

Overseas Engagement – Guidance on Securing the Services of People Resident Overseas

1. Introduction

The University has occasions when, for operational reasons, it wishes to engage the skills and expertise of individuals who are resident outside the UK and the Republic of Ireland. Examples of the reasons why the University may wish to secure the services of these individuals include:

- External examiners and PhD supervision
- Visiting research students not employed by another institution, these are mostly within the Faculty of Science, Technology, Engineering and Mathematics
- Other research relationships, such as research partnerships with non-UK institutions and for which research funding has been received
- Other contracts for services, as diverse as volcanic measurements in Bolivia, photography in Crete, plus many others
- Developmental testing, external assessors of course material, critical reading and authoring, primarily for the Faculty of Business and Law, the Faculty of Wellbeing, Education and Language Studies, the International Development Office, and Learning, Teaching and Innovation
- Donor or operational requirements within international development programmes
- Panel membership for partnership approval of overseas institutions.

In the past, the services of these colleagues has been secured via the issue of UK consultancy contracts or letters of engagement which are de facto consultancy contracts. However, this lays the University open to significant financial and regulatory risk, as the contract is subject to the law of the country in which the colleague is resident, not UK law. Many countries have very significantly different attitudes to consultancy contracts to those in the UK, and these could be interpreted as contracts of employment. As we do not have the resources available to define which countries are high-risk and which are low-risk, **University policy does not allow the issue of consultancy contracts, or any form of engagement which could be interpreted as a contract of employment, to any person resident outside the UK and the Republic of Ireland, except in the specific circumstances set out in paragraph 3 of this guidance.**

In particular, except in the specific circumstances set out in paragraph 3 of this guidance, the University **must not** enter into any form of contractual relationship with individuals resident in the 10 countries of Continental Europe from which we withdrew from direct employment during 2012, as in some countries we have made a legal undertaking not to have such relationships in future, and in others, it would risk re-establishing an employment status that has recently been severed. These countries are: Belgium, Spain, The Netherlands, Germany, France, Switzerland, Luxembourg, Italy, Greece and Austria.

2. Who does this guidance apply to?

This policy applies to any individual who is **normally resident** outside the UK or the Republic of Ireland. If an individual has a UK bank account or a National Insurance number that does not mean that they are excluded from this policy; the crucial factor is whether they are resident outside the UK during the period that they are undertaking the work. This includes a situation where a UK resident has a second home in, for example France, and wishes to undertake work for the University while spending, say, three months resident in that second home. In that situation, not only would the University be at risk of financial penalty, but so would the employee. If it is unclear whether a particular person does or does not fall within the definition of resident overseas for the purpose of this policy, this must be checked with the Resourcing Hub **before** any contract is issued.

This policy does not apply to any UK or Republic of Ireland resident, or any member of staff resident in the UK or the Republic of Ireland (including Associate Lecturers), for whom consultancy contracts can continue to be used, where necessary. In particular, it does not apply to any individual resident in the UK or the Republic of Ireland who is being asked to work for the University outside the EU or EEA. In these circumstances, the International Assignment Policy and Guidance apply.

3. Nationals of countries in the European Economic Area (EEA) and Switzerland working in the UK

Nationals of EEA countries and Switzerland can work in the UK without any restrictions. Such individuals may therefore be engaged directly by the University **provided that the work will be carried out and paid for entirely in the UK**. The standard UK consultancy engagement procedures and contract may be used. Please note that the University has a statutory duty to carry out document checks to verify that an individual has the right to work in the UK.

- **Which countries?** The UK Visas and Immigration (UKVI) publishes a full list of all of the EEA countries of which nationals are free to work in the UK without any restriction.
- **Verifying eligibility.** The University must carry out document checks to confirm that a foreign national has the right to work in the UK. This must be done before they start the work and before issuing a contract. Please contact the Resourcing Hub for detailed guidance on this.
- **UK bank account.** The individual must hold a UK bank account. All fees will be paid in GBP into that account. You should verify that they do before they start the work and before issuing a contract (for example, by asking to see a copy of a recent bank statement).
- **Place of work.** The work must be carried out wholly in the UK and none of it can be done in the individual's home nation. A letter from the individual must be obtained from the individual confirming that they agree to comply with this and stating where the work will be carried out.
- **Taxation.** The individual will be liable to pay income tax and national insurance (NI) in the UK on any UK earnings. They must therefore obtain a National Insurance number if they do not already have one. If they are working on a self-employed basis the University is not responsible for any income tax or NI payment. In these circumstances the individual must register as self-employed with HMRC and submit a tax return. In addition, if the total value of their self-employed work from all sources in the UK is likely to exceed the registration

threshold (currently £79,000 per annum), they must register for and charge VAT. Detailed information on this is available on the HMRC web site.

4. Alternative forms of contract

It will normally be operationally efficient to engage services overseas through Stipenda Ltd. (Stipenda) except where the services can be procured through a registered company. The alternative forms of contract which may be considered include:

- **Contracting with a registered company, rather than an individual.** Many individuals with whom the University may wish to contract, but who are not employed by another HEI, may be an employee of a registered company. This can be their own company provided that it is registered as a legal entity in their country of residence and the individual is an employee of that company. If this is the case, a Purchase Order must be raised to buy these services from the company, rather than contracting with the individual. Steps should be taken to ensure that the company is bona fide, such as asking for a copy of the registration certificate for the company. Extra time should be allowed to ensure that the appropriate supplier information can be acquired and checked by Procurement.
- **Contracting with the home institution of the individual.** In many cases, the person whose services we wish to secure is an academic whose main employment is with an institution in their home country. The possibility of contracting with the home institution should be explored; this appears to be an approach used by many other UK institutions. In most cases, this can be achieved by raising a Purchase Order. In some cases, the home institution may require a contract, rather than a Purchase Order and Commercial Legal Services (CLS) is developing a generic contract to be used in these circumstances.
- **Not issuing a contract at all.** If there is no payment, for example for ARC supervisors and examiners, then there is no need to issue a contract at all, and a letter of appointment should be sufficient.

Engaging the services of an individual through Stipenda

There are three solutions to engaging the services of individuals through Stipenda. In all cases the University makes contract with Stipenda and not directly with the individual:

Solution 1: TraderNet

When services are engaged through Stipenda, one option is to use an in-country solution called TraderNet. This is the engagement of the individual by Stipenda as a consultant using their in-country registered company. Units can specify a piece of work, an associated fee and a payment schedule.

TraderNet is available in all countries with very few exceptions, such as the Netherlands.

However, in some cases, individuals may not be eligible to be treated as a registered company and Stipenda will check this. If the TraderNet solution is not possible for that individual, the **Payroll** or **Professional Employment Organisation (PEO)** solution may be used.

Solution 2: Payroll

Where an individual is not eligible to be engaged via TraderNet, they may be employed by Stipenda through their in-country payroll, called PayNet.

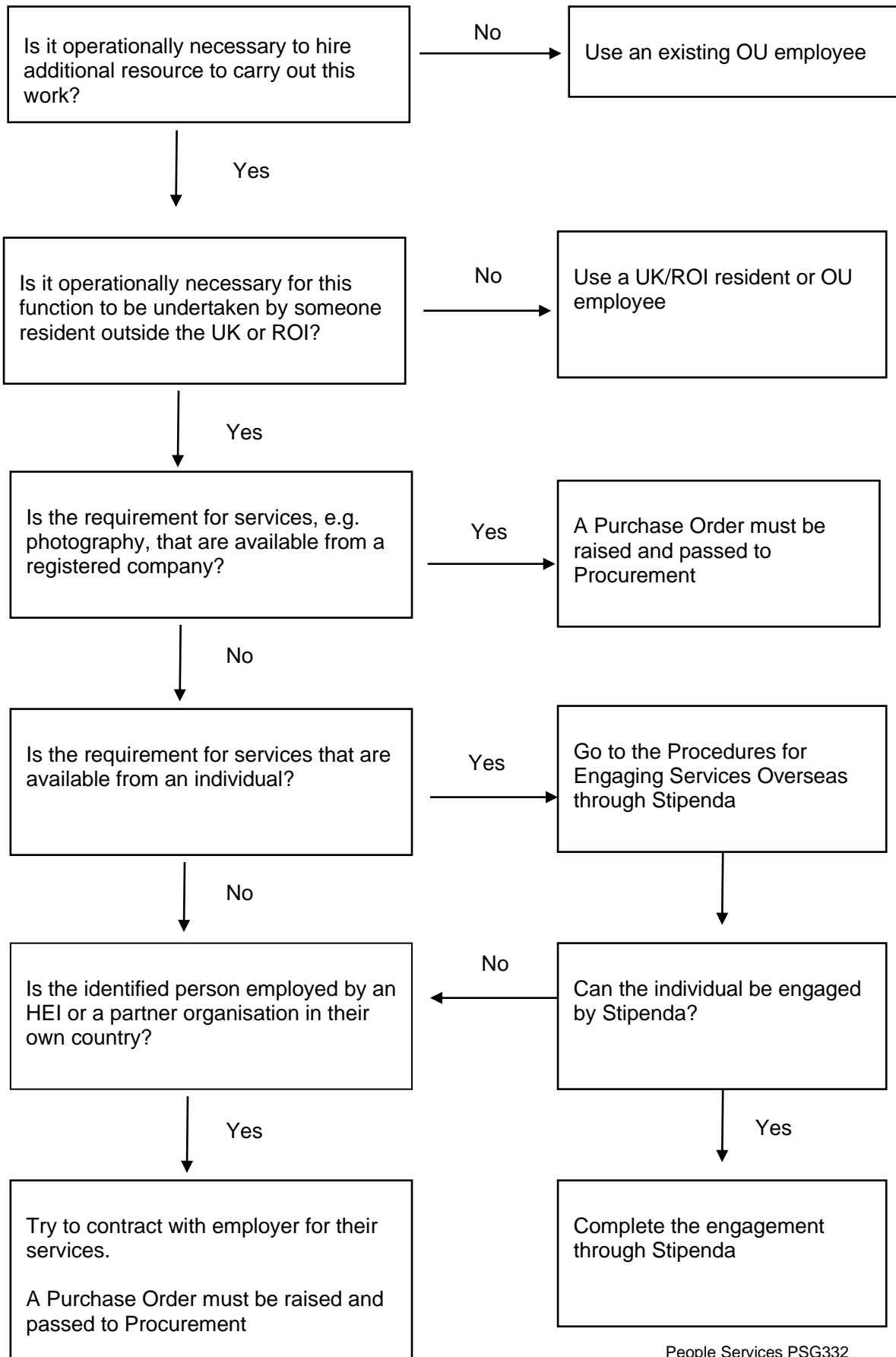
In this case, units can specify a piece of work and either a one-off payment or a series of monthly payments. It is not possible to make irregular payments; that is to say it is not possible to have some months when the payment due to the individual is zero.

Solution 3: Professional Employment Organisation (PEO)

Where an individual does not have their own entity and is not a sole trader in a particular country, they may be employed by Stipenda via PEO. Stipenda will provide the Employer Record of service, which encompasses the management and delivery of Payroll, Tax, HR and compliance to meet all statutory obligations of the specific country. Stipenda will perform payroll registration with the local tax and social insurance authorities, and payroll calculations including reports, filing and tax withholdings.

A web portal allows newly employed contractors to communicate, including registration and the on-boarding process.

The steps that staff should take in determining the most appropriate mechanism for securing the services of individuals is outlined in the following decision tree:



5. Timescales

It is recognised that consultancy contracts were relatively quick to issue, which may be why they have been so widely used, even when not the most appropriate contractual vehicle. Unfortunately, the above arrangements are likely to take longer to implement, and units in the University who need to secure these services are advised to contact the Resourcing Hub as early as possible to discuss the best way to meet their needs.

6. Useful References

Overseas Engagement – Authority To Engage Stipenda Form

Overseas Engagement – Candidate template letter

Overseas Engagement – Stipenda Engagement Form

Overseas Engagement – Policy on Securing the Services of People Resident Overseas.

Overseas Engagement – Procedures for Securing Services Overseas through Stipenda