



University of  
St Andrews

## Overseas working

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<b>Purpose</b>	This procedure provides an overview of the process to be followed when recruiting new employees who will be based overseas or posting existing employees to work overseas on a long-term basis.

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## 1. Purpose

- 1.1 This procedure provides an overview of the main areas that must be considered and the process to be followed when contemplating recruiting new employees who will be based overseas or posting existing employees to work overseas on a long-term basis.
- 1.2 It is important that those responsible for recruiting/posting employees to work overseas contact their [HR Business Partner](#) (HRBP) as early as possible and certainly before any agreement is reached/decision made. The HRBP will ensure that this person is provided with the appropriate advice and guidance.
- 1.3 It is essential that the health, safety, wellbeing, legislative and financial implications of long-term overseas working by employees is considered. The work employees conduct overseas will often be similar to work they conduct in the UK and may be no more hazardous. However, wherever an employee may be working, the University has a duty of care to risk assess the circumstances to ensure the wellbeing and safety of the employee is safeguarded.
- 1.4 This procedure **does not** cover short term travel overseas (8 weeks or less) or establishing an overseas legal entity.
- 1.5 These arrangements can take several months to put in place. Schools/Units must therefore provide as much notice as possible before an employee is expected to relocate overseas.
- 1.6 The University must ensure that all legislative requirements are considered, and appropriate advice taken where necessary, before any commitment is given, or any terms are negotiated with a funding body, a candidate or a current employee.
- 1.7 Establishing an overseas payroll is costly. The average cost of establishing a shadow payroll is around £15K, with ongoing annual costs of over £6K which excludes any additional in country costs such as insurances and taxes. This should be incorporated in the overall costing of the post as all the costs associated with establishing a shadow payroll and the initial research will be charged to the School/Unit.

## 2. Scope

- 2.1 This procedure applies to all employees.

## 3. Application for overseas employment

- 3.1 Approval must be obtained from the School/Unit direct report in the Principal's Office before any agreement on overseas employment is undertaken. A Proposal for an employee to be based overseas form must be completed and submitted to the direct report in the Principal's Office for initial approval. The form can be downloaded from the [HR Policy webpage](#). Once this approval has been obtained, Human Resources (HR) will identify the costs, insurances and other relevant issues associated with the proposal. HR will also review the circumstances to ensure that the employee's terms and conditions with the University will be maintained and/or replicated and as far as possible during the period overseas. The costs associated with this due diligence will be charged to the School/Unit. If the School/Unit wish to proceed with the overseas employment once this information has been obtained, **final approval must be sought from the direct report in the Principal's Office before any agreement is confirmed.**

#### **4. Research leave**

4.1 Research leave is not covered under this procedure. Please refer to the [Research Leave Policy](#) for guidance.

#### **5. Resourcing procedure**

5.1 There are 3 ways to employ individuals overseas, namely:

##### **5.2 Employees seconded overseas (preferred route)**

5.2.1 Where newly appointed or existing employees are seconded to an overseas host institution and the host institution agrees to pay the seconded employee directly via their payroll, there may be no requirement to set up a shadow payroll for the duration of their assignment. However, the secondment agreement must be reviewed by HR to ensure that it specifically states that the host institution takes on all liabilities for the employee during the secondment including deducting all appropriate taxes, social security payments, providing insurance cover, etc. The employee's continuous service with the University will not be affected.

##### **5.3 Consultants/self-employed contractors**

5.3.1 Where a service is being provided, a genuine self-employed independent contractor may be engaged through a contract for services or consultancy agreement. In this instance the individual will not be an employee of the University and would be responsible for making their own arrangements to pay any local taxes or social security contributions required in the country in which they are working and purchase their own insurance cover. However, in most countries it is simply not possible to convert the status of an employee to that of an independent contractor simply for administrative benefit. If they otherwise act like an employee, then they will generally be deemed an employee, regardless of any mechanisms implemented to circumvent employment law. This would leave the University exposed not only reputationally but also financially if we fail to adopt the legally correct employment status.

5.3.2 In each new country, legal advice will need to be sought as to what the contract for services should contain. The costs to obtain this legal advice will be passed to the School/Unit.

##### **5.4 Employee assigned overseas**

5.4.1 Where newly appointed or existing employees are assigned overseas, they will be employees of the University and their terms and conditions determined by the University. Where possible, the employee will be paid through the University's payroll in the normal way but if overseas taxes, Workers Compensation or social security contributions are required to be deducted from the employee's salary, these will be calculated and managed by our overseas payroll advisers and their international partners. It is possible for the University to pay salaries in any currency and into a bank account anywhere in the world.

5.4.2 Please note that using our overseas payroll adviser's services will incur costs which will be passed on to the School/Unit. These costs will vary depending on the country concerned, the complexity of any potential employee's situation and the number of employees the University has working there as a whole.

5.4.3 If any of the circumstances change at any time in the future, the Head of School/Unit and the employee have the responsibility to inform the [HRBP](#) as further actions may be required.

## **6. Due diligence to be undertaken**

6.1 When considering basing or mobilising an employee overseas, a number of due diligence factors must be taken into consideration to ensure all relevant costs, wellbeing, health and safety risks and insurances have been researched. The key considerations are:

### **6.2 Criteria for residence for tax purposes**

6.2.1 This varies considerably from jurisdiction to jurisdiction, and "residence" can be different for other, non-tax purposes. For guidance, please refer to the [HMRC International Manual](#).

### **6.3 Income Tax/Social Security/Other employment liabilities**

6.3.1 Using the information provided on the proposal for employee to be based overseas form (which can be downloaded from the [HR Policy webpage](#)), HR will seek advice and guidance in relation to employment contracts, health and safety, insurance, income tax, social security, payroll obligations and visa requirements before any agreement/offer of employment is made.

6.3.2 The calculations for overseas residency will be based on the employee's location at the start of their period overseas. Should they wish to move location to another country, or another State if they are US based, approval must be sought, in advance, from the direct report in the Principal's Office. HR will again seek advice and guidance in relation to employment contracts, wellbeing, health and safety, insurance, income tax, social security and visa requirements for the proposed new location.

### **6.4 Permanent establishment**

6.4.1 In addition to employment obligations, in some countries, having just one person working for the University has the potential to create a 'permanent establishment' in that country. As a result, the University could be subject to local reporting and regulatory obligations for tax and accountancy purposes resulting in a potential corporation tax and/or administration costs. 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 is therefore imperative that the Head of School/Unit check each time the employee's circumstances change or for each new assignment. Even if no Permanent Establishment is created for tax and accounting purposes, it is possible that there could be statutory requirements, such as Workers Compensation or other similar mandatory insurance or social security requirements, which will not under any circumstances be covered by the University's UK insurance programme.

6.4.2 Failing to carry out the check could expose the University to the risk of prosecution, financial penalties and uninsured liabilities. The administration costs of this set up and requirement to procure country specific advice will need to be taken into account when a permanent establishment applies.

## 6.5 Health & Safety

- 6.5.1 Prior to establishing an employee overseas, a risk assessment must be carried out by the Risk and Insurance Manager and the School/Unit concerned to ensure that risks are identified and, where appropriate, steps are taken to mitigate these. Action will also need to be taken to ensure that the University complies with any local legislative requirements relating to Health and Safety. 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.
- 6.5.2 Where an employee is employed through a partner organisation or seconded overseas, it is important to ensure that the responsibilities of both the University and partner organisation for the Health and Safety of the employee and compliance with local legislative requirements are clarified, in an agreement, prior to the employee commencing employment. It is desirable that where a partner organisation has country specific Health and Safety expertise that this should be utilised.
- 6.5.3 Where an employee based overseas is directly employed by the University, it may be necessary to obtain specialist Health and Safety advice to ensure compliance with relevant country specific requirements.
- 6.5.4 Further advice and guidance on Health and Safety considerations and undertaking risk assessments can be downloaded from the [EHSS website](#).
- 6.5.5 Employees must review the [UK Government's foreign travel advice website](#) to ensure that they are fully aware of the customs and restrictions of the overseas country in which they are to be based prior to travel and check it regularly throughout their period of stay, particularly during periods of national or international unrest that could alter Government advice. If they have any issues or concerns as a result, they must discuss them with their line manager as soon as possible.
- 6.5.6 Links to UK Government diversity specific guidance below:
- Advice for women travelling abroad <https://www.gov.uk/guidance/advice-for-women-travelling-abroad>
  - Travel and mental health <https://www.gov.uk/guidance/foreign-travel-advice-for-people-with-mental-health-issues>
  - Disability and travel abroad <https://www.gov.uk/government/publications/disabled-travellers>
  - Lesbian, Gay, Bisexual and Transgender foreign travel advice <https://www.gov.uk/guidance/lesbian-gay-bisexual-and-transgender-foreign-travel-advice>
  - Wearing of religion or belief items and dress code: refer to the 'local laws and customs' section of the country or territory <https://www.gov.uk/foreign-travel-advice>

## 6.6 Insurance

- 6.6.1 Insurance requirements for employees based overseas will be affected by the period of time that they are based overseas and the country within which they are based. It is essential that appropriate insurance is arranged through the Planning Unit and that this is in place prior to the employee commencing work overseas.

- 6.6.2 Where an employee's normal base is the UK and they are sent on assignment overseas for less than twelve months, cover will normally be provided through the University's UK Employers Liability and Public Liability Insurance policies. While this provides emergency medical cover, it will not cover routine medical costs and the employee may wish to take out additional health insurance in this respect. If an employee is required to travel from their overseas base to a country out with the UK, this may not be covered by the University Travel policy and advice should be sought from the Planning Unit prior to travel.
- 6.6.3 An additional premium may be charged by the University Insurers where an employee is planning to be overseas for more than twelve months, or if they are likely to be participating in any hazardous activity. This additional cost must be covered by the School or Unit. Failure to advise the Planning Unit of extended stays or hazardous activities may result in the cover being deemed invalid by the Insurers. It should be noted that this may also apply to travel to areas that the Foreign Office is advising against visiting for "all but essential travel".
- 6.6.4 There may be requirements within specific countries for the University to have additional insurance, e.g. in the United States the University would require to hold Workers Compensation cover. This will be assessed on a case by case basis by the Planning Unit.
- 6.6.5 Further information regarding travel insurance can be accessed via the website at: <https://www.st-andrews.ac.uk/staff/money/insurance/travelinsurance/>

## 6.7 Emergency evacuation procedures

- 6.7.1 In the event that the security or political situation in the country deteriorates to a point that it is no longer safe to operate; we may have to consider the appropriate steps to take. This may differ between a UK national or a non-UK national. UK nationals would normally return to the UK, either directly or via a third country. Non-UK nationals may not wish to do this or may not be permitted to do so due to UK visa and entrance requirements.

## 7. Next steps – employee working/seconded overseas

- 7.1 If the decision is that it is appropriate to employ/second a person overseas, the following steps must be undertaken:

### 7.2 Permission from the School/Unit direct report in the Principal's Office (Stage 1 for Head of School/Unit)

- Permission **must** be obtained from the direct report in the Principal's Office **before** all the necessary due diligence is undertaken. Please complete the overseas assignment form and submit this to the direct report in the Principal's Office. Once initial approval has been provided, submit the form to the following email address: [overseas@st-andrews.ac.uk](mailto:overseas@st-andrews.ac.uk).

### 7.3 Stage 2: Due Diligence Exercise (HR)

- HR will, with the relevant individuals in other areas, commence the due diligence exercise which will include identifying income tax/social security costs, insurance costs, permanent establishment issues. All costs associated with this will be passed to the School/Unit.



#### 7.4 Immigration/Visa check (HR/Employee)

- Permission to work or 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. This will be addressed during the due diligence exercise and HR will assist where relevant in obtaining the necessary visa.
- Where the individual is a non-EEA national who holds a current Tier 2 or 5 UK visa, please discuss the proposal with the HRBP as any change of circumstances will need to be reported to the UKVI. The period of time they work overseas may also have implications for their current visa if this expires whilst they are out of the UK, future applications for Indefinite Leave to Remain in the UK, etc.

#### 7.5 Permanent establishment (Finance)

- As noted in 6.1 above, having one single employee may create a permanent establishment. As part of the due diligence process, information will be obtained on this issue.

#### 7.6 Insurance (Insurance)

- Employment Insurance: Insurance requirements relating to employment for staff based overseas will be affected by the period of time that they are based overseas and the country within which they are based. This will be addressed as part of the due diligence process.
- Travel Insurance: Employees simply travelling temporarily to a country for up to twelve months will be covered by the University travel insurance. If the overseas assignment is for longer, it may be possible to extend this but advice will need to be sought from [insurance@st-andrews.ac.uk](mailto:insurance@st-andrews.ac.uk).
- **Please note that the University's UK travel insurance provides only emergency medical expenses and repatriation back to the UK. It does not provide healthcare insurance, as required by some partner institutions, notably but not exclusively in the USA. If healthcare insurance is required, then it must be purchased by the School/Unit in the country concerned.**

#### 7.7 Motor Insurance (School/Unit and Employee)

- The University's motor insurance has restrictions on cover overseas. Therefore, non-domicile employees who use a vehicle for their work must not only insure that vehicle themselves in the country concerned, but categorically ensure that the cover is extended for business use on behalf of the University and that the third party limits are sufficiently high. Extra costs in meeting such requirements would be borne by the School/Unit concerned.

#### 7.8 Final approval from the direct report in the Principal's Office – (Stage 2 for School/Unit)

- If the proposed costs associated with the overseas location are deemed acceptable by the School/Unit, final approval by the School/Unit direct report in the Principal's Office must be obtained and passed to Overseas in order that contractual changes can be made.



## 7.9 Overseas Assignment Paperwork (HR)

- HR will issue the relevant paperwork informing the employee of any overseas Tax and Social Security obligations and will ensure a shadow payroll is established if required.

## 8. Support and advice

8.1 General advice on overseas issues can be obtained by contacting [overseas@st-andrews.ac.uk](mailto:overseas@st-andrews.ac.uk).

*This document is not contractual and may be amended by the University from time to time.*

Version number	Purpose / changes	Document status	Author of changes, role and school / unit	Date
1.0	New procedure	Published	Val Insch HR	19/10/2020
1.1	Updated link @ 4.1	Published	Val Insch HR	11/11/2020
1.2	Update to front cover to confirm EIA completion date.	Published	Lisa Stewart HR	02/04/2021
1.3	Guidance updated due to updated USS regulations due to Brexit transition. (Removal of section 6.5 Pensions)	Published.	Val Insch HR	01/07/2021
1.4	Change to review date only.	Published.	Val Insch HR	29/08/2023
1.5	Review date extended to allow review to be concluded.	Published.	Hannah Couser Global Mobility Specialist	03/01/2024