



## SCOTLAND

### 4.1.3 RESIDENCY

In order to be residentially eligible for an EMA, a student must meet the residency criteria set out in the Education Maintenance Allowances (Scotland) Regulations 2007 (as amended).

The following provides a summary of what these residency criteria are. However, this is only intended as a guide, and **in all cases** reference should be made to the regulations when deciding a student's residential eligibility for the EMA Programme. The residency schedules were consolidated and new regulations drawn up at beginning of academic session 2007/2008 (SSI 2007/156). These were again amended in December 2007 (SSI 2007/503), in May 2009 (SSI 2009/188) and in September 2009 (SSI 2009/309). All regulations are available from the legislation.gov.uk website:

- <http://www.legislation.gov.uk/ssi/2007/156/made>
- <http://www.legislation.gov.uk/ssi/2007/503/made>
- <http://www.legislation.gov.uk/ssi/2009/188/made>
- <http://www.legislation.gov.uk/ssi/2009/309/made>

#### 4.1.3.1 *Qualifying Date*

In deciding eligibility, reference will be made to a “qualifying date”. For applications made under the autumn intake, this day will be the first day of the first term of the academic year (e.g. a date in August). For applications made under the winter intake, this day will be the first day of the first term in the new calendar year (e.g. a date in January).

For those eligible for a full year award, if the application is not submitted by the last day of September the award can only be made from the week it is received by the local authority.

#### 4.1.3.2 *Ordinarily Resident*

Students must satisfy “ordinary residence” criteria in order to be eligible for an EMA. Generally this relates to the qualifying date and to the three year period immediately before the qualifying date. “Ordinarily resident” has been defined in the courts as “habitual and normal residence in one place”. There are restrictions as to whether living in a place totally or mainly for the purpose of receiving full-time education can count towards ordinary residence. Please refer to the regulations.

There are situations where a student can be considered to have met the requirements even if he or she has been out of the area in question on the qualifying date or during the preceding 3 year period. These exceptions are set out in Schedule 2 of the Regulations.

#### 4.1.3.3 *Settled Status*

(Schedule 1 Paragraph 1)

EMAs were rolled out nationally across Scotland, England, Wales and Northern Ireland. Reciprocal arrangements are in place to allow all eligible UK citizens to receive an EMA regardless of the UK nation in which they study. The residency requirements for UK citizens are therefore that the student:-

- is settled in the UK (within the meaning of the Immigration Act 1971);
- has been ordinarily resident **in the UK and Islands** throughout the 3 year period immediately before the qualifying date; and
- is ordinarily resident **in the UK and Islands** on the qualifying date.

A person may be settled in the UK within the meaning of the Immigration Act 1971 if they are ordinarily resident in the UK and not subject under the immigration laws to any restriction on the amount of time they may stay in the UK.

This would include British citizens, some Commonwealth citizens who have “Right of Abode” in the UK, those with indefinite leave to enter or remain and limited leave to enter or limited leave to remain, and those who have attained a right of permanent residence under Directive 2004/38/EC.

#### *4.1.3.4 Right Of Permanent Residence*

(Schedule 1 Paragraph 4)

There is also provision to enable people with settled status - such as a UK national (or family member), or a person who has a right of residence in the UK - to be eligible where they have utilised a right of residence elsewhere in the EEA or Switzerland during the 3 year period. This requires that he or she has been ordinarily resident in the EEA or Switzerland for the 3 year period.

Where the 3 year residence in the EEA or Switzerland has been for the purposes of education, they would also require to have been ordinarily resident in the EEA or Switzerland prior to that period of study. Exceptions may apply when the student has been outwith the relevant area as detailed in Schedule 2 of the Regulations.

#### *4.1.3.5 European Economic Area (EEA) And Swiss Employed Persons Or Migrant Workers (Including Self-Employed)*

(Schedule 1 Paragraph 2-3)

A person who is an EEA migrant Worker, or an EEA or Swiss employed or self-employed person, (or who is the family member of such a person), may be eligible for an EMA. They must:-

- have been ordinarily resident **in the European Economic Area or Switzerland** throughout the immediately preceding three year period; and
- be ordinarily resident **in the UK and Islands** on the qualifying date.

The EEA consists of all the countries of the European Union, plus Iceland, Liechtenstein and Norway. Please refer to the SSI 2007/156 for a definition of “family member”.

#### *4.1.3.6 European Economic Area (EEA) And Swiss Frontier Workers (Including Self-Employed)*

A “frontier worker” means an EEA or Swiss national who is either a worker (for EEA nationals within the meaning of article 7 of Directive 2004/38) or employed (for Swiss nationals) in Scotland, who resides in Switzerland or in the territory of an EEA state other than the UK, and who returns to his or her residence in Switzerland or that EEA state, as the case may be, daily or at least once a week.

A person who is an EEA or Swiss frontier worker or self-employed frontier worker in Scotland, or who is the family member of such a person, may be eligible provided:-

- he or she has been ordinarily resident in the EEA or Switzerland for the 3 year period immediately prior.

#### *4.1.3.7 Refugee Status*

(Schedule 1 Paragraph 5)

Asylum seekers who are granted refugee status or some other form of leave to remain as the result of a failed asylum application are the only category of people who will become eligible at the point of receiving their new status. All other categories of people must meet the criteria specified in the Regulations at the qualifying date.

Applicants who have been granted refugee status and have been living **in the UK and Islands** at all times since receiving it (or who are the spouse, civil partner or child of such a person) are entitled to apply for an EMA provided they are ordinarily resident **in Scotland** on the qualifying date.

These applicants should have a letter from the Home Office stating that they have been **recognised as a refugee** and/or awarded leave to remain **as a refugee**.

#### *4.1.3.8 Leave To Remain, Including Exceptional Leave, Humanitarian Protection And Discretionary Leave*

(Schedule 1 Paragraph 6)

Applicants who have been refused refugee status but granted a form of leave to enter or remain are also eligible, provided they:-

- are ordinarily resident **in Scotland** on the qualifying date; and
- have been ordinarily resident **in the UK and Islands** at all times since receiving that status.

The spouse, civil partner or child of such a person is also eligible provided he or she is ordinarily resident in Scotland on the qualifying date.

These applicants should again have a letter from the Home Office which will indicate that they **have not been recognised as a refugee**, and **detail the leave granted**. Exceptional Leave was replaced by Humanitarian Protection and Discretionary Leave on 1 April 2003.

#### 4.1.3.9 *EU Temporary Protection*

(Schedule 1 Paragraph 7)

Students may be granted limited leave under the provision for Temporary Protection where there is a mass influx of displaced persons. The EU will determine when such a situation exists.

Students who have been granted leave under Temporary Protection will be eligible to apply for an EMA if they are:-

- **under 18** on the qualifying date;
- ordinarily resident **in the UK and Islands** on the qualifying date; and
- have been ordinarily resident **in the UK and Islands** at all times since receiving that status.

#### 4.1.3.10 *Non-UK EC Nationals*

(Schedule 1 Paragraph 8)

Non-UK EC nationals (or their children) may be eligible for an EMA, provided they:-

- are ordinarily resident **in the UK and Islands on the qualifying date; and**
- **have been ordinarily resident in the UK and Islands throughout the preceding 3 years period**

Where the residence during the 3 year period has been wholly or mainly for the purposes of education (for example where an EMA applicant has been in secondary education in the UK), they may still be eligible, provided that they were ordinarily resident in the EEA or Switzerland immediately before the start of that 3 year period.

#### 4.1.3.11 *Child Of Swiss National*

(Schedule 1 Paragraph 9)

The child of a Swiss national will be eligible, provided:-

- they are ordinarily resident in the UK and Islands on the qualifying date; and
- have been ordinarily resident in the EEA or Switzerland throughout the 3 year period.

Where the residence during the 3 year period has been wholly or mainly for the purposes of education they must also have been ordinarily resident in the EEA or Switzerland immediately before the start of that 3 year period.

#### 4.1.3.12 *Child of a Turkish worker*

(Schedule 1 Paragraph 11)

A student who is the child of a Turkish worker (Turkish worker is a Turkish national who is ordinary resident in Scotland and is or has been lawfully employed in the UK) may be eligible to receive EMA if they are ordinary resident in Scotland on the qualifying date and have been ordinary resident in EEA, Switzerland or Turkey throughout the preceding 3 years.

#### 4.1.3.13 *Iraqi Nationals (LESAS)*

(The Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2009, Regulation 18)

Some Iraqi nationals have been granted leave to remain in the UK through the Locally Engaged Staff Assistance Scheme (LESAS), also known as the Iraqi Direct Entry Scheme. LESAS was established to assist Iraqis who worked for the British armed forces and civilian missions in Iraq. After their employment they have the option to settle in the UK.

For those who were employed between 1 January 2005 and 7 August 2007, the Home Office allowed them to enter the UK as a recognised refugee under the Gateway Protection Programme. However changes were made in March 2009 and it was decided that this part of LESAS would close to new applicants on 19 May 2009. For those who were employed from 8 August 2007 onwards, the Home Office now allows them to enter the UK with Indefinite Leave to Enter (ILE). Normally with ILE a young person would need to meet the normal residency conditions and in particular the 3 year residency criteria. The EMA regulations were amended in September 2009 so that Iraqi nationals and their children who have been awarded ILE under the LESAS scheme may gain eligibility for EMA from the date of their entry to the UK without having to meet the normal 3 year residency requirements.

Iraqi nationals (or their children) will be eligible if:

- They have been granted Indefinite Leave to Enter the UK under LESAS;
- They have been ordinarily resident in the UK and Islands at all times since they were first granted ILE; and
- Are ordinarily resident in Scotland on the qualifying date.