

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

1. Introduction

This policy has three purposes:

- To protect individuals who undertake work for the OU from incurring unforeseen obligations in relation to tax and other payments;
- To protect the Open University from the risk of incurring legal, fiscal and financial obligations outside the UK and the Republic of Ireland;
- To ensure consistency of support to students based outside the UK and the Republic of Ireland.

The University has occasions when, for operational reasons, it wishes to engage the skills and expertise of academic or other colleagues who are resident outside the UK and the Republic of Ireland.

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 policy.**

In particular, except in the specific circumstances set out in paragraph 3 of this policy, 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 in 2012. These countries are: Belgium, Spain, The Netherlands, Germany, France, Switzerland, Luxembourg, Italy, Greece and Austria.

2. Who does this policy 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, this 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 outside the UK or the Republic of Ireland 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 being resident overseas for the purpose of this policy, this must be checked with the Resourcing Hub **before** any contract is issued or commitment, oral or written, made.

This policy does not apply to any UK or Republic of Ireland resident, or any member of staff resident in the UK or 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 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 a foreign national has the right to work in the UK.

Such individuals may be engaged provided that the following criteria are met:

- The work will be carried out entirely in the UK and the individual has given written confirmation that this will be the case
- The individual has a UK bank account
- The document checks that are required by the UKVI are carried out.

3. What mechanisms can be used to engage the services of individuals overseas?

A number of alternative mechanisms have been developed for engaging the services of individuals resident in countries outside the UK and the Republic of Ireland. The first and most important criterion for engaging the services of such an individual is that such services are essential for the international operation and/or global academic reputation of the University; reasons such as track record of work with the University are not, on their own, acceptable as reasons for contracting with individuals overseas.

The associated Guidance on Overseas Engagement includes a decision tree to assist staff in identifying the appropriate mechanism(s) for securing the services of individuals in particular circumstances, which include (but are not confined to):

- Contracting with registered companies overseas for other services, rather than individuals;
- Utilising the services of Stipenda Ltd, an international employment agency, to secure the services of an individual;
- Contracting with a member of academic staff via their home institution, rather than directly;
- Contracting with an individual not employed in academia via their employing organisation.

All the above mechanisms involve using the Purchasing system in order to secure the services required, and for this reason should be treated separately to UK consultancy contracts which are issued through People Services systems. Extra time should be allowed to ensure that the appropriate supplier information can be acquired and checked by Procurement.

4. Equality, Diversity and Inclusion

Policies are inclusive of all Open University staff, regardless of age, care experience, caring status or dependency, civil status, disability, family status, gender, gender expression, gender identity, gender reassignment, marital status, marriage and civil

partnership, membership of the Traveller community, political opinion, pregnancy and maternity, race, religion or belief, sex, sexual orientation, socio-economic background or trades union membership status.

5. Useful References

Overseas Engagement - Authority to Engage Stipenda Form

Overseas Engagement – Candidate template letter

Overseas Engagement – Stipenda Engagement Form

Overseas Engagement - Guidance on Securing the Services of People Resident

Overseas

Overseas Engagement - Procedures for Securing Services Overseas Through Stipenda