Learner Support Programme

EMA Residency 2009/10 – Supporting Information

June 2009

Of interest to stakeholders involved in delivering Education Maintenance Allowance and learners applying for Education Maintenance Allowance
Further information
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 support helpline on 0800 121 8989.

Alternatively the Learner Support Service can be contacted via email at ema@lsclearnersupport.co.uk.

Learner Support Directorate
Learning and Skills Council
(National Office)

The Straddle
Victoria Quays
Wharf Street
Sheffield S2 5SY

T 0845 019 4171
lsc.gov.uk
Introduction

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 Education Maintenance Allowance Provider Guidance 2009/10.

This document is of interest to post-16 Learning Providers, LSC Area Partnership Teams, Connexions staff and other institutions involved in 16–19 provision.

Ian Pursglove
Young People's Learner Support Director

June 2009
The flowchart below will help you determine if you meet the residency criteria

1. **Someone who is ‘settled’ in the UK**
   - Please see page 5 for a definition of someone who has ‘settled’ status
   - 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 Mark Box E

2. **EU 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
   - HAS BEEN ORDINARILY RESIDENT IN THE EEA OR SWITZERLAND THROUGHOUT THE THREE-YEAR PERIOD PRIOR TO THE START OF THEIR LEARNING PROGRAMME
   - YES: Eligible Mark Box B
   - NO: Not Eligible Mark Box E

3. **EEA migrant worker or the spouse, civil partner or child of an EEA migrant worker or the child of a Swiss national or the child of a Turkish 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 Mark Box E

4. **Refugee or the spouse, civil partner or child of a refugee or person with humanitarian protection**
   - Immigration status document (or passport, if available, where dependants do not want asylum) that states refugee or humanitarian protection status, endorsed with vignette, or stamped Home Office status letter (including for Family ILR Exercise)
   - YES: Eligible Mark Box D
   - NO: Not Eligible Mark Box E

5. **Person with EU temporary protection**
   - An application registration card
   - YES: Eligible Mark Box D
   - NO: Not Eligible Mark Box E

6. **Asylum seeker or person who has been granted asylum**
   - Passport or immigration status document endorsed with a vignette that states a discretionary leave or a stamped Home Office status letter
   - YES: Eligible Mark Box D
   - NO: Not Eligible Mark Box E

7. **Person with discretionary/exceptional leave to enter or remain**
   - Once the EU has invoked the Temporary Protection Directive
   - PASSPORT OR IMMIGRATION STATUS DOCUMENT ENDORSED WITH A VIGNETTE THAT STATES A DISCRETIONARY LEAVE OR A STAMPED HOME OFFICE STATUS LETTER
   - YES: Eligible Mark Box D
   - NO: Not Eligible Mark Box E

**Note**: If you have been temporarily absent from the UK/EEA, Switzerland or Turkey during the three-year qualifying period – see the section on temporary absences, page 5.
Summary of residency terms

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

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 the 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 the three years prior to beginning their learning programme.

Please note: some EEA countries issue an alien’s passport. This does not confer citizenship of that country. Therefore someone with an alien's passport will also need to have indefinite leave to remain (ILR) 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 the three years prior to the beginning of their learning programme.

Children of 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 learning programme.

EEA migrant workers
An EEA migrant worker is a national of a member state of the EEA, Switzerland or Turkey who has taken up an activity as an employed person in the UK.

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:

- those with the European Community, United Kingdom of Great Britain and Northern Ireland passports;
- British Dependent Territory Citizens (now known as British Overseas Territory Citizens);
- those whose passports have been endorsed to show they have right of abode in the UK; and
- 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 the 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, we would 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 claim.

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:

- maintaining a home in the UK/EEA that is available for use upon return;
- evidence that charges were being paid on a property, for example, council tax, utility bills; and
- 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 the 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 parent’s or carer’s 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 HP are also granted five years’ limited leave (three years were granted before 30 August 2005).
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 under which 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 1951 United Nations Convention Relating to the Status of Refugees. ELE/ELR status does not confer eligibility for EMA, and is not the same as indefinite leave to remain or enter (ILR/ILE). ELR was abolished on 1 April 2003. 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, while 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 on page 9.

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

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.
Support

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: 0800 121 8989

Provider helpline: 0845 600 7979

Email: ema@lslearnersupport.co.uk