioner does not, by virtue of his employment, engage in public practice.

8 A member who is employed to provide accountancy services to his employer does not thereby engage in public practice. For the purposes of deciding if a practising certificate is needed, employment includes situations where

the relationship between the member and the recipient of the accountancy services is similar to that of an employer/employee.

9 An employee of a firm of public practitioners who is required by his or her employer to act as a trustee, administrator or the donee of a power of attorney is not subject to the direction of his employer in the exercise of the duties of such an office and, in these respects, acts more as a sole practitioner than as an employee. Nevertheless, since the employee is not holding himself out **personally** as providing services to the public he is not merely by reason of such an appointment engaged in public practice.

10 An ex-principal of a firm of public practitioners, commonly known as a consultant, is not engaged in public practice if he provides accountancy services to that firm.

11 A member is not engaged in public practice if he gratuitously or for a nominal amount (which is in the nature of expenses and does not exceed £500 per appointment):

- provides accountancy services to a small charitable, community, religious or sporting body, or to similar bodies of a non profit-making nature, whose income is less than £250,000¹; or
- acts as auditor to a small entity (as described above) that is not required to be audited by a registered auditor.

(The income limit is the point at which accruals accounting is required for charities and should this change, the limit in this exemption would be changed. If a member undertakes an audit, he should be very careful that he does not represent himself as a registered auditor if this is not the case.)

12 A member who acts as a director, trustee, treasurer or other officer of an entity (unless the entity is a public practitioner) does not need a practising certificate even if in that role the member provides accountancy service to the entity. Whether or not the office is remunerated is not a consideration.

13 A member who gratuitously and not in anticipation of reward applies his skills for the private benefit of friends or family does not thereby engage in public practice.

14 A member who gratuitously and not in anticipation of reward applies his or her skills for the benefit of others via an organisation such as a voluntary advice bureau for the public does not thereby engage in public practice.

General

15 Additional guidance is given on 'public practice' and 'accountancy services' in annexes 1 and 2 respectively. Annex 3 contains a flowchart to help members ascertain whether a practising certificate is needed. Further information, including how to apply for a practising certificate, can be found on the Institute's website at www.icaew.com/pc.

16 It is each member's responsibility to ascertain whether or not he is engaged in public practice and whether he is thus required to hold a practising certificate and professional indemnity insurance.

17 If a member remains in doubt as to whether his activities amount to engaging in public practice, he should contact Ethics Advisory Services on +44 (0)1908 248 258 and give all the facts of his circumstances.

18 A member who is not engaged in public practice may nevertheless incur liabilities against which protection can be obtained only by holding professional indemnity insurance. Members should therefore be mindful of the possible consequences to themselves and others from acting in a professional capacity without insurance. A member who provides accountancy services in circumstances where a practising certificate is not needed should inform the recipient of the accountancy services of the absence of professional indemnity insurance.

19 A member who does not require a practising certificate under this statement may still fall within the requirements to be monitored under anti-money laundering legislation. This is particularly the case for those who provide 'accountancy services by way of business', which may include, for example, interim managers who use a company to provide interim management services. Monitoring can be by the Institute and this would be as part of Practice Assurance; for others it would normally be done by HM Revenue and Customs. Such members may wish to consider obtaining a practising certificate and so fall within the anti-money laundering monitoring that is part of Practice Assurance.

Annex 1

Guidance on 'public practice'

The definition of 'public practice' sets out the situations in which a practising certificate is needed, assuming the 'entity' is providing accountancy services. The following notes give guidance on this definition.

It does not matter if the individual member is not directly providing accountancy services. It is sufficient that the member is a principal in an entity that provides such services. It is also the case that, if a member is a principal of

¹ Amended with effect from 1 April 2009

an entity which itself is principal of a firm providing accountancy services, then that member is engaged in public practice.

If the member is a principal of a company in a group, the situation of the group needs considering. If a substantial part (as defined above) of the activities of the group is accountancy services, then members who are principals in the holding company (even if it is not providing accountancy services) or the subsidiaries providing the accountancy services are engaged in public practice. If accountancy services are not a substantial part of the group's activities, then a member is not engaged in public practice, even if the particular entity in which the member is a principal does provide accountancy services.

Accountancy services have to be provided in anticipation of reward for a member to be engaged in public practice. Thus, although accountancy services may be provided to a family member or a friend, it is the absence of any expectation of reward that is the key issue. If a reward is subsequently received, this does not change the original provision of accountancy services. However, the member would have to be sure that any subsequent provision of services to that individual was not in the anticipation of further reward.

The following is a list of common situations which members may find useful in deciding if they are engaged in public practice. (Depending on the example, the assumption is that the member concerned is not already in public practice.)

Member role	Practising certificate needed or not
1 My only role is as the marketing principal in a public practitioner.	The role of the individual principal is irrelevant. If you are a principal in a public practitioner, you need a practising certificate.
2 I act as an expert in tax matters for other firms of chartered accountants.	If your relationship to the other firms is as a principal, then you are engaged in public practice and need a practising certificate.
3 I am a principal in a firm whose only activity is to be a principal in a public practitioner.	This constitutes a group where the group meets the definition of a public practitioner so you are in public practice and need a practising certificate.
4 I am a principal in a non-trading holding company where more than 10% of the turnover of the group is the provision of accountancy services.	As the group meets the definition of a public practitioner, and you are a director of the holding company, then you are engaged in public practice and need a practising certificate.
5 I am an employee responsible individual for audit work.	It is a requirement of the audit regulations that you have a practising certificate.
6 I am a principal in a holding company where less than 10% of the turnover of the holding company is the provision of accountancy services but more than 10% of the turnover of the group is the provision of accountancy services.	As the group meets the definition of a public practitioner and you are a director in the holding company, you are engaged in public practice and need a practising certificate.
7 I provide audit review services etc. to firms of chartered accountants.	If you are acting on your own account as a principal in relation to those other firms, you are engaged in public practice and need a practising certificate.
8 I am an employee holding an insolvency licence and I accept insolvency appointments.	It is a requirement of the insolvency regulations that you have a practising certificate. If you do not take appointments, there is no requirement under the insolvency regulations to have a practising certificate.
9 I have been asked to undertake an independent examination of a charity.	Depending on the size of the charity and any income you receive you may not need a practising certificate.
10 I have retired but remain with my former practice as a consultant.	As you are no longer a principal then you do not meet the definition of being in practice so no practising certificate is needed. However, you should be careful that you are not held out as a principal by the firm as this could have other legal consequences, as well as bringing you back into the definition of a principal and so needing a practising certificate.

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| 11 I am an employee/principal of an entity whose primary purpose is to provide financial services (ie, services that would need a licence from the Financial Services Authority), insurance services, and computer installation or computer applications. | You are not engaged in public practice. However, remember that the group situation may need to be considered. If the main objective of the group is the provision of accountancy services and the entity described in the adjacent column is the holding company, then, if you are a principal in that entity, you need a practising certificate. |
| 12 I am the finance director of a company that has nothing to do with providing accountancy services. | Principals (including directors) do not need a practising certificate unless the activities of the business meet the definition of a public practitioner. |
| 13 I act as an interim manager, either personally or through a corporate entity, to businesses. In this relationship, the businesses effectively act as my employer and I effectively work as an employee. | If your relationship to the entities that you work for is not a principal/client relationship, then you are not engaged in public practice and do not need a practising certificate. |
| 14 I give time voluntarily to act as a trustee (or treasurer) of a charity and this involves preparing the entity's accounts. | You are not acting in a public practice role and do not need a practising certificate. |
| 15 I have been asked to undertake the audit of a small charity (that is one whose income is less than £250,000) and there is no legal requirement (and no requirement in the charity's constitution or from a regulator) for the audit to be undertaken by a registered auditor. I will not receive a fee. | As there is no legal (or other) requirement for an audit by a registered auditor and this is a 'small' charity, there is no need for a practising certificate (but you should make sure that you do not represent yourself as a registered auditor). |
| 16 I give time voluntarily to advise the clients of the local Citizens Advice Bureau (or similar). | You are not doing this in anticipation of reward and so are not in public practice and do not need a practising certificate. |
| 17 I am a principal in a company where more than 10% of the turnover of the company is the provision of accountancy services but less than 10% of the turnover of the group is the provision of accountancy services. | As the group does not meet the definition of a public practitioner you are not engaged in public practice and do not need a practising certificate. |
| 18 I act as a subcontractor providing accountancy services to an accountancy firm. In such working relationships, the firm effectively acts as my employer and I effectively work as an employee. | You are not holding yourself out, or being held out, as providing accountancy services to third parties so you are not in public practice and do not need a practising certificate. This also applies if an agency contracts for the work. Also, the relationship to the firms that you work for is not a principal-client relationship. |
| 19 I am not a principal but my firm wants me to act as a trustee (or administrator or donee of a power of attorney). | As you are not being held out as providing services to the public, you are not engaged in public practice and do not need a practising certificate. |

Annex 2

Guidance on accountancy services

Members may find the following lists of common activities useful in deciding if the work that they undertake falls within the definition of accountancy services.

These services are regarded as accountancy services

- 1 bookkeeping (ie, the entry of transactions into the accounting records)
- 2 preparation of management or financial accounts
- 3 external audit and assurance services
- 4 internal audit of accounting and internal control systems
- 5 advice or consultancy on accounting and financial reporting systems
- 6 payroll services
- 7 dealing with personal/business tax returns

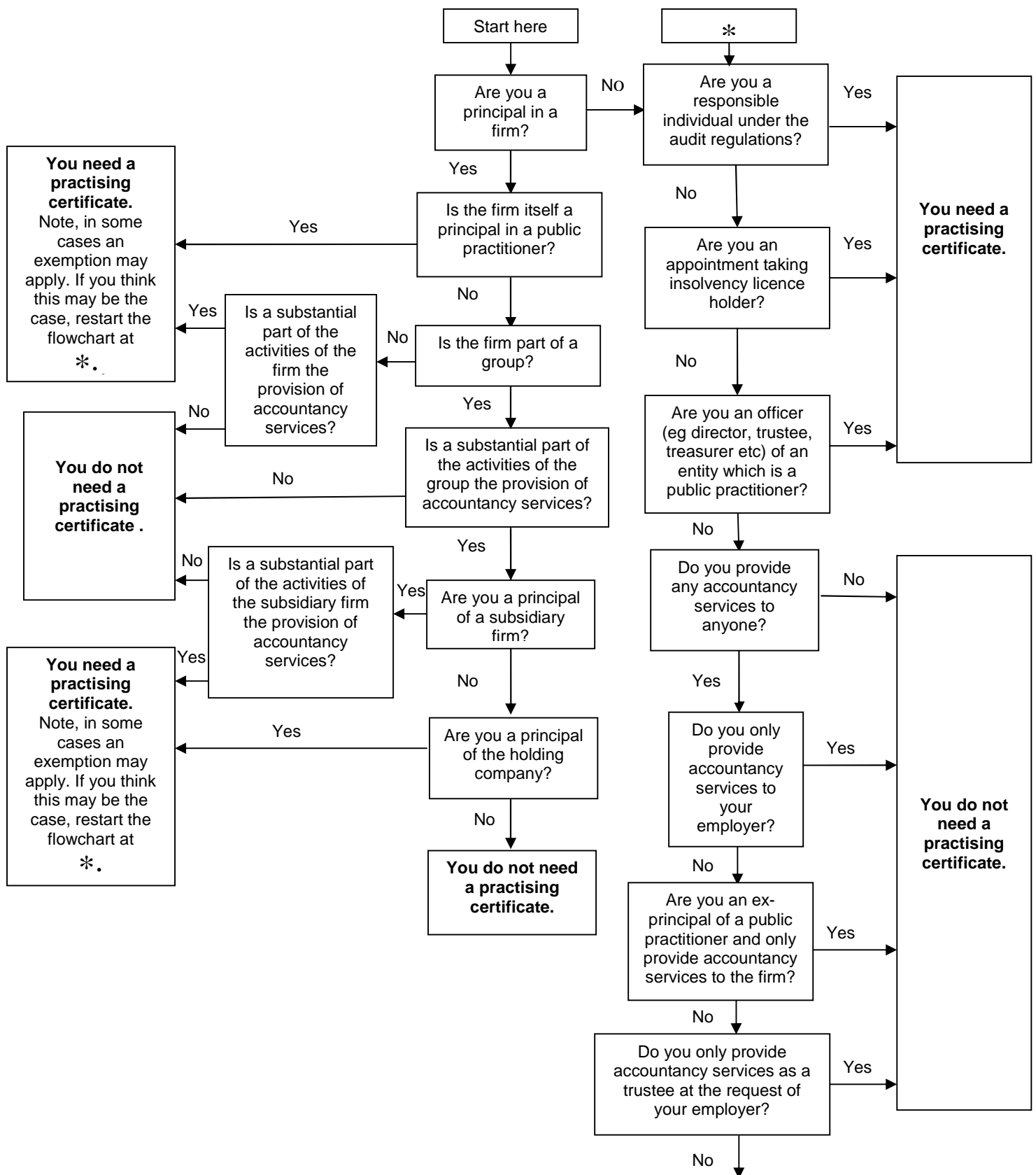
- 8 providing tax advice
- 9 representing a client in a tax situation (eg. client is having an investigation and needs someone to deal with the tax authorities)
- 10 investment business advice undertaken under a licence from a Designated Professional Body
- 11 preparation of cash flows and budgets
- 12 business funding advice, except where the purpose of the advice is to actively seek/negotiate the source of funds
- 13 due diligence (ie, investigations into the accounting or financial aspects of a transaction such as a company take over)
- 14 preparation of business plans
- 15 management consulting on accountancy activities
- 16 accepting insolvency appointments
- 17 debt counselling
- 18 compliance services (including file reviews) supplied to firms of accountants
- 19 valuing incorporated and unincorporated businesses, shares and related instruments, and intangible assets
- 20 forensic accounting

These services are not regarded as accountancy services.

- 21 investment business activities conducted under FSA authorisation
- 22 acting as a trustee
- 23 training services to accounting firms or students
- 24 business funding advice where this only involves seeking/negotiating the source of funds
- 25 management consulting on non-accounting matters
- 26 company secretarial matters
- 27 computer hardware and software installation
- 28 computer training

Annex 3

This flowchart is to help members decide if they need a practising certificate. Please note, a member may have a number of roles, some of which need a practising certificate. A member should use the flowchart for each role to establish if a practising certificate is needed. The flowchart uses some of the defined terms from the Council statement and these are included below.



Accountancy services	<ul style="list-style-type: none"> the preparation of financial records, returns returns, statements or information; the provision of consultancy or advice concerning accounting, auditing, insolvency or taxation matters; or the provision of a service that requires a specific licence that the Institute can provide (even if the licence is not obtained from the Institute); or the representation of a client to/before third parties in matters concerning accounting, auditing, insolvency or taxation.
Public practitioner	<p>an entity which provides accountancy services to clients in anticipation of reward where:</p> <ul style="list-style-type: none"> a substantial part of the activities of that entity is the provision of such services; and if the entity is part of a group, a substantial part of the activities of the group is the provision of such services.
Substantial part	more than 10% of the total annual turnover of the entity or the group.

* These entities are small charitable, community, religious or sporting bodies, or similar bodies of a non profit-making nature, whose income is less than £250,000, the service is not an audit (which can only be undertaken by a registered auditor) and any amount received does not exceed £500 and is more in the nature of expenses.

A member who does not require a practising certificate under this statement may still fall within the requirements to be monitored under anti-money laundering legislation. This is particularly the case for those who provide 'accountancy services by way of business', which may include, for example, interim managers who use a company to provide interim management services. Monitoring can be by the Institute and this would be as part of Practice Assurance, for others it would normally be done by HM Revenue and Customs. Such members may wish to consider obtaining a practising certificate and so fall within the anti-money laundering monitoring that is part of Practice Assurance.

