Learner Support Programme

EMA Residency 2008/09 – Supporting Information

July 2008

Of interest to stakeholders involved in delivering Education Maintenance Allowance and learners applying for Education Maintenance Allowance
Further information on the scheme is available from the following sources:

Learning providers can contact the Learner Support Service for advice on administering the scheme on 0845 600 7979.

Learners should be directed to the Learner Helpline on 0800 121 8989.

Alternatively, the Learner Support Service can be contacted via email at ema@liberata.com.

Learner Support Directorate
Learning and Skills Council
(National Office)

The Straddle
Victoria Quays
Wharf Street
Sheffield S2 5SY
T 0845 019 4171
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Summary

This document contains additional residency information to support learners to determine if they meet the residency eligibility criteria of the Education Maintenance Allowance (EMA) scheme. This document should be read in conjunction with the 2008/09 EMA Guidance for FE Providers and the 2008/09 EMA Guidance for Providers of LSC-funded Entry to Employment and Programme Led Apprenticeships.

This document is of interest to post-16 learning providers, LSC Area Partnership Teams, Connexions staff and other institutions involved in 16–19 provision. It will also be useful for learners applying for support from EMA.

Issued by Ian Pursglove
Young Peoples Support Programmes
Policy Director
July 2008
The flowchart below will help you determine if you meet the residency criteria:

**Someone who is 'settled' in the UK**

- Has been ordinarily resident in the UK for at least the three years prior to the start of their learning programme

  - Yes: Eligible Mark Box A
  - No: Not Eligible

**EEA National (including Gibraltar) Or the spouse, civil partner or child of an EU National**

- A passport from one of the EU countries or a national identity card

  - Yes: Eligible Mark Box B
  - No: Not Eligible

**EEA Migrant Worker Or the spouse, civil partner or child of an EEA migrant worker**

- A passport from one of the EEA countries, Switzerland or Turkey or a national identity card

  - Yes: Eligible Mark Box C
  - No: Not Eligible

**Refugee Or the spouse, civil partner or child of refugee or Person with Humanitarian Protection**

- An Application Registration Card

  - Yes: Eligible Mark Box D
  - No: Not Eligible

**Person with EU Temporary Protection**

- An Application Registration Card

  - Yes: Eligible Mark Box D
  - No: Not Eligible

**Asylum seeker or person who has been granted asylum**

- Passport or Immigration Status Document endorsed with a vignette or stamped Home Office Status Letter (including for Family ILR Exercise)

  - Yes: Eligible Mark Box D
  - No: Not Eligible

**Person with Discretionary Exceptional leave to Enter or Remain**

- Passport or Immigration Status Document endorsed with a vignette that states a Discretionary Letter or a stamped Home Office Status Letter

  - Yes: Eligible Mark Box D
  - No: Not Eligible

**Note:** If you have been temporarily absent from the UK/EEA, Switzerland or Turkey during the three years qualifying period then please see the section on Temporary Absences.
Summary of residency terms

EU
European Union, the member states of which are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, the United Kingdom (including Gibraltar), Luxembourg. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Bulgaria and Romania.

Citizens of the EU can receive EMA if they are ordinarily resident in England on the first day of their learning programme, and have been ordinarily resident in one of the EU/EEA countries for three years prior to beginning their learning programme.

EEA
European Economic Area, consisting of the states of the EU (see above) plus Iceland, Liechtenstein, and Norway.

EEA Migrant Workers and the spouse, civil partner or child of an EEA Migrant Worker can receive EMA if they are ordinarily resident in England on the first day of their learning programme, and have been ordinarily resident in one of the EU/EEA countries for three years prior to beginning their learning programme.

Please note: Some EEA Countries issue Alien Passports. These do not confer citizenship of that country. Therefore someone with one of these passports will also need to have Indefinite Leave to Remain to be eligible for EMA.

Children of Swiss Nationals
Children of Swiss Nationals can receive EMA if they have been ordinarily resident in England on the first day of the learning programme, and have been ordinarily resident in one of the EU/EEA countries or Switzerland for three years prior to the beginning of their learning programme.

Turkish Migrant Workers
Children of Turkish migrant workers can receive EMA if they have been ordinarily resident in England on the first day of their learning programme, and have been living in the EU/EEA, Switzerland or Turkey in the three year period prior to the start of their course.

EEA Migrant Workers
A national of a member state of the EEA, Switzerland or Turkey who has taken up an activity as an employed person in the United Kingdom

A UK National who has moved from the UK to work in another EEA country, and then returned to the UK to work, may be considered as an EEA Migrant Worker upon their return to the UK.

Settled status
‘Settled’ means having either indefinite leave to enter or remain (ILE/R) or having the right of abode in the UK. British citizens and certain other people have the right of abode in the UK:

i those with the European Community – United Kingdom of Great Britain and Northern Ireland Passports
ii British Dependent Territory Citizens (now known as British Overseas Territory Citizens)
iii those whose passports have been endorsed to show they have Right of Abode in the UK
iv those who have a certificate of naturalisation or registration as a British Citizen.

Ordinarily resident
The LSC regards as ordinarily resident in a given country or region any person who habitually, normally and lawfully resides from choice and for a settled purpose in that country. Someone who has not been ordinarily resident because he or she or the person’s parent, spouse or civil partner was working temporarily abroad will be treated as though the person had been ordinarily resident in the relevant area.
**Temporary Absences**

Absences of six months or less should be counted as temporary and disregarded for Residency eligibility when determining if a learner has been ordinarily resident in the UK/EEA for three years prior to beginning their learning programme. Absences between six months and three years can be counted as temporary, provided evidence is available to support the claim.

Where an absence is between six months and three years it will be necessary to determine the purpose of the absence to identify if it was intended to be temporary. This will require a consideration of all the circumstances of the absence. For example, if a family had left the UK/EEA with the intention of emigrating permanently, and had then returned because of unforeseen circumstances then we could not consider the absence to be temporary, as this was clearly not the original intention.

However, if a family had left the UK/EEA for a period of time to look after a sick relative, with a clear intention to return then this could be considered a temporary absence if it falls within the criteria outlined, and evidence can be provided to support the case.

All evidence supporting a claim for temporary absence must be forwarded to the EMA Policy Team at the address below, who will make a decision on a learner’s eligibility:

EMA Policy Team  
Learning and Skills Council  
National Office (Sheffield)  
4th Floor The Straddle, Victoria Quays  
Wharf Street, Sheffield  
S2 5SY

Examples of the types of evidence that could be used to prove that an absence from the UK/EEA was intended to be temporary are as follows:

i  Maintaining a home in the UK/EEA that is available for use upon return

ii  Evidence that charges were being paid on a property, e.g. Council Tax, Utilities

iii  Evidence of a temporary work contract if the absence was for employment purposes

This list is not exhaustive and no one piece of evidence would necessarily determine that an absence was temporary.

We are prepared to accept copies of original documents when checking eligibility in these cases, although original documents may also be requested.

Learners and their parents/carers should note that if appropriate evidence cannot be supplied to substantiate their claim of temporary absence, then we will not be able to make a judgement on their eligibility.

**Temporary Absences and Children of Military Personnel**

If a learner has been accompanying a parent or carer on an official overseas posting then we will consider them exempt from having to have been ordinarily resident in the UK/EEA for the three years prior to beginning their learning programme.

The LSC will need to see proof of the parents or carers posting, and this should be forwarded for consideration by the EMA Policy Team to the same address as evidence for temporary absences.

**Humanitarian Protection**

Humanitarian Protection (HP) is granted to individuals who do not qualify for asylum but who if removed from the UK would be at real risk of

- the death penalty
- unlawful killing or
- torture or inhuman or degrading treatment or punishment arising from the deliberate infliction of ill treatment.

People with HP will be sent an immigration status document endorsed with a United Kingdom Residence Permit (UKRP), also known as a vignette, from the Home Office, which specifies they have been granted this status.

**Refugees**

A refugee is defined as someone who is outside their country of nationality, and who is unable or unwilling to return there because of a well founded fear that they may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.
Government policies on Refugee Leave and Humanitarian Protection, which came into effect on 30 August 2005 mean that refugees are now given an initial grant of five years’ limited leave (where previously they were immediately granted indefinite leave to remain or enter), all people with refugee status are eligible to claim EMA, subject to other eligibility criteria being met, for example age and household income. People granted Humanitarian Protection are also granted five years’ limited leave (three years were granted before 30 August).

EU Temporary Protection
In the event of a mass displacement of EU Citizens, for example, due to a natural disaster, the Council of the European Union may invoke the European Union Temporary Protection Directive, and therefore those displaced Citizens will have a right to move to the UK and other EU states and access their public services.

Exceptional leave to enter or remain (ELE/ELR)
ELE/ELR is not asylum and does not constitute recognition as a refugee within the meaning of the United Nations Convention. ELE/ELR status does not confer eligibility to EMA, and is not the same as indefinite leave to remain or enter. ELR was abolished on 1 April 2003, so that no one was granted it after that date. It was normally granted to a set calendar date (four years from the date of the application) although in some circumstances it may have been granted for a shorter period. The applicant should have been sent a letter by the Home Office stating that, whilst they are not recognised as a refugee, they have been granted exceptional leave to remain. After completing four years exceptional leave to enter or remain it is open to the person to apply for settlement at which point indefinite leave to remain may be granted.

Persons with D’Hoop Rights and Frontier Workers
If you, or a member of your immediate family is a frontier worker, or has D’Hoop rights, please contact the Learner Support Service for advice. Their helpline numbers are listed below.

Learners who are not eligible for EMA
Asylum Seekers or Unaccompanied Asylum Seeking Children are not eligible to receive EMA. Learners with discretionary or exceptional leave to enter or remain are not eligible for EMA.
Examples of evidence to confirm residency status (as mentioned in the flow chart)

For general queries regarding the status a piece of documentation confers call the Immigration and Nationality Enquiry Bureau on 0870 606 7766. However please note that they will not be able to assess eligibility for EMA.

Immigration Status Document
(The example below is for someone granted Refugee status, but these can also be issued for those with Humanitarian Protection.)

United Kingdom Residency Permit (UKRP), also referred to as a Vignette
(The example below is for someone who has been granted Limited Leave to Remain)

Asylum Seeker – Application Registration Card
(Issued to an asylum seeker to confirm they have made an application for asylum)
Helpful Contacts

If you require further help and guidance regarding the EMA residency eligibility criteria, please contact the Learner Support Service using the numbers below:

Learner Helpline Number – 0800 121 8989

Provider Helpline Number – 0845 600 7979