

SECONDMENTS

A secondment is an exchange arrangement between a UK company and an overseas company where an overseas national will be loaned temporarily to the UK company for a fixed length of time, normally for no more than a year or two at a time. Generally, the overseas organisation will continue to pay the salary during the secondment period. There should be an employer/employee relationship between the UK-based company and the overseas worker such that the UK employer is accountable for the overseas national while in the UK. A contract or agreement between the two companies should give full details (length of secondment, duties and functions of the post) of the secondment arrangement.

Caseworkers should be satisfied that there is a job to be done in the UK before they approve a work permit for a secondment. The approval period should not exceed the expiry date of the contract or secondment agreement between the UK company and the overseas company.

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Establishing a genuine vacancy

Caseworkers should be satisfied that there is an identifiable job in the UK before they approve a secondment application. In most cases it is likely that there will not be a vacancy available to be filled by a resident worker.

Caseworkers should request a copy of the secondment agreement, a job description and staff hierarchy charts as evidence of there being a job to be done in the UK. The job description should demonstrate the skills that are applicable to the job. A hierarchy chart should show the level of seniority of the job. This will demonstrate the level of responsibility and, where necessary, supervision responsibilities required. This can be compared with the job description in the application form and advertisements.

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When is it a TWES application?

Where the secondment is for training and development purposes and the person is additional to normal staffing requirements, a TWES permit will normally be appropriate.

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When can the advertising requirement be waived?

The requirement to advertise the vacancy can be waived where the individual remains an employee of an overseas employer and is seconded to work at, or for a UK based employer. This may be appropriate where:

- The UK based company has contracted with an overseas company for the supply of a service that requires one or more of the overseas employees to work in the UK. The employee of the overseas company must have skills and expertise that are not available from the resident labour pool. The UK based company must demonstrate this condition has been met by providing an acceptable business case to waive this requirement; OR
- A UK based company has been awarded a contract to supply goods or services to an overseas company. If the company can demonstrate a need to have key personnel from the overseas company working alongside the UK company's workers to oversee the project a work permit holder will be required. If the overseas company's representatives only need to enter Britain for occasional short periods to carry out this monitoring role and will not be required to work, they may be able to enter the country as Business Visitors under separate provisions of the Immigration Rules.

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What to do if?

The secondment provides no clear benefits to the UK employer – the UK employer should provide a business case outlining the benefits of seconding an overseas national for the length of time specified. A business case is required before the advertising requirement can be waived. If there are no clear advantages to be gained by seconding an overseas national the post must be advertised.

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The secondment is related to an outsource offshoring project – secondments are appropriate when resourcing short-term assignments or projects such as outsource offshoring projects. The term 'outsource offshoring' refers to a business process through which UK based employers have decided to 'offshore' all or some of its functions to an overseas company. Employees of the overseas company will be required to work in the

UK to familiarise themselves with the UK company's processes and systems, and to prepare the ground to move designated functions offshore.

Before approving an offshoring secondment, caseworkers should request a copy of the offshoring contract and establish a genuine vacancy as described above. The UK based company must also provide an acceptable business case to waive the advertising requirement.

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The worker does not have six months experience with the overseas company – in some cases, particularly with outsource offshoring applications, the overseas company will have only recently recruited the worker to work on a specific project. It is therefore not necessary for the worker to have six months experience with the overseas company.

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There is no evidence of the link between the overseas company and the UK-based employer – before the recruitment search can be waived for a secondment application, the UK based employer must demonstrate that a secondment agreement exists between them and the overseas company. With outsource offshoring cases, the UK based employer must provide evidence of the offshoring contract which is in place with the overseas company. Any evidence received should be noted on the employer comments on gLOBE.

If this evidence cannot be provided then the application should be assessed under other criteria, for example Tier 1 (if applicable) or Tier 2. If the application fails to meet any of the applicable criteria the applications should be refused. Where no references or qualifications are submitted, the application should be refused using paragraph P81A/B/C/E in the refusal letter. Where no evidence of advertising is produced, the case should be refused using either paragraph P83A/B in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

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The individual remains an employee of an overseas employer and meets the conditions outlined above - Cases should be dealt with as Tier 2 applications, exceptionally waiving advertising if a copy of the secondment agreement has been provided and where the benefits of the secondment can be clearly shown, using paragraph P70A in the approval letter.

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