

1. Purpose

- 1.1 The purpose of this document is to set out the parameters within which schools and departments can make international appointments that can be properly supported and resourced by the University and are legally-compliant. This document details the various arrangements associated with international staff appointments, the associated risks, and an outline of the requirements to comply with related legislation.
- 1.2 This policy applies to engagements falling within a 'standard' definition of international employment for University purposes, and sets out the steps to be followed should an employment arrangement be proposed that falls outside this definition.

2. Introduction

- 2.1 In pursuance of the University's Internationalisation Policy and the result of greater globalisation of academic pursuit, increasing numbers of instances are arising that propose the engagement of individuals, whether UK-based or overseas-based, to work outside the UK or for overseas nationals to work in the UK. This is particularly relevant to the Research Excellence Framework under which a person may only be cited as a UoK researcher if he/she has an employment contract of not less than 0.2 FTE, and the person is paid via a UoK payroll
- 2.2 Employing persons who carry out their UoK duties wholly or partly abroad, or carry them out wholly in the UK for temporary periods whilst retaining an habitual residence abroad, can impose considerable legal obligations that UoK should comply with in respect of employment, taxation and social security legislation. Complying with these obligations can be very time-consuming for HR and Finance staff whom have limited resources to deal with employer's obligations relating to overseas workers. In addition there are significant cost implications if external legal and financial advice needs to be bought-in. Moreover, UoK is subject to the risk of non-compliance particularly if the University would count as an employer in the home country of the worker or the place where the duties are carried out. It can be particularly difficult to establish the details of employer's obligations in overseas countries unless UoK has local contacts in the place concerned or can buy-in the relevant professional advice from appropriate advisors in the overseas location.
- 2.3 This policy mirrors the statutory residence tests, which apply with effect from 6 April 2013, that determine the place of residence of a worker for the purposes of income tax, capital gains tax and inheritance tax, but do not extend to social security benefits or contract/employment law which may be

subject to different residence rules. The residence tests adopted in this policy are outlined in Annex 1 and seek to clarify whether a person is to be treated for any tax year as being resident in UK and subject to UK rules, or is resident abroad and subject to the rules of one or more overseas locations.

3. Risk Analysis

3.1 A different set of risks attaches to both UoK and the employee depending upon whether:

- The person is an overseas national coming to work for UoK in the UK on a short-term or long-term basis;
- The person is an overseas national whom UoK would like to engage to carry out duties in his/her country of residence;
- The person is currently resident in the UK and whom UoK would like to engage to carry out duties overseas on a short-term or long-term basis;

3.2 The risks attaching to the various contractual arrangements are summarised in Annex 2 and fall into the following broad headings:

Right to work: is UoK aware of the border rules for the country concerned in relation to the nationality of the worker, that must be complied with if the worker is legally entitled to work in the proposed location?

Equality: can the conditions of service for inward-bound and outward-bound workers match those afforded to substantive UK employees?

Employment law: is UoK aware of all employment legislation and related obligations including any relating to occupational pension schemes that apply in the country where the person would work?

Income tax: is UoK aware of all taxation rules akin to the PAYE regime in the UK that would require UoK to determine an employee's income tax liability and make tax deductions at source, and aware of any available reliefs under a double tax treaty between the UK and the country concerned?

Social security: is UoK aware of all obligations laid to employers under the social security regime that applies in the country concerned including deduction of employee's contributions

at source, any compulsory benefits that must be provided, and the payment of employer's contributions?

4. International Employment Arrangements

- 4.1 Each international employment arrangement is to be allocated to one of a set of defined arrangements which may, or may not, be permitted depending upon the degree of risk and the costs involved. Possible arrangements and the suggested permissibility are set out in Annex 3, and the variations in legislative compliance associated with each arrangement are set out in Annex 4.
- 4.2 The 'standard' international employment arrangement for workers of any nationality is that the person concerned;
- 4.2.1 spends sufficient time in the UK under the statutory residence tests to be treated as UK-resident; or
- 4.2.2 is employed locally and wholly in a country where UoK currently has an HR/payroll facility (Belgium and Greece at present);
- 4.3 If a school or department wishes to engage any employee on a non-standard arrangement, it must prepare a business case, to be jointly approved by EG, HR and Finance, that outlines:
- the cost/benefit analysis of the investment required to set-up the local HR/payroll facility
 - Assessment and mitigation (including costs) of the risks outlined at 3.2 and Annex 2
 - the burden of maintaining the on-going functioning of the facility
 - the costs associated with drafting contracts and maintaining compliance with local employment law
 - the costs associated with ensuring parity of payments and benefits between UK and the overseas employees
- 4.4 The proposal must receive approval before any associated offer of employment is made.
- 4.5 If a proposal is raised to employ one or more workers who will not pass the UK residency test (and whom will be resident in a country in which UoK does not currently have an local HR/payroll facility) the provision of a local HR/payroll facility in the country concerned should be established before any locally-resident workers are stationed there.

- 4.6 Experience so far indicates that the cost in administrative time and bought-in professional services for the creation of a new overseas branch for the purposes of employing one individual is disproportionate to the initial academic gain made from the overseas arrangements. A business case proposing that a new local HR/payroll facility be established should identify a critical mass of local staff that would make the new branch economically viable and justify the cost of the investment. Such a critical mass might be not less than a Branch Head plus one academic plus one administrator.

Policy Approved By: Executive Group
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Date: 14th January 2013 (version 5)

Annex 1

Residence tests applicable from 6 April 2013

The residence tests in this policy mirror the statutory residence tests enacted in the Finance Act 2013, and fall into two primary categories that determine whether a person is deemed automatically to be resident inside the UK or is deemed automatically to be resident overseas. There is then a third set of tests to determine a person's place of residence when that is not automatically determined by the primary tests.

The statutory residence tests apply for the first time from 6 April 2013, and may be subject to legislative amendment and clarification of interpretation with the passage of time. Therefore, whilst residence for University purposes should be determined in accordance with this Annex, the taxation authorities in the UK and the employee's home country may take a different view.

Automatic overseas residence tests

Persons are deemed not to be resident in the UK in a tax year if any one of the following three tests applies:

1. They were not resident in the UK at any time during the previous 3 tax years and are present in the UK during the current tax year for fewer than 46 days;
2. They were resident in the UK during one or more of the previous 3 tax years and are present in the UK for fewer than 16 days during the current tax year;
3. They work overseas full-time during the current tax year with no "significant breaks from work" such that the number of any days spent in the UK is fewer than 91, and the number of any days spent working in the UK when more than 3 hours is worked, is fewer than 31.
4. They die during the tax year and were not UK resident during either of the 2 tax years preceding the tax year concerned, or were not UK resident during the immediately preceding year which was a "split year" in which less than 46 days were spent in the UK.

Automatic UK residence tests

Persons are deemed to be resident in the UK in a tax year if they do not meet any of the automatic overseas tests and they meet at least one of the following automatic UK tests:

1. They spend 183 days or more in the UK.
2. Their only home is in the UK, or if they have more than one home, then all the homes are in the UK.
3. They work full-time in the UK for 365 days during which time there are no "significant breaks from work" (being a period of 31 days or more during which more than 3 hours' work is performed each day), and all or part of the 365 days

falls in the tax year concerned, and more than 75% of the days when they work more than 3 hours are worked in the UK.

4. They die during the tax year and met one of the automatic UK tests in each of the previous 3 tax years, or if they did not meet an automatic UK test in the tax year concerned, the immediately preceding year was not a “split year”.

Significant breaks

In both the automatic UK test and automatic overseas tests there is deemed to be a “significant break from work” if at least 31 days go by and not one of those days is a day when the person does more than 3 hours of work or would have done more than 3 hours but for being on annual leave, sick leave, or parenting leave.

Sufficient UK ties test

If an individual meets neither one of the automatic overseas tests nor one of the automatic UK tests, then the residence status of the person is determined by the period of time that the person is present in the UK linked to a specified number of UK ties. If the person was resident in the UK during one or more of the 3 tax years preceding the year concerned, then the UK ties are drawn from the following 5 categories:

1. Family tie - the person has a “relevant relationship* with another person who is resident in the UK for the tax year concerned (e.g. a husband, wife, or civil partner in the absence of a legal separation, or child aged under 18 who is seen in the UK on more than 61 days in the year).
2. Accommodation tie - the person has a place to live in the UK that is available for a continuous period of at least 91 days and the person spends at least one night in that place during the year concerned.
3. Work tie - The person works in the UK for at least 40 days (whether continuously or intermittently) in the year concerned when more than 3 hours’ work is performed on each day.
4. 90-day tie - The person has a 90-day tie if he/she has spent more than 90 days in the UK: (a) during the tax year preceding the current one; (b) during the tax year preceding that in (a); or (c) separately during each of the years in (a) and (b).
5. Country tie – The UK is the country where the person is present at the end of a day (the “midnight test”) for the greatest number of days or if the number of days meeting the midnight test is exactly the same in 2 or more countries, then the UK is one of the countries and the number of days meeting the midnight test in the countries concerned is the maximum number of days meeting this test in all the countries that the person might have been present in.

However, if the person was not resident in the UK before the year in question, the UK ties are drawn from the first 4 categories excluding the country tie.

The link between the period of presence in the UK and the number of required UK-ties for UK residence is set out in the following table and the number of ties is slightly different depending upon whether the person was resident in the UK for one or more of the 3 tax years preceding the tax year concerned:

	Days spent in the UK in current tax year	Number of UK ties for UK residence – when resident in past 3 years	Number of UK ties for UK residence – when not previously UK resident
1	Fewer than 16 days when UK resident during any of the previous three tax years	None - overseas resident	None - overseas resident
3	16 to 45 days	Any 4 UK ties	None - overseas resident
4	46 to 90 days	Any 3 UK ties	Any 4 UK ties
5	91 to 120 days	Any 2 UK ties	Any 3 UK ties
6	121 to 182 days	Any 1UK tie	Any 2 UK ties
7	More than 182 days	Always UK resident	Always UK resident

Further guidance on sufficient UK ties

Accommodation tie

The definition has been drawn to capture any accommodation that is available to an individual for a significant period during the tax year, and persons have an accommodation tie if they have a place to live in the UK that is available for a continuous period of 91 days during the tax year concerned and the person spends at least one night at that place during the year.

Accommodation should not be treated as being available accommodation for the purpose of this test unless the individual would really be able to stay there for at least a three month period. A casual offer by a friend or relative indicating that somebody is welcome to stay with them at any time will not create an accommodation tie unless the offer would genuinely extend for a stay of at least three months, and also the requirement to spend at least one night at the place is extended to at least 16 nights.

Stays at the same hotel will be included only if the same hotel is always used and there is no gap between visits of more than 16 days over a 91 day period. Gaps of less than 16 days should be disregarded, and very frequent and regular stays at the same hotel over a long period should be capable of being an accommodation tie.

The idea of accommodation “belonging” to a close relative has been replaced with accommodation being “the home of” a close relative. And as with “home” the reference to a weekend home has been removed.

Family tie

Persons have a family tie if they have a “relevant relationship” with another person who is resident in the UK during the tax year in question. Such relationships include (i) marriage and civil partnerships that do not involve separation; (ii) cohabitation as if

they were husband and wife or civil partners; and (iii) parent and child for children under the age of 18.

Persons will not have a family tie in respect of a child who is resident in the UK if they see the child in the UK on fewer than 61 days in total during the tax year or during such part of the tax before which the child turns 18.

A child in education in the UK will not be treated as giving a family tie connection if they spend fewer than 21 days in the UK outside term-time.

Half term breaks are included within the definition of term time for the purposes of the test. This means that time spent in the UK during half-term breaks will not be taken into account when calculating whether a child has been in the UK for fewer than 21 days outside of term-time.

Annex 2: Risks attaching to international staff appointments

Engagement type	Risks for UoK	Risks for employees
(A) Overseas national coming to UK for a fixed-term working full-time for UoK in the UK	The Border Agency challenges the Visa under which the worker has entered the UK. UK Income tax and NIC deductions are not applied correctly. Auto-enrolment into a UK pension scheme might be required	A liability to income tax and social security contributions applies to the UK income which is reportable in the home country and may need relief to be sought under double tax treaties with the UK
(B) Overseas national coming to UK for a fixed-term working part-time for UoK in UK and part-time in the home country for an overseas employer	As for Type A, plus the risk that the residence test are not passed so that the person remains resident abroad and UoK is subject to the employment rules of the home country	As for Type A, plus increased risk of error when completing tax returns in respect of holding 2 employments. In the absence of a reciprocal social security treaty or single-country treatment for EU member states, SS contributions might be paid twice.
(C) Overseas national working full-time or part-time for UoK abroad in the home country	UoK becomes an overseas employer but fails to establish all obligations that need to be complied with in the country concerned, and unknowingly commits compliance errors. UoK becomes liable for local employer's social security contributions that can be much higher than those in the UK. UoK incurs admin burdens and costs of engaging local lawyers and accountants for employment law and payroll advice and processing Cross-border workers are not eligible to be a member of USS or SAUL potentially requiring a separate pension scheme to be arranged in the local country	Terms and conditions of employment, including salary scales, are based upon UK contracts in GBP when the local employment law and local currency are different. UoK may not be able to offer local pension provision or that which is offered is less beneficial than that available from other employers
(D) UK national going to work for UoK full-time abroad or part-time abroad and part-time in the UK	As for Type C, plus further complexity in respect of residence status and UK pension provision if the job requires part-time presence in both the UK and overseas locations	Lack of knowledge of employee obligations in the overseas country if working there full-time, and overseas income may be reportable on UK tax returns subject to any reliefs under a double tax treaty. As for Type B if working part-time in both countries.

Annex 3:

International staff appointments - Definitions

Assignment Type	Definition	Eligibility
Business visit	A single or series of individual business trips each for a period not exceeding 45 calendar days that do not trigger any change of residence for the traveller	Allowable for UoK workers enrolled in a UK or overseas UoK payroll
Short-term inward-bound international assignment	Contract for an overseas national to work in the UK involving UK presence on fewer than 183 calendar days with a subsequent return to the home country	Allowable provided that overseas worker has a work-visa applicable for whole of the assignment period, and is UK-resident during the period under the <i>Sufficient UK Ties Test</i>
Long-term inward-bound international assignment	Contract for an overseas national to work in the UK involving UK-presence on more than 182 calendar days with a subsequent return to the home country	Allowable provided that the overseas worker has a work-visa applicable in the UK for the whole of the assignment
Short-term outward-bound international assignment	Contract for a UK national to work abroad involving overseas presence on fewer than 183 calendar days with a subsequent return to the UK	Allowable only if the worker remains solely UK-resident unless the overseas residence arises in Belgium, Greece or any further countries for which UoK establishes a local HR/payroll facility
Long-term outward-bound international assignment	Contract for a UK national to work abroad involving overseas presence on more than 182 calendar days with a subsequent return to the UK	Allowable only for UK staff to be seconded to Belgium and Greece or any further countries for which UoK establishes a local HR/payroll facility, and matters relating to continuation of membership of a UK pension scheme and UK social security can be resolved
Overseas international assignment	Contract for a worker to work wholly abroad with journeys to the UK solely as <i>Business visits</i>	Allowable only for staff located in Belgium and Greece unless EG has given approval for an investment to be made in setting up a local HR/payroll facility in the country concerned based upon a sufficient size of workforce to justify the investment