EMA Residency 2007/08 – Supporting Information

Summary

This document contains additional residency information to support providers who are involved in administering the Education Maintenance Allowance (EMA) scheme. It should be read in conjunction with the 2007/08 EMA Guidance for FE Providers and the 2007/08 EMA Guidance for Providers of LSC-funded Entry to Employment and Programme Led Apprenticeships (formerly known as Programme Led Pathways).

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

Issued by Ian Pursglove, Young Peoples Support Programmes Policy Director

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Residency guidance for EMA

Examples of evidence held by student:

- A passport from one of the EU/EEA countries or a national identity card
- Please see summary of terms below of all EEA/EU
- Immigration Status Document (or Passport, if available, where dependants do not want asylum) that states Refugee or Humanitarian Protection status, endorsed with a vignette, see below for examples, or stamped Home Office Status Letter (including for Family ILR Exercise)
- An Application Registration Card
- Passport or Immigration Status Document endorsed with a vignette that states a Discretionary Leave or a stamped Home Office Status Letter

**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

**EEA Migrant Workers**

**EU Nationals**

Swiss Nationals

Turkish Migrant Workers

Or the spouse, civil partner or child of an EU National / EEA Migrant Worker

**Refugee**

Or the spouse, civil partner or child of a refugee

**Person with Humanitarian Protection**

**Person with EU Temporary Protection**

Once the EU have involved the Temporary Protection Directive

**Asylum seeker**

**Person with Discretionary/Exceptional Leave**

- Discretionary Leave;
- Exceptional Leave to Enter or Remain

**NOTE:**

The 3 years is to the actual first date of the course.

Duration of residence may be confirmed in a letter from a school previously attended or from a GP confirming the student has been registered throughout the 3-year residence period

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
Summary of residency terms

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

Children of Swiss Nationals and Turkish migrant workers can receive EMA if they have been ordinarily resident in England on the first day of the learning programme, and had been living in the EEA, Switzerland or Turkey in the 3 year period prior to the start of the course.

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.

**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, Luxembourg, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

**Learners from Bulgaria and Romania**
Bulgaria and Romania acceded to the EU on 1 January 2007. Therefore, we will only pay EMA to learners that started a learning programme on or after 1 January

Learners from Bulgaria and Romania that started a course before 1 January 2007 and are continuing on it will not be able to receive EMA until the start of the 2007/08 EMA year. This is unless they end their existing programme and begin another.

**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)
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.

During the residency eligibility check providers must first determine if it can be demonstrated under the guidance above that the absence from the UK/EEA can be classed as temporary. All evidence supporting this claim must then be forwarded to the EMA Policy Team at the address below who will make a decision on the learner’s eligibility:

- those whose passports have been endorsed to show they have Right of Abode in the UK
- those who have a certificate of naturalisation or registration as a British Citizen.
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. However, we would need the provider concerned to confirm that they have seen the original documentation.

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 of returning there because they may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Due to a recent change in Government policies on Refugee Leave and Humanitarian Protection, which came into effect on 30 August 2005, 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. In this instance we will email super-users to inform them that the directive has been invoked.
**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.

**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 have a case where a learner or a member of their immediate family is a Frontier Worker or has D’Hoop rights please contact the EMA Assessment and Payment Body for advice. Their Partner Helpline number is 0800 056 2811.
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)

Name: Smith John
Place of origin: ABD
Date of original issue: 30/06/2004
Card issue number: 11
Number of dependants: 0
Dependant of: IFL03/002712/S
Language(s): Albanian, English

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If you require this document in an alternative format or language, please contact the LSC Helpdesk.

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