1. Introduction

In March 2020, the University made the decision to support employees who were required, or requested, to work remotely overseas on the basis that this was an exceptional and temporary arrangement that had arisen as a result of the Covid-19 pandemic. It was agreed that any reasonable costs that were properly incurred and directly associated with Covid-19 temporary overseas working would be borne centrally by the University through the Covid contingency fund.

However, due to the enduring nature of the pandemic it has been necessary to review the University’s position in order to ensure compliance and mitigate any risks, including costs.

This guidance document aims to highlight the implications of continued with overseas working, confirm the University’s current policy and provide details of the University’s policy going forward.

It also confirms the actions required by Institutions by 31st December 2020 and going forward.

2. Covid-19 Decision Tree

This Decision tree aims to provide Institutions with a quick guide through the University’s policy in relation to overseas working and action required, specifically during the Covid-19 pandemic. Further more detailed guidance can be found in the following sections of this guidance and in the Global Mobility Policy and webpages.
Requests concerning overseas working before 31\textsuperscript{st} December 2020

The Institution should contact the Global Mobility Adviser (GMA) who will advise if temporary overseas working request is approved, based on right to work, duration etc. Please refer to section 3 for further details of the processes and actions required by the Institution where temporary overseas working is approved up until 31\textsuperscript{st} December 2020.

Will the employee commence/return to working in the UK by 31/12/2020?

Yes

The Institution should support the return/relocation of the employee, following all advice and recommendations available on our webpages: advice for Institutions

No

The Institution should contact the GMA and the HR Compliance Team to confirm the employee’s date of entry/re-entry to the UK. The GMA will confirm if any further action is required in relation to the period of overseas working.

Have you carried out an initial assessment of risk/costs?

No

The Institution should speak to the HR schools Team and the GMA to discuss the options should the employee plan to remain overseas after 31\textsuperscript{st} December 2020. They will need to assess whether the work overseas should continue with the support of the Institution, or if other options should be considered (see section 3).

Yes

New hires are likely to be tax and social security resident in their overseas location from the first day of their employment and are therefore high risk (see section 5). However, by exception due to Covid-19, the Institution can authorise a role to start overseas for up to 2 months, during which time it is expected that the employee will relocate to the UK. The institution should ensure they are following all actions as set out in section 3.

Is the employee a new recruit?

Yes

For any period longer than 2 months, the Institution should contact the GMA who can advise on any action required. This may require completion of an HR56 Form, in line with the Global Mobility Policy.

No
Current Policy

The University will continue to support temporary overseas working patterns until 31st December 2020, providing these have been approved by the Global Mobility Adviser (GMA).

If, before 31st December 2020, a new recruit is required to work temporarily overseas due to visa or travel restrictions, or an existing employee asks to return to their home of nationality for personal/health reasons, you should contact the Global Mobility Adviser providing the following details:

- employee name
- type of work they will be carrying out in the overseas location (job title and basic role profile)
- overseas location
- nationality
- immigration and right to work status in overseas location (including confirmation of their right to work for the University)
- immigration status in the UK (for EU nationals please confirm if they have pre-settled or settled status)
- days spent (if any) working in the overseas location in the 12 months prior to this trip
- date of travel overseas for this trip / start date of employment.

For the period the employee has been authorised to work overseas, the University will cover all reasonable and properly incurred costs that are directly associated with
overseas working centrally. A letter will be issued to each employee confirming the arrangements to be put in place and obligations of all parties.

Whilst outside the UK, the employee will be paid through the UK payroll subject to UK tax and NI. As an interim measure, salary can be paid into an overseas bank account; however, international bank transfer charges may apply, and any transfer will be subject to exchange rate fluctuation which the employee will need to agree to in advance.

Please note that where the individual will be working from overseas, no UK Right to Work check is required. However, please notify the HR Compliance Team when the employee enters the UK so they can advise on the checks required at that time.

If the employee does not have the right to work for the University in the overseas location, the employee must be placed on unpaid leave, or agree a delay to their employment start date, with no productive work taking place until they are able to relocate to the UK.

Please note that employment visas are often linked to a specific employer, so you should not assume that because an individual is already working in the overseas location, they have the right to work for the University.

Until the employee’s return/relocation to the UK, the Institution should continue to ensure that each employee:

- Seeks guidance from the airline/travel agent on possible travel restrictions.
- Is following the advice from the Government and health services in the overseas location and is also consulting the UK Government and NHS advice on how to avoid catching or spreading coronavirus (COVID-19).
- Is legally able to work for the University and live in the overseas location (please request copies of the employee’s visa/work permits).
- Provides you with their address and next of kin details or adds these details to ESS if they have access. It may also be useful to hold copies of the employee’s passport (to be held securely and destroyed when the employee returns to the UK).
- Will have access to appropriate healthcare facilities, either through their own private healthcare policy or through the state healthcare system, and that this will cover any pre-existing medical conditions.
- Registers with the FCO for travel advice alerts relating to their overseas location, and the UK for information on permitted travel to the UK.
- Checks the official travel advice from local government authorities in the overseas country.
Actions required by Institutions before 31st December 2020

Institutions are expected to commence discussions with any employees working temporarily overseas to ensure that, where possible, they have returned to the UK by 31st December 2020. An open letter addressed to the employee has been drafted to assist Institutions in these discussions if required.

Where the employee will return to the UK before 31st December 2020, the Institution should confirm the return/relocation date to the GMA and the HR Compliance Team. The GMA will advise if any further action will be required in relation to the period that the employee was working temporarily overseas.

If the employee is not able/does not wish to relocate to the UK by 31st December 2020, the Institution should take advice from the HR Schools Team and the Global Mobility Adviser to assess whether the employment should continue overseas for a further agreed period (with the associated risks and costs to the Institution – see section 5), or if other options should be considered in the particular circumstances. This could include agreeing a reasonable period of unpaid leave. This will require their express written agreement – please seek further guidance from the HR Schools Team. In very exceptional circumstances, for example where the employee is not willing or able to comply with the terms of their employment contract as regards place of work, consideration may be required as to whether the employment should continue. This should only be considered in close discussion with the HR School Team.

Please note that there are employees who normally live overseas but carry out all or part of their role in the UK. These employees may also have been affected by restrictions arising from Covid-19 and may no longer be able to work in the UK as often as previously agreed. In these cases, a review may still be required to confirm if their current payroll set up and social security arrangements continue to be appropriate. Again, the Institution should contact the GMA as soon as they become aware of any such change in the employee’s previously agreed work pattern.

4. Overseas Working – January 2021 onwards

If the Institution supports the continuation of overseas working beyond 31st December 2020, based on an initial assessment of risk and cost, then the processes set out below will need to be followed.

Overseas working requests for existing employees- Less than 6 months

In most cases, where the period of overseas working will be less than 6 months (taking in to account any time the employee has spent in the overseas location in the 12 months prior to this request or plans to spend in the overseas location in the future), the request can be managed within the Institution. However, such arrangements are not without risk and, as highlighted in section 5, in some locations a tax liability may be triggered in less than 183 days, therefore the Institution should confirm the details of any such arrangement with the GMA before any authorisation is given to the employee. The Institution must also ensure that all steps/actions as detailed in Section 3 are followed.
Under no circumstances should overseas working be authorised if the employee does not have the right to work for the University in the overseas location. Please note that employment visas are often linked to a specific employer, so you should not assume that because an individual is already working in the overseas location, they have the right to work for the University. If you have any concerns about the employee’s right to work in the overseas location, please contact the GMA.

**Overseas working requests for existing employees - More than 6 months**

If it is likely that the overseas working pattern will last for more than 6 months, it should be fully reviewed for compliance purposes and a business case prepared in line with the Global Mobility Policy, which includes HR56: Global Mobility Form approval.

It is recommended that the HR56 form is completed and submitted to the GMA as soon as it is known that any overseas work pattern is likely to exceed 6 months, and well in advance of 31st December 2020 so that appropriate advice can be provided in relation to costs and payroll administration before any commitment is given to the employee to continue overseas working. It is worth noting that the costs to back-date payroll and penalties for late payment of tax, where this is required/due can be significant and will be recharged to the Institution.

**Overseas working requests for new recruits**

For new overseas recruits, due to the current exceptional circumstances, it is agreed that the Institution can authorise an employee can start working overseas where this is required as a direct result of Covid-19, for up to 2 months. This can only be agreed if the employee has the right to work for the University in the overseas location and where it can be guaranteed that the employee will relocate to the UK within 2 months.

Please note that, as highlighted in Section 5, as the employee is likely to be already tax resident in the overseas location, the 183 day rule will not apply and it is highly likely that their income will be subject to tax and social security in that overseas location from the first day of their employment. However, if the arrangement only continues for 2 months, and given the current exceptional circumstances, the risk is limited. The Institution must accept all risks and costs associated with this arrangement.

Please note that failing to submit a UK visa application in time to meet the intended employment start date is not an appropriate justification for overseas working. The Institution should ensure that UK visa applications are made in a timely manner.

Where it is likely that overseas working will be required for more than 2 months, the Institution should contact the GMA who will be able to provide further information on the risks and cost implications so the Institution can make an informed decision on whether to continue with, or delay the start date of the appointment.
The key risks and costs associated with overseas working are summarised below. However, there are other implications not detailed here in relation to, for example, effect on pension eligibility, as well as data protection, security and insurance considerations. Further details can be found in the Global Mobility Policy and on the Global Mobility and overseas assignment webpages.

**Tax and Social Security Implications**

During the initial period of the pandemic, tax and immigration authorities appeared to be taking a pragmatic approach to compliance, based, in part, on the expectation that the disruption would be short-term. As time passes, and certainly now that the restrictions have been in place for more than six months, the narrative appears to be changing.

Six months is a key trigger point for tax, as in many countries if an employee is present for more than 183 days (approximately six months) in the tax year they will become liable to tax and potentially social security in that country, even if they are paid in the UK by a UK based employer.

It should be noted that:

- The 183 day rule is not applicable in all countries and, where tax liability is assessed differently, employees may create a personal tax presence after less than 183 days.
- For employees who have been recruited while living overseas, the 183 day rule will not be applicable if they are already tax resident in that country and therefore they will be liable to tax and social security in the overseas country from the first date of their employment with the University.
- The 183 day rule does not apply to social security, for which an overseas liability may arise much sooner.

Please also note that if the employee remains in the overseas location for 184 days, where the 183 day rule does apply, their income would be taxable in the overseas location for the entire period not just the ‘overstay’.

Payment of tax is the employee’s responsibility, although in some countries there is a requirement to withhold tax through a payroll (just like the PAYE system in the UK). As a rule, where there is an employer withholding obligation, the obligation and liability may rest with the employer. Therefore, in some of these cases the University may be required to establish an overseas payroll through an external provider in order for the employer to settle the taxes that are due.

If social security becomes due in the overseas location, this will require an employer contribution that may be in addition to, or instead of, the UK National Insurance contributions. It is worth noting that UK has one of the lowest employer contribution rates in Europe, so it is likely that if overseas social security does become due, this will be an additional cost.
In addition to the significant administrative burden, the cost to set up an overseas payroll can be around £2000-£5000 plus VAT per country, plus around £200 plus VAT per month per employee paid through that payroll.

**Tax Advice**

Specialist external tax advice is usually required in relation to overseas working requests to establish, for example, if tax withholding is required, how social security can be settled or if there is a risk of creating a permanent establishment (PE) for the University in the overseas country. Please note that in some countries it only take one employee working from their home to create a PE, and this can have significant corporate tax implications for the University and can create a tax withholding (payroll) requirement where this would otherwise not have been required.

The cost of this advice could be up to £10,000 plus VAT per country.

**Legal Advice**

Local external legal advice may be required to ensure that the University adheres to all employment requirements in the overseas location (in relation for example to mandatory local employee healthcare insurance, other insurance requirements, unusual holiday entitlement, employment documentation etc).

This advice can cost up to £10,000 plus VAT per country.

**Immigration - EU nationals (pre-settled status requirement to be a resident by 31 December 2020)**

Due to the new immigration system expected to come into force from 1 January 2020, EU nationals recruited overseas will need to be resident in the UK by 31st December 2020 in order to make their applications for pre-settled status. If they do not, they will need to apply for a visa before they relocate to work in the UK. Doing so will require them to be eligible under the applicable rules for a visa, and they would be required to pay up to £5,000 in visa costs per person. This could be extremely costly for an employee if they are relocating with family members.

Conversely, being resident in the UK before 31 December guarantees them a free 5 year ‘visa’, which leads to settlement. This would be the preferred option for them and the University. Further information on the EU settlement scheme can be found here:

https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status

There is similar risk for current EU staff (i.e. who were employed and resident in the UK before the start of the pandemic) who are abroad and who have not yet secured pre-settled or settled status in the UK. These individuals do not have to return by 31 December 2020 to be eligible to apply; rather they have until no later than 30 June 2021 to return and apply for pre-settled/settled status if they have not already done so. This does not include any Irish nationals, as they are exempt from all UK immigration requirements.

The compliance team have advised that most visa centres/embassies are now re-opening and visas are being processed more or less in line with normal timeframes (with some exceptions).
6. List of Resources

- HR School teams: https://www.hr.admin.cam.ac.uk/contact-us
- Global Mobility and Overseas working:
  https://www.hr.admin.cam.ac.uk/hr-services/global-mobility-and-overseas-working
- **Global Mobility Adviser (GMA)**: globalmobility@admin.cam.ac.uk
- Global Mobility Form: HR56:
  https://www.hr.admin.cam.ac.uk/forms/global-mobility-form-hr56
- HR/CHRIS Forms: https://www.hr.admin.cam.ac.uk/forms
- Safety Office: https://www.safety.admin.cam.ac.uk/
- Safeguarding Work Away (Risk Assessment):
  https://www.safeguarding.admin.cam.ac.uk/policy-and-guidance
- Pensions: https://www.pensions.admin.cam.ac.uk/
- Payroll: payrollenquiries@admin.cam.ac.uk
- Insurance: Insurance.section.online@admin.cam.ac.uk
- Group Business Travel Insurance:
  https://www.insurance.admin.cam.ac.uk/travel-insurance
- Key Travel:
  http://www.admin.cam.ac.uk/offices/purchasing/travel/index.shtml
- Compliance Team:
  http://www.admin.cam.ac.uk/global/cgi/stafflist.cgi?officeabbr=compliance_team