

Overseas Working Guidance

1. Introduction

The following guidance applies to staff members on the University payroll or new starts joining the University who wish to work outside of the UK or be based overseas to work for a period of more than four weeks. Guidance for Travel overseas for a period of up to four weeks is outlined in the “Guidance for Fieldwork, Periods of Study, External Research Visits and Travel Overseas: Staff and Students”.

Before considering the logistical feasibility of this arrangement, the line manager should consider whether the work that the employee has been contracted to do can be undertaken, in the main, remotely. If the line manager can, in principle, support such a request, this should be fully explored with the Head of Department/School. As a guide, the University will only agree for staff to be based overseas where there is a **defined business requirement** to do so.

Due to the complexities of employing staff overseas it is important that advice is sought as early possible to ensure that country specific considerations can be identified and any additional costs relating to these can be highlighted.

It is important that this advice is sought before any commitment is given to staff members.

2. Considerations

Working overseas can have many implications for both individuals and the University. It is a complex area that has legal, tax, social security, insurance, pension and residency implications and is country specific. There are also risks in terms of Health and Safety, Intellectual property and related custom duties, as well as data protection and data security matters to be considered.

Employees working overseas may be subject to the employment law within that country and in these circumstances may require a local contract specific to that country. Pensions is another area of consideration due to cross-border regulations following Brexit.

The costs of taking individual employment, tax and payroll advice on specific cases in specific countries are potentially high. It could require the set up and maintenance of in-country payrolls in order to enable appropriate payments to be made.

To assist understanding of the assessment of overseas working and completion of requests, the following gives further details on the considerations.

i. Income tax and social security

The area around income tax and social security liability is complex and country specific.

Employees operating or carrying out business activities in certain countries may be deemed to have created a 'permanent establishment' for the purpose of corporate, indirect (VAT) and employment taxation. There may also be social security costs incurred. In cases such as these, the University would be subject to local reporting and regulatory obligations resulting in potentially substantial costs of regulatory compliance, alongside an increased and unbudgeted tax burden. Failure to comply with these obligations would also expose the University to the risk of prosecution, financial penalties, and uninsured liabilities.

Permanent Establishment rules are different from country to country; therefore, what duties are permissible to be undertaken in one country could create a 'permanent establishment' in another.

It should be noted that even where no 'permanent establishment' is created for corporate tax and accounting purposes, it is possible that there could be other statutory requirements or social security requirements. Any additional costs involved would be met by the School/Department.

This should be addressed on a case by case basis, referring to both the information collected on the 'Global Mobility Initiation Form' and in conjunction with guidance as set out at <https://www.gov.uk/hmrc-internal-manuals/international-manual>. This will give an initial indication, but more specific advice may need to be sought.

ii. Payroll implications

In order to enable appropriate payments to be made to staff, there may be a requirement for an in-country payroll function. This involves the set-up and maintenance of payroll processes through specialist international providers. Associated costs are country-dependent and can be high given the complexity involved.

It is important to advise of an employee's changing circumstances or assignments via the HR team to ensure risks and implications are managed.

iii. Immigration/VISA checks

A visa may be required for employees in order to work overseas. This will depend on the individual's nationality and the country in which they will be based. If an employee is not a national of the country they are working in, they may also require specific permission to work in this country and a visa to be in place. This may also impact their ability to gain an appropriate visa on return to the U.K.

Advice should be sought from HR who may need to seek further specialist advice, depending on the circumstances. There may be a cost involved if a VISA is required.

iv. Contractual implications

If you started your employment with the University on a UK contract, you will be subject to UK employment law and terms and conditions. Should you be located and working in another country, it may be a requirement for your contract to be reviewed locally (in country) to ensure that the University is remaining compliant and is adhering to at least the minimum local conditions.

v. Pensions

Following the withdrawal of the cross-border regulations at the end of the Brexit transition period on 31 December 2020, and with no replacement regime taking effect, employees of UK institutions who work in a European Economic Area country and are eligible for USS should now be treated in the same way as any other overseas member. This means that these employees will be able to join, or remain in, USS.

The most up-to-date guidance is provided on the USS pension website as below:

<https://www.uss.co.uk/for-members/life-events/working-or-retiring-overseas>

vi. Insurance requirements

Public Liability and Professional Indemnity may be in place subject to the usual conditions of cover. UK Employee Liability is time-limited to 24 months and is governed by the Employee Liability regulations of the host country. The details of the proposed employment should be communicated to Finance, prior to commencement of the contract, in order to ensure the appropriate cover will be applicable.

vii. Safety, Health & Wellbeing

A Risk Assessment will be required to ensure that risks are identified and, where appropriate, steps are taken to mitigate these. A risk assessment will include managers considering the risks around remote working and how the member of staff will be supported in these circumstances, for example, a DSE assessment. In addition to this, a more detailed risk assessment must be undertaken for assignments that will involve greater risks, including postings to destinations/areas where the Foreign & Commonwealth Office advises against travel (or 'all but essential' travel), or where the planned activities are deemed to be potentially hazardous. Advice can also be sought from the University Safety, Health and Wellbeing team, and in some cases further specialist advice may be required. Action will also need to be taken to ensure that the University complies with any local legislative requirements relating to Safety, Health and Wellbeing.

viii. Data Protection and Information Security

Data Protection legislation provides a range of obligations on aspects of handling and managing personal data. Any personal data processed (which includes created, accessed and revised) during the course of the employee's work, would come within the scope of Data Protection legislation. Any employee working off campus, whether overseas or within the UK, should manage information in line with University policies. In particular, GDPR prevents the processing of personal information outside the EU unless particular arrangements are in place. This would need to be reviewed on a case by case basis.

Individual personal data and business sensitive information should be handled in line with the University policies. Where the personal data relating to staff, students, research participants or any other Data Subject will be processed outside the EU, advice should be sought from Information Governance Unit.

ix. IT Arrangements

Consideration will need to be given to a number of IT requirements for any staff working overseas, to ensure ease of access and security of data.

Any Strathclyde computers being used permanently off-campus will need to be specially set up to enable access to all corporate applications and systems. The computer's hard disk will also require encryption and setup of an encrypted data tunnel (VPN) back into the network, to ensure Strathclyde data or IT systems are not compromised. Some countries will require



appropriate precautions regarding the use of devices overseas. Advice should be sought well in advance from the IT Service Desk.

3. New Starts

In the event of a new start being unable to travel to Scotland to commence employment due to exceptional circumstances, it may be possible to accommodate a remote start of employment for a short and defined time, i.e. up to 4 weeks. This would be at the request of the line manager to their designated HR Manager. This should also be logged by the HR team for tracking and monitoring purposes. Given the risks and implications detailed in Section 2, it should be made clear that this is a temporary arrangement and plans made to travel as soon as reasonable possible.

Any request longer than short-term support, i.e. longer than 4 weeks should be approved by the process outlined in Section 4 below.

4. Approval process for staff working overseas for longer than 4 weeks

There is a two-step approval process:

Step 1

Having reviewed all of the above, if the Head of Department/School considers that they can support the employee to live and work abroad, and there is a defined business requirement to do so, they should submit a request to the Global Mobility team in the first instance. This is via the Global Mobility Initiation form as per Appendix 1.

The Global Mobility team consists of HR and Finance with specialist input from Safety, Health and Wellbeing, Insurance, Pensions and any external advisers. Where necessary, specialist tax advice will be sought, the cost of which will be borne by the requesting department. An analysis will be undertaken to assess the risks, costs and implications of the overseas working.

Reasons for supporting such a request may be that not allowing the request would create a substantial loss to the University. The benefits would need to be evaluated against the time and financial costs of allowing the arrangement.

Step 2

The Global Mobility team would consider the case fully and if the request is viable, advice would be given to the Executive Dean or Senior Officer for their approval. A final review between the Finance Director, Deputy Director of HR and the Executive Dean should take place to confirm the decision and approach. The decision should then be cascaded to the line manager for onward communication to the member of staff.

If you require further advice and guidance, please contact a member of your HR team.