



SCOTLAND

# Guidance and Processes

**Released to Stakeholders July 2019**

The Education Maintenance Allowance (EMA) programme aims to provide financial support to 16 to 19 year-olds from low-income households who are attending non-advanced learning in school, college or are on an Activity Agreement. It is also available to those who are home educated. The programme aims to increase participation and retention in post-compulsory education.

The Scottish Government wants young people to be able to choose from the same learning opportunities regardless of background or circumstance

This document has been compiled by the Scottish Government for use by those who administer EMA on behalf of the Scottish Government. It sets out the rules, principles and processes by which the EMA programme should operate. Scottish Ministers may adjust the terms of the programme at any time.

This document should be read in conjunction all relevant legislation, including:

- (1) The Education Maintenance Allowances (Scotland) Regulations 2007, which provides the legal framework for education authorities to pay EMAs to school students: and**
- (2) The Education (Access Funds) (Scotland) Determination 2016 which makes similar provision for colleges of further education.**
- (3) The Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017.**

This document has been split into two sections: **Part 1 Guidance and Part 2 Processes.**

**Part 1** aims to provide guidance for those involved directly in either administering EMAs or advising young people about application and eligibility. The Scottish Further and Higher Education Funding Council (SFC) administers the programme for those attending colleges, with the exception of colleges in Orkney and Shetland where the programme is administered by the relevant local authority (LA). Local authorities administer the programme for those in school (including home education), and all other learning.

**Part 2** sets out the business processes by which the EMA programme is governed and the key roles and responsibilities of key partners. The business processes outlined are described as far as possible without reference to systems or process design. The descriptions are meant to portray WHAT must happen, but not necessarily **WHO, HOW** and **WHEN**.

Finally, the document refers throughout to Local Agents. Local Agents will be the Scottish Government's partners operating at local level. The main parties are: local education authorities, SFC, Skills Development Scotland (SDS) and learning centres which means colleges, schools and other learning organisations approved by local authorities (LA) for the purposes of EMA. While some (SFC, SDS) will not formally be part of the national payment and assessment system for individuals,

they will have key roles in maximising the impact of EMA on the ground, or working with young people and with schools and colleges.

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# Part 1 – EMA Guidance

## AIM OF EMA PROGRAMME

There is a well-established and researched causal link between low income and low attainment. As a result, many young people from financially disadvantaged households leave school with few or no qualifications. This in turn means that they face greater difficulties entering the labour market.

The EMA programme provides support directly to young people to help towards mitigating financial barriers they may face which could prevent them staying in post-16 learning. We expect EMA support to help young people to progress through learning and, although receipt is not dependent on achieving a qualification, we expect courses to lead towards one. In this way EMA offers young people an opportunity to enhance their employment prospects.

## EMA ELIGIBILITY CRITERIA

For a young person to receive EMA support they must first meet all the eligibility criteria. This includes **meeting residency criteria; having a household income under the EMA income threshold; be of an eligible age, and be taking part in an eligible course of learning**. This section sets out each of the essential criteria in more detail.

### **RESIDENCY**

The legislation broadly states that to be eligible for EMA support a young person must be able to demonstrate that they have been ordinarily resident in Scotland for three years immediately preceding the qualifying or start date of the course of education they are to participate in (7 years for those eligible under **Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007**). **However, this is only intended as a guide, and in all cases reference should be made to the Regulations or the Determination (as appropriate) when assessing a student’s eligibility for the EMA Programme.**

To be considered eligible in terms of residency a young person must meet the residency criteria set out in EMA legislation. This means for a student studying a course of non-advanced education under the supervision of the education authority they must meet the residency criteria set out in the Education Maintenance Allowances (Scotland) Regulations 2007 (as amended) (“the Regulations”) - <http://www.legislation.gov.uk/ssi/2007/156/contents/made> and The Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 - <http://www.legislation.gov.uk/ssi/2017/180/made>.

For a student who is studying a course of non-advanced education at a college of further education in Scotland out with the local authority areas of Orkney and Shetland they must meet the residency criteria set out in the Schedule to the Education (Access Funds) (Scotland) Determination 2016 (“the Determination”).

Determining whether a young person's residency status makes them eligible for EMA support can be a complicated process. Definitions of terms and detailed advice to determine residency eligibility is available in **Annex A**.

**NOTE:** Students who reside in Boarding school accommodation out with Scotland and do not travel across the border daily are also **not** entitled to receive EMA support. However students who reside in Scotland and travel to England **daily** to attend learning will be eligible for EMA.

### **HOUSEHOLD INCOME**

The household income of the young person will also determine their eligibility for an EMA. Where the household income is £24,421 or less before tax (for households with one dependent child) or £26,884 before tax (for households with more than one dependent child) the young person would be eligible for a weekly payment of £30 per week providing they meet the other criteria also. **The income thresholds are before tax.**

**NOTE:** A dependent child is one who is 16 or under, or is between 16 and 25 years old and is in full time further or higher education.

Siblings income should not be taken into account when calculating EMA. The exception to this is in which a sibling gains parental responsibilities, but this is in limited circumstances.

Refer to **Annex B** for details of the financial assessment and the EMA Regulations/Determination for further details on whose income can be taken into consideration for calculation of household income.

### **AGE**

Recipients will normally be aged between 16 and 19 years (inclusive), **however as with school students, college students and those on Activity Agreements should also follow the school intake dates of eligibility to maintain consistency across all recipients.** This means some young people may start receiving EMA at the age of 15.

The two intakes of eligibility reflect the two school leaving dates in Scotland (set out below). Eligibility for continuing students should be reassessed at the start of each academic year. Young people on Activity Agreements will apply at the point of signing their agreement (see **Annex C** for guidance on Activity Agreements)

**EMA is not available to young people still in compulsory education.**

### **AUTUMN INTAKE**

This will coincide with the start of the academic year following the summer school leaving date (last day of term before the summer holiday). Students who have reached the statutory school leaving age

in the May prior to the current academic year will be eligible under this intake (i.e. those students who turn 16 between 1 March and the 30 September of the current year).

### **WINTER INTAKE**

This will coincide with the start of the term/course following the Christmas holidays. Students who would be eligible to leave school at the winter leaving date (those whose 16<sup>th</sup> birthday falls between 1 October and the last day in February), become eligible for an EMA from the start of the term following the winter leaving date.

### **COURSE ELIGIBILITY**

The applicant must normally be on a full-time course of education at a school or a full or part-time non-advanced course at a college of further education (see **Annex D** on guidance on Home Education); or any recognised institution under the supervision of an education authority offering a course of non-advanced education (which includes Activity Agreements), **which does not attract any other form of public or employer bursary**. This is defined in the Education Maintenance Allowances (Scotland) Regulations 2007 and the Education (Access Funds) (Scotland) Determination 2016. Information to consider when determining an eligible course of learning and guidance on students changing courses or leaving a course **is covered in Annex E**.

**Note: Eligibility for EMA for young people undertaking a full time course of *school* education is not dependent on the level of course, thus any courses studied within a school will be covered (including advanced Highers).**

### **LEARNING CENTRES**

The young person must be attending a school, or a college funded by SFC, or any other relevant education establishment that the LA or the Scottish Government deems appropriate such as Scotland's Rural College (SRUC). This may include residential schools, secure care establishment, community and voluntary care organisations, students undertaking home education and institutions in the public and private sectors. From Autumn 2012, this also included college places funded by Skills Development Scotland (SDS).

Relevant education establishment is defined as:

- A school or learning centre maintained by a LA (which may include home education approved by the education authority).
- A community or 3<sup>rd</sup> sector organisation approved by a local authority for the purpose of EMA.
- An independent school.
- A Scottish College funded by SFC.

## **APPLYING FOR EMA**

Young people should apply to the organisation that either provides the course of learning they are taking part (college) in or is responsible for its delivery (local authority). Local authorities and colleges will be responsible for developing application forms and correctly determining student eligibility for EMAs using documentary evidence. For young people who are taking part in community and voluntary activity which is recognised by the local authority for the purposes of EMA, the key partners are the providers of such activity in the local authority.

Detail on the process of administering EMA applications can be found at **Annex F**.

## **AWARDING EMA**

The EMA is a means-tested weekly allowance of £30 (payable fortnightly in arrears) during term-time. EMA will be paid directly into the bank account of the young person and can only be awarded when all of the eligibility criteria has been met and a learning agreement is in place.

Details on what constitutes a learning agreement and the process for putting one in place with a young person can be found in **Annex G**.

## **ANNUAL CLAIM PERIOD**

For a young person who takes part in a course of study that follows the academic year, i.e. the school and college sectors, EMA can only be paid for each full week's attendance within term time, up to a **maximum** of 42 weeks in any one academic year. For college courses the duration of payment will be dependent upon the length of the course. EMA payments will not be made during holidays which include the October break, Christmas and Easter.

## **DURATION OF ALLOWANCE**

Payment of an EMA will normally be restricted to a maximum period of 3 years (from the anniversary of the first payment) and recipients should be between 16 and 19 years old inclusive. In exceptional circumstances some young people identified as "vulnerable" or with special educational needs may be entitled to receive 4 years EMA support (**see Annex H**). **However in all cases, EMA cannot be paid if the recipient has reached the age of 20 years on the first day of the term for which EMA is sought.**

The period of eligibility for EMA commences on the first day of the new academic term following the school leaving date in which the student ceases to be of compulsory school age.

## **WITHHOLDING PAYMENTS**

**Schools and other learning providers:** the local authority may discontinue EMA payments where the information supplied by the school or other learning providers state that the student has failed to meet the agreed targets outlined in the student's Learning Agreement.

It is possible for a young person to study for one year, take a year out, then re-enter non-advanced study and still receive an additional two years' EMA funding, dependent on the age eligibility. The college is responsible for monitoring the student's participation and may withhold payment if this is not satisfactory. Guidance on absences can be found in **section 9**.

### **ATTENDANCE REQUIREMENTS**

EMA is a weekly allowance requiring 100% of agreed attendance at all timetabled sessions. Part payments for part attendance will not be made. Young people on college placements funded by Skills Development Scotland are subject to the same attendance criteria.

Absences authorised by the educational provider where there is good cause for absence should be treated as a day of attendance for EMA purposes.

Vulnerable young people should be given appropriate flexibility and discretion when assessing attendance. This flexibility should be considered on a case by case basis and be part of the Learning Agreement. If total attendance falls below a satisfactory level the EMA should be reviewed.

The student must have 100% of **agreed** attendance for their course to receive each week's payment. As different centres have different methods of recording, such as half-day or full-day reports, what constitutes 100% will be up to the institution and related to the course requirements. Further information on attendance requirements and absences is set out in **Section 10 (Absences), Annex H (Vulnerable Young People) and Annex D (Home Education)**.

**NOTE:** Attendance data, absence and other information must be retained by administrators as part of the audit trail.

### **GUIDANCE ON ABSENCES**

Education providers will be required to record attendance of EMA recipients on days when learning centres are open to students. Where the institution is closed on days when it would normally be open (see below for a non-exhaustive list of circumstances) these days should be considered authorised absences.

Where there is a shortened week at the start or end of an official school holiday, students will be eligible for the weekly payment if the number of days the school or learning provider is "open" **3 or more** (including the above exceptions) and where the student has fulfilled the 100% attendance when the school was open.

For in-service days, students should be recorded as being in attendance. For example, if a school reopens on a Thursday following a Wednesday in-service day, students would be eligible for a payment for that week (subject to 100% attendance).

**Colleges:** institutions are responsible for keeping attendance records and if necessary liaising with SFC to clarify difficult cases. SFC will inform the Scottish Government of any institution that refuses to co-operate in monitoring attendance of an EMA recipient.

**Schools or other learning providers:** institutions are responsible for recording absences and notifying the local authority about the daily attendance patterns of students receiving the allowance.

### **AUTHORISED ABSENCE**

Education providers will be required to **use their discretion in all cases**, and should take account of the local authority's or college's own policy.

The following are examples, but are neither prescriptive nor exhaustive.

- ill health
- attendance at the funeral of a close family relative when leave is granted prior to the funeral
- the breakdown of the student's method of transport to and from the institution
- attendance at a Children's Hearing, meeting related to a Looked After young person's care needs, meeting related to a care leavers Pathway Plan, court hearing or probation meeting
- authorised school/college activities
- religious holidays, by prior arrangement
- severe weather conditions affecting transport to and/or closure of the learning establishment
- absences, for example caring responsibilities, that relate to a vulnerable young person's circumstance
- If learning centre is closed due to unforeseen circumstances

**NOTE:** Holidays/leave taken within term time **cannot** be considered as authorised absence, except in the case of pre-determined religious festivals.

Absences can be reviewed and recorded as authorised (and thus as attendance) at any point after the relevant week.

### **MEDICAL CERTIFICATES AND ABSENCES DUE TO ILL HEALTH**

Students are required to produce documentary evidence that they were unfit to attend due to ill health. Local authorities and colleges should refer to their existing policies in relation to how long after an absence parental/guardian/carer letters or medical certificates will be accepted.

## **SELF CERTIFICATION**

**We recommend that if a student is absent due to ill health for up to 5 consecutive working days**, a letter from the parent/guardian/carer should be submitted to confirm this absence; however, it will be at the institutions' discretion how many times they will accept this. We suggest that they use their existing bursary guidance, or employment guidance for staff members, for determining this.

Isolated periods of illness can be regarded as authorised absence, provided administrators are satisfied that the illness was genuine. You have the right to turn down a request for authorisation, if you suspect that the reason was not genuine.

## **MEDICAL CERTIFICATES**

**Beyond the normal 5 working days a medical certificate should be produced.** As GPs are not obliged to provide medical certificates, this may have to be at the student's own expense. A medical certificate should only be obtained from a GP if the student has been absent due to illness for a period of more than 5 consecutive working days.

In no circumstances should local authorities or learning providers require medical certificates for shorter absences for the purpose of determining authorised absence for EMAs.

**NOTE:** Although medical certificates would be desirable, it must be recognised that some GPs will not supply Medical Certificates to students, and therefore there will be instances where determining whether a medical absence is genuine or not must be left to the teacher/tutor/school/college or learning provider in question.

## **OTHER ACCEPTABLE EVIDENCE**

Other forms of evidence, such as a copy of a doctor's prescription supported by a letter from the parent/guardian/carer confirming period of absence **may** also be acceptable at the discretion of the learning provider.

## **EXCEPTIONAL CIRCUMSTANCES**

Exceptional circumstances must be referred to the local authority or college board of management for adjudication. A periodic medical absence that extends beyond 3 weeks will be subject to review. Individual circumstances should be taken into account.

## **LATENESS**

Reference should be made to existing local authority or college policy in how to deal with and record lateness.

## **WORK EXPERIENCE PLACEMENTS**

Students will continue to receive payments only if the work experience placement is a pre-arranged integral part of the course and takes place during term-time, and the young person does not receive a wage. The period of work experience should be recorded on their EMA Learning Agreement either at the outset of the course or as soon as it was arranged. **EMA will not be paid for paid work experience.**

## **EXAM PREPARATION**

Revision periods leading up to exams are counted as attendance, as long as they are in term time and recorded in the Learning Agreement as soon as they are arranged. These will generally be timetabled as study time.

## **EMA PAYMENTS DURING SQA SUMMER EXAMINATION TIMETABLE (SCHOOL SECTOR ONLY)**

The last day of the exam timetable (as set out by the Scottish Qualifications Authority (SQA) is the cut-off date for payments. If a student has been attending for exams, they should be paid until the end of the exam timetable – even if they don't have exams that week. Students who do not attend exams should have the EMA payment withheld for that week, except in cases of medical absences.

### **S4 and S5 students returning to complete a further academic year –**

Students who have completed S4 or S5 and decided to remain in school for the next academic session, are eligible to receive EMA payments to the end of the academic year (usually June) providing 100% attendance is recorded each week.

### **S4 and S5 students leaving school at the end of the academic year (exam period) –**

Students in S4 and S5 who do not wish to remain in school after the exam period is complete will only be eligible to receive EMA until the end of the SQA Examination timetable. After this date, students should cease to receive any further EMA payments.

### **S6 students leaving school at the end of the academic year (exam period) –**

S6 students will only be paid until the end of the SQA exam period (usually mid-June) as they are not eligible to remain in school.

### **Staying on at school for an additional year (S7)**

Young people who are coming back to school (often defined as adult returners) for a 7th year are eligible to receive EMA payments to the end of the academic year, as with S4 and S5 pupils returning for the following academic year.

**School students who gain full-time employment during the SQA exam period should have their EMA payments stopped as they would no longer be considered to be in full-time learning.**

**NOTE:** Students in receipt of EMA who wish to take part-time or seasonal employment should be encouraged to do so to gain valuable work experience and soft-skills. However the employment should not affect them meeting their learning agreement or attendance at the learning centre. EMA should be stopped if they are not meeting their attendance and learning agreement as a result of their employment. **Any salary earned should not be included in household income assessment.**

### **PROMOTION OF EMA**

Local authorities and colleges are expected to continually promote the EMA programme throughout the year. Examples of how promotion is carried out across local authority areas and colleges is set out in **Annex I**. It is important that promotion targets as many groups as possible such as young carers and those from ethnic minorities.

For ethnic minority groups, an action point on EMA promotion is within the Scottish Government's "Race Equality Framework for Scotland" which was published in April 2016 (see below).

***Continue to work with delivery partners to ensure the Education Maintenance Allowance programme is promoted so that young people and parents (including those from minority ethnic communities) are aware of the programme, as a means to help 16-19 year olds overcome financial barriers to access and remain in learning.***

This framework sets out the Scottish Government's approach to promoting race equality and tackling racism and inequality between 2016 and 2030. Further details of the Race Equality Framework can be found at: <http://www.gov.scot/Publications/2016/03/4084>.

## Part 2 – Processes

### 1. APPLICATION AND ASSESSMENT

The application and assessment process will determine an applicant's eligibility for EMA. Applications will be dealt by local authorities or colleges, who will be responsible for developing and distributing their own EMA application forms for students. Application forms and guidance notes will be available through LAs for young people attending schools and learning centres. and through bursary offices for young people attending college. Application forms may be on-line or paper format. **If applications are made online, it is the responsibility of the administrators to conduct relevant checks to satisfy that any scanned documentation provided is legitimate.**

**Applications can be made in hard copy or online.**

Applications will be assessed on the basis of the defined EMA eligibility rules (residency, age, household income, and course of education). A student must re-apply each year and an assessment on eligibility criteria will be carried out to determine if the young person remains entitled to EMA.

The following information is required in order to process applications:

Scottish Candidate Number; Name; Address; Date of Birth; Bank Account details; Household Income details of parent(s); parent's partner; (guardian(s) partners - schools only); Where relevant, confirmation of Looked After/care leavers status.

The assessment cannot be completed without all required information having been presented and checked. Applicants must be given reasonable opportunity to provide any information which is not submitted with the original application.

Once an application has been processed and is approved, the student is provided with a Notice of Entitlement. This will detail their entitlement and provide the necessary forms and guidance for what to do next.

Rejected applicants will be notified in writing by the administrator, which will provide the reasons why. Where appropriate this should include reference to other forms of support which may be available. A process will be required to handle queries on entitlement and rejection, including a right of appeal.

In-year re-assessments may also take place post-application as a result of detrimental changes in financial circumstances i.e. where income has fallen to within the EMA thresholds. The student is responsible for informing the relevant body of changes in circumstances. Any re-assessment will be treated as a new application.

## **2. PAYMENT AUTHORISATION**

### Weekly Allowance

The authorisation process will take place for every student fortnightly and will lead to either the release or withholding of a payment. Learning centres are responsible for discharging the authorisation process. The authorisation process should be completed by the end of the second working day following the end of the attendance week. All eligible students can be authorised to receive a payment.

**NOTE:** - payments cannot be released until a Learning Agreement has been recorded.

Authorisation will take account of:

- Attendance for the week concerned
- Absences: only authorised absences count as “attendance”

Authorisation must be carried out by someone authorised by the learning centre, and the decision should be auditable. There must be the right of appeal against stoppage if the student wishes to exercise this. A successful appeal may lead to one or more payments being reinstated.

Guidance is available on learning centre closures for planned events such as polling station duty; public holidays and in-service days; any planned study activity which might take place during planned institutional holidays, e.g. study trips; remedial lessons; and for unplanned events such as local weather conditions. For further information see Guidance Part 1, Section 6 on Absences.

## **3. PAYMENT INSTRUCTION**

Detailed attendance data will not be sent to the LA or SFC. Instructions to pay or stop payment should be sent to the LA by the school/learning centre. This should be done internally in the case of colleges.

The LA/SFC will hold details of people authorised to send these instructions through the agreed interface/method. This may/may not be the person making the payment or stop decisions. There must be a clear, auditable trail of information with respect to hand-over from the authoriser to those send details to the LA/SFC relating to decisions made on each weekly payment

#### **4. PAYMENT AND OVERPAYMENT**

##### **PAYMENT**

EMA payments are for weekly attendance and will be made in fortnightly instalments in arrears. Payment to an eligible student is made on an instruction from the learning centre and will normally be paid through the BACS System. Payments should reach the student's bank account no later than 5 working days following the day of authorisation.

The learning centre must at any time be able to authorise a weekly payment for the current week, and any preceding week for which no payment has already been made (in line with existing fortnightly payment timetables). Where more than one payment authority is recorded, payments can be added together to form one transaction to the bank account.

**NOTE:** An EMA payment cannot be authorised if the student is in receipt of a training allowance such as the SDS Employability Fund.

##### **OVERPAYMENT**

We recognise that overpayments may occur. Institutions should use their current procedures for the recovery of overpayments e.g. recovery of bursary funds. We suggest a letter should be sent to the student providing the reason for overpayment and requesting repayment.

Students should be made aware that the recovery of overpayments (in whole or in part) may be deducted from future payments.

#### **5. FUNDING**

Funding is the process whereby funds are transferred from the Scottish Government budget to the LAs/SFC.

There are two distinct types:

- 1) Reimbursement of LAs for administration of the EMA programme in schools and other learning centres
- 2) Reimbursement of colleges and SFC for administration of the EMA programme in colleges

Claims should be made to the appropriate authority, as follows:

- LAs to Scottish Government
- Colleges to SFC
- SFC to Scottish Government

## REIMBURSEMENT FOR SERVICE PROVISION

EMA claims will be submitted in 12 monthly periods throughout the year from 1 April through to 31 March. LA claims must be submitted no later than **10 working days after the end of the appropriate period (see Schedule 2 (iii) of EMA Offer of Grant Letter)**. It is mandatory that claim forms are signed by the appropriate authorised signatory.

The data provided for the year allows the annual publication of statistics on EMA. If any Terms and Conditions set out in the offer of grant are not met, reimbursement will be withheld until such time as the issue is resolved. The Scottish Government aims to pay all duly completed invoices by the payment dated indicated in the grant letter. Payment to the LA and SFC is via BACS. Any administration costs and their reimbursement will be subject to the terms and conditions of grant agreed with the relevant body.

Rejected payment transactions from BACS must start to be dealt with within one working day of the return.

Payment returns from BACS should be actioned in the following priority order:

- directly by phone if number supplied.
- via the learning centre to the student
- in writing as a last resort

## LATE CLAIMS

In accordance with the terms and conditions set out in the offer of grant, the grant is available only in respect of EMA payments made to eligible young people in that financial year. It will not be possible to carry forward any unclaimed balance to the following financial year. Timely submission of claims is therefore essential. **The Scottish Government will not pay claims, or part of a claim which relates to the previous financial year.** LA's and colleges are responsible for paying any claims relating to the previous financial year.

There is a late claim period which is used by LAs to claim for payments which relate to the previous academic year but which fall under the current financial year. A date is added to the previous year in the SEEMIS system usually around October to cover any additional payments that are made after the July cut-off (payments relating to the previous academic year but the same financial year).

## ACCRUAL PROCESS

A grant accrual is a claim that relates to the current financial year but payment will not be processed until the following financial year. The payment is therefore required to be accrued to ensure that it is accounted for in the correct financial year.

Since the EMA grant payment for March is claimed and paid in the new financial year, the March claim is classified as an accrual. In addition, if payments are made in the last week/s in March, this grant must be claimed within the April claim and the March element will be identified as a part accrual.

The accrual process is a crucial exercise to determine an accurate EMA forecast outturn. This is carried out prior to the end of the financial year and LAs and the SFC are expected to identify accruals, as accurately as possible. Scottish Government will alert local authorities each year in March when accrual data is due.

## **6. APPEALS PROCESS**

All partners should ensure that mechanisms are in place for dealing with appeals in circumstances where the student is assessed as ineligible. Evidence should be available to allow appeals against attendance monitoring to be addressed within the institution. There must be a focal point (at the LA/college) through which appeals can be lodged.

An applicant must submit an appeal in writing within one calendar month of the date of the letter notifying them of the refusal of their application for EMA to the relevant LA or College.

The appeal should clearly state the reason for the appeal and be accompanied by any relevant additional evidence or information. Such evidence may be clarification of household income, written confirmation from employers if available, or a benefits statement if not already provided. The LA/College will consider all additional evidence provided.

All such evidence is to be considered confidential under the terms of the General Data Protection Regulation (GDPR) and is to be treated accordingly.

If colleges require advice on an appeal, they may first refer to SFC. Where the LA, college or SFC consider there are circumstances on which they need advice, they will refer to the Employability Division at the Scottish Government through the following mailbox:

[EducationMaintenanceAllowance@gov.scot](mailto:EducationMaintenanceAllowance@gov.scot) .

The appeals process should normally take no longer than 14 days to issue a decision including any Scottish Government input/involvement. However, it is possible that some may raise issues of government policy which may require more time to resolve.

The student is to be notified of the result in writing. The LA or college should record the decision and additional evidence provided should be stored with the original application information in accordance with the terms of the General Data Protection Regulation (GDPR).

Where an appeal is successful the student will receive their Notice of Entitlement, EMA Contract and any original documents supplied with their appeal. The learning centre should also be informed.

Where a student is successful with an appeal, they are eligible for back-payment for previously unpaid weeks as follows:

- If the appeal is resolved prior to 30 September, they may be paid for each week back to the beginning of the current term, providing agreed attendance criteria has been met.
- If the appeal is resolved after 30 September, and the original application was made prior to 30 September, they may be paid for each week back to the beginning of the current term, providing attendance criteria has been met.
- If the appeal is resolved after 30 September and the original application was made after 30 September, they may be paid from the Monday of the week in which the original application was received, providing attendance criteria has been met.
- Dates only refer to Autumn starts; take 6 weeks from start of course in other cases.

## **7. APPEALS REGISTER**

LAs and colleges should set up an Appeals Register which details information surrounding appeals and the date of their resolution and also of their outcome.

This information should be made available to the Scottish Government on an annual basis to enable monitoring of the effectiveness of the programme.

## **8. COMPLAINTS**

Formal complaints about the EMA programme or EMA policies should be dealt with in accordance with LA or college complaints procedures. They should be recorded in a complaints register and forwarded to the Scottish Government on an annual basis to enable monitoring of the effectiveness of the EMA programme.

## **9. AUDIT AND COMPLIANCE**

Systems and processes must comply with all relevant legislation and Scottish Governments internal requirements with particular regard to audit.

### **Audit Requirements**

Compliance with National and Scottish Government internal audit requirements is a critical component of the EMA programme. All business processes are required to maintain and provide a clear audit trail sufficient to satisfy Scottish Government, Audit Scotland and Education Scotland.

### **LOCAL AUTHORITIES**

On receipt of attendance data from schools (either stating 100% attendance or accompanied by proof of authorised absence) LAs will authorise weekly payment of EMA paid on a fortnightly basis.

On a monthly basis, LAs will make a claim to the Scottish Government to draw down funds for payments made to date. Claims will be submitted on the standard forms attached to the Offer of Grant Letter along with the SEEMIS printout to be cross-checked by the SG. Monthly claims must be certified by an authorised signatory.

**NOTE:** The final claim (March) for the financial year must be certified by the Director of Finance and sent by hard copy to the Scottish Government.

Completed unaudited year end statements should be passed to the external auditor by **30 April**. In addition a hard copy of the Year End Statement and an original signed Statement of Compliance should be sent to Scottish Government by **30 April**.

External auditors should carry out the audit work and sign the Audit Scotland certificate. This must be sent to the Scottish Government by **31 July**. This should include evidence of 1% spot checks carried out throughout the year.

#### COLLEGES

On confirmation of attendance either stating 100% of **agreed** attendance, or accompanied by proof of authorised absence, college bursary/finance officer will authorise weekly payment of EMA paid on a fortnightly basis to student.

On a monthly basis colleges will complete a claim form of actual spend. Claims must be submitted to SFC with accompanying data in a standard spread sheet. Claims made for January and July and individualised returns will be submitted to Scottish Funding Council (SFC). Monthly claims will be certified by the Accountable Officer or nominated deputy. SFC should make data, showing breakdown of claims by institution, to the Scottish Government along with the claim.

**NOTE:** The final claim (March) must be certified by the Accountable Officer.

Year-end statements (certified by the Accountable Officer) must be submitted to SFC by 15 April. The statement will show evidence of 5% spot checks carried out throughout the year. An independently audited year end statement should be sent to the SFC by 30 October.

#### SFC

On a monthly basis SFC will submit a claim of total actual spend to the Scottish Government, along with data showing EMA spending per institution and any adjustments made.

Monthly claims will be certified by the Director of Funding or nominated deputy. This signature should confirm that relevant internal checking procedures have been carried out in checking and verifying the claim.

Monthly claims will identify weekly payments clearly illustrated in both volumes and amounts (excluding SFC) and be recorded against the specific weeks for which they are made.

An authorised payment must be traceable to a defined learning centre, person, date and time. Payments must be recorded against the specific weeks for which they are made.

Within 4 months following the end of the academic year, a completed unaudited year end statement should be passed to the external auditor and a copy sent to the Scottish Government. This should include evidence of 5% spot checks carried out throughout the year and should be signed by the Director of Funding.

External auditors should carry out the audit work and sign the External Audit Certificate. This must be sent to the Scottish Government by 30 April 2020 and should also include supporting evidence of independent audit certification from each college.

## **GENERAL**

The funding, audit and reconciliation processes (reimbursement of LAs/ colleges) will form part of the terms and condition of grant with the Scottish Government. Included within the terms and conditions there should be a list of authorised signatories. The Scottish Government must be alerted to any staffing changes which result in alterations to these signatories and an updated schedule of authorised signatories must be submitted to the Scottish Government. Payments will not be processed if signed by a signatory not on record with the Scottish Government.

Officials carrying out specific functions, whether they are paper-based or computerised, must be authorised to carry out those functions, trained to carry out those functions, and they must be aware of their responsibilities.

Where computerised access and functions are concerned, access logs must be maintained recording who has performed each function and when. Security and right of access must be maintained at all times so that information is safeguarded, particularly personal information.

Officers of the Scottish Government will have right of access for purposes of auditing, monitoring and investigation. Officers of, or acting for Audit Scotland, will have right of access for purposes of auditing, monitoring and investigation.

Applications from individuals for EMA, whether on-line or paper-based must be auditable, so that approval and rejection decisions are traceable. Where an appeals process takes place, the relevant information and decision should be recorded. Such information should be held until the eligibility period for the student has expired.

Payment must be made for the right amount, to the right person and at the right time.

Where help and support functions are provided, calls need to be logged, and subsequent actions recorded through to problem resolution. It must be clear who has the responsibility for the resolution of a query.

Internal Scottish Government processes must ensure that funds are released only when local authority/SFC invoices are reconciled fully, and that all movements of funds are approved and auditable.

#### **10. QUALITY ASSURANCE AND FRAUD AVOIDANCE**

Administrators should be conscious and aware of the risk of fraud and be active in identifying and preventing it. There are some obvious issues e.g. preventing duplicate applications or preventing duplication of payments. Application processes should identify when more than one application provides the same bank account detail, guarding against fraud but being sensitive to situations such as where married students are both entitled to EMA, and sharing a bank account.

Fraud might be attempted (separately or in collusion) by: young people; their parents; teachers; school/college administrators; people working in the LAs; SG officials; by other individuals or groups or organisations or organised crime. The use of original documents should be used for income evidence and administrators must be satisfied of authenticity. Administrators are responsible for requesting further information or querying issues to achieve this.

Only authorised representatives (or users) should have access to systems and processes. A hierarchy of users should be established, from senior users, with high levels of access and authority including the ability to add change or delete lower-level user information, to lower-level users who will have limited access and authority. This security is fundamental to the operation of all EMA ICT systems. **Claims and payments must NOT be generated and authorised by the same individual.**

It is important to have mechanisms in place which provide and support early identification and intervention. The Scottish Government will use the capabilities of local authorities/colleges to provide information on suspected individual cases and trends.

#### **11. QUALITY MANAGEMENT**

Scottish Government has the responsibility in respect of SFC and LAs to:

- Ensure clear understanding of EMA; programme design, delivery and financial processes, as well as management information and monitoring arrangements, and
- Ensure and view evidence that adequate quality management and fraud avoidance arrangements are in place for delivery and financial processes, management information and monitoring arrangements

SFC and LAs similarly have responsibility in relation to colleges and schools and other learning centres respectively to:

- Ensure clear understanding of EMA: programme design, delivery and financial processes, as well as management information and monitoring arrangements, and
- Ensure and view evidence that adequate quality management and fraud avoidance arrangements are in place for delivery and financial processes; management information and monitoring arrangements.

## **12. SUPPORT, HELP AND TRAINING**

### **RANGE OF SUPPORT**

For EMA to work effectively, support of different types will be needed by:

- students and their families/carers
- learning centres
- local agents

### **SUPPORT RESPONSIBILITIES**

Some stakeholders will be both a provider and customer of support. For instance a teacher will provide support and information to students and will draw support and information from others. (see **Annex J Roles and Responsibilities**)

The following agents will be involved:

#### **LAs, SFC**

- Promotion to learning centres. Distribution of application forms to schools (LAs only).
- Being a source of advice on entitlement, eligibility and application completion.
- Interventions where necessary where take-up is low or non-attendance rates increase (LAs only).
- Promotion and support in uptake for Looked After young people and care leavers.

### **Learning Centre, SDS and Key Workers**

- Promotion and publicity – to students/parents/carers.
  - Being a source of advice on entitlement, eligibility and application completion.
  - Informing students on stoppage and re-instatement of payments.
  - Being the first point of contact for payment queries from the student.
- Interventions by learning centres, where necessary, where take-up is low or non-attendance rates increase.

### **Scottish Government**

- Maintenance of policy and regulations.
- Maintenance and distribution of guidance material.

### **TYPES OF SUPPORT**

Support will be required in the following areas:

#### **Applications:**

- Understanding eligibility
  - Financial
  - Non-financial
  - Course
  - Learning centre
- Access to forms or other application methods
- Completion of forms
- Letter confirming Looked After/care leaver status
- Application rejections – explaining rejections

#### **Payment Queries:**

- Stoppages – with the learning centre being the first point of contact
- Institutional appeal process against stoppage of payment
- Overpayment recovery
- “Missing” payments – e.g. where bank details are wrong

#### **Learning Centres should provide support on the following:**

- Technical support
- Policy and rules – guidance; interface with Scottish Government
- Recording incidents – i.e. reasons for payment stoppages or reviews to Learning Agreement

### **Also the Provision of Forms and Leaflets:**

- Central stocks of forms, reprints, distribution

### **TRAINING**

It may be appropriate for learning centres and other local agents to provide their staff with training from time to time, as follows:

- For those people in the learning centre workforce who need to understand and apply the following EMA processes: the weekly cycle; dealing with absences; stoppage; informing students; maintaining records; audit and management responsibilities.
- For Local Agents:
  - sufficient to allow them to undertake agreed Help and Support roles
  - a good understanding of the aims of the EMA programme so that they can monitor its effect, and intervene where take-up and/or attendance patterns are not as expected.

### **13. MANAGEMENT/OPERATIONAL INFORMATION**

Information will be captured and made available by the LAs, SFC and colleges to Scottish Government. This should be done through the use of standard forms attached at Schedule 2 (i) and (ii) of the Offer of Grant letter from the Scottish Government to LAs and SFC. This will enable consistency, ease of access and flexibility in the use of the data for analysis.

Information is required to inform the Scottish Government of the take-up and progress of the EMA programme as well as to monitor its effects on widening participation.

There will be a flow of information reflecting EMA activity between the LAs/SFC/colleges and Analytical Services Division (ASD) of the Scottish Government which will develop statistical models to measure the performance of the programme.

The following categories of information are indicative of relevant management/operational information and of the uses that will be made of it:

#### **Geography**

Breakdowns of take-up, impact and performance by:

- Postcode

#### **Students**

Information on students and cohort analysis on characteristics such as:

- Take-up
- Household income

- Ethnicity

### **Learning Centres**

Learning centre-based information such as:

- Breakdown of student population by above student characteristics
- Administrative indicators such as:
  - Performance on authorisation of payments
  - Volume of stopped/re-instated payments

### **Time Factors/Periods**

Information consolidated, as examples, by:

- Academic Year
- Weekly
- Financial periods
- Year-to-date
- This Year/Last Year comparisons
- Identified summer school and other non-standard learning periods

### **Application Processing**

- Number of applications
- Number of approvals
- Number of rejections with reasons (so we can pursue continuous improvement)  
Analysis of issues surrounding application and assessment with regards to highlighting patterns and problems

### **Payment Processing**

Ability to provide:

- Number and total value of weekly payments
- Number of stoppages/re-instatements

## **14. EVALUATION AND CRITICAL SUCCESS FACTORS**

The programme will be evaluated through mechanisms such as longitudinal studies, surveys of schools and colleges, and existing inspection regimes. It is anticipated that Education Scotland will take account of a learning centre's operation of EMA. (See Section on Audit requirements)

In addition to the underlying question of the policy impact of EMA, the Scottish Government has defined seven strategic critical success factors for the implementation of EMA.

The critical success factors are:

- Acceptance of the EMA programme by learning centres, voluntary and community organisations
- Acceptance of the EMA programme by young people and their families/guardians/carers
- Success of the “something-for-something” element of EMA
- Public awareness of EMA
- Levels of take up of the allowance
- Standards of service quality by local authorities/colleges

The Scottish Government will measure performance using the data normally collected from delivery partners and from specifically designed evaluation projects. Evidence of quality management, fraud avoidance arrangements and continuous monitoring will be required as part of the Terms and Conditions of Grant with each LA and SFC.

#### **INFORMATION REQUIREMENTS FOR EMA**

The point of contact in the Scottish Government for EMA monthly claims is Nichelle Gill. Local authorities should feel free to contact the Scottish Government with any questions relating to the EMA programme at Nichelle.Gill@gov.scot. Authorised claim forms and the SEEMIS printout should be submitted by email (with the exception of the March claim which should be sent by hard copy as stated in the Grant conditions) to Nichelle Gill. Each monthly return and claim should relate to period up to the final Friday in the month in question. To ensure timely payment by the Scottish Government, claim forms should be received within 10 working days of the final Friday of the month in question. Payments to local authorities will be processed within the payment deadlines indicated in the offer of grant letter.

Set out below is a summary of the categories of information that will be required to drive the business processes for the EMA programme.

- LOCAL AUTHORITIES

As part of the national roll-out of the EMA programme, data collection for schools was discussed at the regional EMA meetings. This note summarises the rationale and agreed arrangements for data collection. The Scottish Government requires data for two main purposes:

- At the start of each financial year the Scottish Government will have a budget allocation based on forecasts of demand. Should actual demand outstrip forecast demand **Scottish Ministers may amend the programme. For this reason it is important to monitor expenditure and uptake throughout the year in order to identify any such deficit. Timely submission of claims is therefore essential.**

- EMA is designed to increase participation in post-compulsory education among young people from low income households and vulnerable young people. In order to assess and report on the programme, the Scottish Government will require information on individuals receiving EMAs. For this reason it is essential to collect individual level information on those receiving EMA.

The following information is required from LAs:

Application information to be submitted via SEEMIS (normally with the first four weekly payment return):

- Scottish Candidate Number (SCN) - If this is not available, Scottish Government would require a unique identifier which would allow it to track payments to individuals throughout the year and to trace back for any future amendments. If a unique identifier is used, the local authority should ensure that each applicant across the authority has a different number and that the applicant's number does not change during the year. If an authority wishes to use unique identifiers, they should contact ScotXed Unit in Scottish Government to ensure that the coding hasn't already been used by another authority.
- School ID (SEED Number) - This should be the ScotXed reference number of school attended by the EMA student. In the case of Home Educated students, the School ID would be 'Home Educated'
- Gender
- Date of Birth
- Postcode

It is important that the above information is provided for each student by the LA and that this data is made available directly to SG via the SEEMIS system.

Late payment information provided by cut-off in October for previous academic year:

By October, after an academic year ends, LAs should record any payments that were not originally recorded by the July cut-off. This includes payments made over the summer (e.g. to young people on Activity Agreements).

## COLLEGES

This note summarises the rationale behind data collection.

SFC and the Scottish Government require data for two main purposes:

- At the start of each financial year the Scottish Government will have a budget allocation based on forecasts of demand. Should actual demand outstrip forecast demand **Scottish Ministers may amend the programme. For this reason it is important to monitor**

**expenditure and uptake throughout the year in order to identify any such deficit.**

**Timely submission of claims is therefore essential.**

- EMA is designed to increase participation in post-compulsory education among young people from low income households. In order to assess and report on the programme, SFC and the Scottish Government will require information on individuals receiving EMAs. For this reason it is essential to collect individual level information on those receiving EMA payments.

The following information is required from colleges:

Monthly returns to be made 2 weeks after the end of each month containing:

- Total number of payments per month for claims
- Total number of payments per month for admin
- Total amount paid

The data collected from colleges are collated and used by SFC to submit a claim form to SG each month, detailing the total of EMA payments as well as a breakdown by institution.

Additional data is provided in the following months:

- October – student headcount

In August, an individualised return for all EMA students on the programme at any point between beginning of August and end of July:

- Student's first initial
- Student's surname
- Student ID (as used in FES) or matriculation number
- Gender
- Date of birth
- Postcode
- Weekly Allowance
- Total amount paid in weekly payments
- Number of weeks paid
- Whether student started before or after end of January
- Full-time/part-time marker

## **16. GENERAL DATA PROTECTION REGULATION POLICY**

Compliance with the General Data Protection Regulation (GDPR) and any future Data Protection legislation is essential for all EMA stakeholders. The collection, transfer, process and sharing of EMA data must be carried out in accordance with the General Data Protection Regulation.

### SCOTTISH GOVERNMENT

In compliance with the GDPR any information collected, processed and/or stored by the Scottish Government will be used for:

- a. statistical and research purposes and they will not use any personal information collected through EMA to support measures, decisions or actions in relation to specific individuals, and
- b. aggregate budgeting purposes. Scottish Government will only use the statistical information above to monitor and forecast budget demands.

### SCOTTISH FUNDING COUNCIL AND LOCAL AUTHORITIES

Individual data will be collected by the SFC and LA's for the purposes of processing applications for EMA. This data will be shared with the Scottish Government only for the purposes stated above.

### ACCESS TO PERSONALISED INFORMATION

Within the Scottish Government and SFC, access to complete EMA data will be restricted to a small number of specialist statistical staff involved in processing and analysing the data, who will be required to adhere to strict data security procedures. EMA data held by the Scottish Government will be made more widely available for internal use only once all personal identifiers have been removed and the data has been treated to safeguard absolutely the confidentiality of individuals.

In accordance with the Conditions of Grant, the SFC and LAs may use individual data collected for fraud avoidance purposes.

## **17. RETENTION OF EMA DATA**

EMA data collected by the Scottish Government for research and statistical purpose will be retained in order to carry out year on year '[longitudinal](#)' studies and monitor changes and improvements and to gauge the effect of the programme over time. As this information is linked to financial data, i.e. payments made, data will be held for a period of 6 years.

## **18. ARCHIVING**

The following table represents a retention schedule for EMA-related information.

| <b>Information</b>                 | <b>Category</b>        | <b>Retain for</b> | <b>Where</b>                                      |
|------------------------------------|------------------------|-------------------|---|
| Student Data                       | Non-financial          | 6 years ***       | LAs/Colleges                                      |
| Applications & associated evidence | Financial              | 6 years           | LAs/Colleges                                      |
| EMA Contract Parts 1 and 2         | Non-financial          | 2 years           | Learning centre                                   |
| Payment Authorisations             | Financial              | 6 years           | LAs & Learning centre                             |
| Payment Transactions               | Financial              | 6 years           | LAs & Learning centre                             |
| Student Correspondence             | Non-financial          | 6 years           | LAs/colleges – store with application information |
| Management Information             | Various – to be agreed | 6 years           | LA/SFC/colleges – to be agreed                    |

\*\*\*Note that the Fifth Data Protection Principle, (which says that personal data “shall not be kept for longer than necessary” for the purpose for which it is processed), has not been ignored but that the student data will be linked to financial data, i.e. EMA payments made, and therefore we stipulate a retention period of 6 years.

Information (either electronic or paper) is to be retained in whole years, from the 1st April, in the year in which it exists. On expiry of the retention period, information should be destroyed appropriately.

## **19. FREEDOM OF INFORMATION ACT**

Access to information from colleges, LAs and SFC relating to the EMA programme will comply with Scottish Government policy on the Freedom of Information (Scotland) Act 2002.

## **RESIDENCY CRITERIA**

To note changes were made to the EMA Regulations in March 2016. The changes include:

- students who move to Scotland from other parts of the UK for the purpose of undertaking a course of education are considered to be ordinarily resident in the place in the UK from where they moved.
- Provision made to allow Syrian Refugees to apply for EMA under the Syrian Vulnerable Persons Relocation Scheme (VPRS)
- Students who were born and settled in the UK, have then moved to an EEA country and, after a period of time, returned to the UK will need to be resident in Scotland for 3 years **before** moving to the EEA

**NOTE: The purpose of this section is to provide a quick reference guide; administrators should refer to EMA legislation when considering all residency matters.**

### **The Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland)**

**Regulations 2017** made the following changes to ordinary residence criteria for non-UK and non-EU national who has lived in the UK for a significant part of his or her life (if under the age of 18, a period of at least 7 years prior to commencing study or if over 18, half their life or a period of 20 years) but who does not have an unrestricted right to remain in the UK under immigration law to qualify for student support. They are now eligible to receive EMA (subject to other eligibility criteria) providing:

- Under the age of 18, has lived in the UK throughout the 7 year period preceding the qualifying date or
- Aged 18 years and above, preceding the qualifying date, has lived in the UK throughout either half their life or a period of 20 years.

#### **What does the Qualifying date mean?**

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).

#### **What does Ordinarily Resident mean?**

Students must satisfy “ordinary residence” criteria. Generally this relates to the qualifying date and to the three year period immediately before the qualifying date. Students must be ordinary resident in Scotland on the qualifying date and **depending on individual circumstances, they will have to fulfil** the 3 year ordinary residence either in the UK and Islands or, EEA and Switzerland, preceding the qualifying date. There are different arrangements in place for those who have been granted refugee status; leave to remain’ temporary protection and Syrian Nationals. These individuals will need to be ordinarily resident in the UK and Islands at all times since they being granted the relevant

status and will be ordinary resident in Scotland on the qualifying date. Local authorities and colleges must assess on case by case basis and refer to the EMA Regulations when considering the residency criteria.

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.

## **RESIDENCY CRITERIA IN THE EMA REGULATIONS AND DETERMINATION**

### **SETTLED STATUS**

(See Paragraph 1, Schedule 1 of the Regulations and Paragraph 1, Part 2 of the Determination)

The residency requirements are that the student:-

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

### **MIGRANT WORKERS (INCLUDING SELF-EMPLOYED)**

(See Paragraphs 2 and 3, Schedule 1 of the Regulations and Paragraphs 2 and 3, Part 2 of the Determination)

The EEA consists of all the countries of the European Union, plus Ireland, Liechtenstein and Norway.

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. The person:-

- has been ordinarily resident **in EEA or Switzerland** throughout the three year period immediately preceding the qualifying date; and
- is ordinarily resident **in Scotland** on the qualifying date.

A person who is an EEA frontier worker or self-employed frontier worker or Swiss frontier employed person or frontier self-employed person in the UK 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 preceding the qualifying date.

### RIGHT OF PERMANENT RESIDENCE

(See Paragraph 4, Schedule 1 of the Regulations and Paragraph 4, Part 2 of the Determination)

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

- he or she has been ordinarily resident in the EEA or Switzerland for the 3 year period and must be ordinarily resident in Scotland for 3 years before moving to the EEA
- 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” (defined as the UK and Islands, the EEA, Switzerland and Turkey) as detailed in Schedule 2 of the Regulations and in Part 3 of the Schedule to the Determination.

### REFUGEE STATUS

(See Paragraph 5, Schedule 1 of the Regulations and Paragraph 5, Part 2 of the Determination)

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**.

### LEAVE TO ENTER OR REMAIN (WHERE REFUGEE STATUS IS REFUSED)

(See Paragraph 6, Schedule 1 of the Regulations and Paragraph 6, Part 2 of the Determination)

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

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

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 have a letter from the Home Office which will indicate that they **have not been recognised as a refugee**, and **detail the leave granted**.

### **IRAQI NATIONALS (LESAS)**

(See Paragraph 6A, Schedule 1 of the Regulations and Paragraph 7, Part 2 of the Determination)

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 this part of LESAS closed 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). The Regulations were amended in September 2009 so that Iraqi nationals and their children who have been awarded ILE under the LESAS scheme are eligible 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 ILE under LESAS;
- they have been ordinarily resident in the UK and Islands at all times since they were first granted ILE; and
- they are ordinarily resident in Scotland on the qualifying date.

### **SYRIAN VULNERABLE PERSONS RELOCATION SCHEME (VPRS)**

(See Paragraph 6B, Schedule 1 of the Regulations and Paragraph 8, Part 2 of the Determination)

The scheme will bring 20,000 refugees to the UK by 2020. Refugees will come from camps in five countries in the region – Egypt, Iraq, Turkey, Lebanon and Jordan. People arriving under this programme will be given five years' Humanitarian Protection, after which they will be able to apply for asylum. Criteria for selecting refugees include those who have experienced torture, those with severe medical needs, women and girls at risk of sexual violence and those at risk because of their sexual orientation or gender identity.

The Scottish Government has committed to taking 10% of the refugees who come to the UK. This would equate to 2,000 refugees coming to Scotland over the five years of the programme if numbers remain at the current level.

The VPRS came into force on 31 March 2016 under the Regulations and will be in force from 1 August 2016 under the Determination.

A provision has been made to enable Syrian nationals who have entered the United Kingdom through the Syrian Vulnerable Persons Relocation Scheme (VPRS) to be eligible EMA providing they meet the following conditions:

- Are a Syrian national who has been granted humanitarian protection to enter the UK under the Syrian VPRS; and
- Has been ordinarily resident in the United Kingdom and Islands at all times since they were granted Humanitarian Protection; and
- Are ordinarily resident in Scotland on the relevant day

Or

- is the spouse, civil partner or child of a person above and;
- is ordinarily resident in Scotland on the relevant day

### EU TEMPORARY PROTECTION

(See Paragraph 7, Schedule 1 of the Regulations and Paragraph 8, Part 2 of the Determination)

Students may be granted Temporary Protection where there is a mass influx of displaced persons. The EU will determine when such a situation exists. To date this provision has never been used by the EU.

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

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

EMA paid to a person under this paragraph must not continue beyond the end of any academic year in which that person attains the age of 18 years.

### NON-UK EU NATIONALS

(See Paragraph 8, Schedule 1 of the Regulations and Paragraph 9, Part 2 of the Determination)

Non-UK EU nationals (or their family members) may be eligible for an EMA, provided they:

- are a non-UK EU national or the family member of such a national;
- are ordinarily resident in Scotland on the qualifying date; and
- have been ordinarily resident in the UK and Islands throughout the preceding 3 year period.

Where the residence in the UK and Islands during the 3 year period has been wholly or mainly for the purposes of receiving full-time 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.

### **CHILD OF SWISS NATIONAL**

(See Paragraph 9, Schedule 1 of the Regulations and Paragraph 10, Part 2 of the Determination)

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

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

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

### **CHILD OF A TURKISH WORKER**

(See Paragraph 11, Schedule 1 of the Regulations and Paragraph 12, Part 2 of the Determination)

A student who is the child of a Turkish worker (defined as Turkish national who is ordinary resident in Scotland and is or has been lawfully employed in the UK) is eligible to receive EMA if they

- are ordinarily resident in Scotland on the qualifying date and
- have been ordinary resident in EEA, Switzerland or Turkey throughout the preceding 3 years.

### **CROSS-BORDER STUDENTS**

The EMA programme was rolled out nationally across Scotland, England, Wales and Northern Ireland in academic year 2004/05. From academic year 2011-12, England replaced EMA with an enhanced discretionary learner support fund. Residency criteria in the EMA Regulations were amended in December 2015 to align with the Determination which was amended in 2012.

Students from a part of the UK other than Scotland travelling daily across the border to study in Scotland will not be eligible to apply for Scottish EMA.

Students who move to Scotland from other parts of the UK solely for the purpose of undertaking a course of education are considered to be ordinarily resident in the place in the UK from where they moved. They are not eligible to claim EMA i.e. a student from England who was in Scotland on the qualifying date but was only in Scotland to study would not be eligible for EMA. However a student who is resident in Scotland and travels across the border daily for education can receive EMA.

## **List of EU/EEA countries and EU Overseas Territories**

### **List of EU countries and date of accession:**

|                       |                       |
|-----------------------|-----------------------|
| Austria (1995)        | Italy (1952)          |
| Belgium (1952)        | Latvia (2004)         |
| Bulgaria (2007)       | Lithuania (2004)      |
| Croatia (1 July 2013) | Luxembourg (1952)     |
| Cyprus (2004)         | Malta (2004)          |
| Czech Republic (2004) | Netherlands (1952)    |
| Denmark (1973)        | Poland (2004)         |
| Estonia (2004)        | Portugal (1986)       |
| Finland (1995)        | Romania (2007)        |
| France (1952)         | Slovakia (2004)       |
| Germany (1952)        | Slovenia (2004)       |
| Greece (1981)         | Spain (1986)          |
| Hungary (2004)        | Sweden (1995)         |
| Ireland (1973)        | United Kingdom (1973) |

### **List of additional EEA countries**

Iceland  
Liechtenstein  
Norway

### **List of A8 and A2 countries**

A8: In May 2004 the following countries joined the EU: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

A2: In January 2007 Romania and Bulgaria joined the EU.

### **List of EU Overseas Territories**

Aruba  
Faeroe Islands  
French Polynesia  
French Southern and Antarctic Territories  
Greenland  
Mayotte  
Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten)  
The Territory of New Caledonia and Dependencies  
St Pierre et Miquelon  
Wallis and Futuna Islands

## **Glossary of Terms**

### **Asylum Seeker**

Those whose applications for asylum in the United Kingdom are currently being considered by the Home Office. See Appendix 5 for more information.

### **Discretionary Leave**

Granted to persons who have been refused refugee status and who do not have protection needs, but whom the Home Office would not seek to remove from the UK because there is a legal barrier to their removal. See Appendix 5 for more information.

### **Frontier worker/Frontier employed person**

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 within the meaning of Annex 1 to the Switzerland agreement) in the UK, 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.

### **Humanitarian Protection**

Granted to those who fail to qualify for refugee status, but who can demonstrate they have protection needs. For further information see Appendix 5 or visit [the UKBA](#).

### **Indefinite leave to enter/remain**

Permission to enter the UK, and permission to remain permanently in the UK, respectively. For further information visit:

<http://www.ukba.homeoffice.gov.uk/settlement/>. See stamps in Appendix 5. This is counted as settled status.

### **Independent Student**

A person who is 25 years old or over, or is married on the first day of their course, or has supported themselves from their full-time wage for an aggregate period of three years or more, or has no parents living.

### **National of a member state of the European Union**

A person who is a national for the purposes of the EU Treaties of any member state of the European Union (including the United Kingdom) as constituted from time to time.

### **Non-UK EU Nationals**

Relates to the Bidar ruling by the European Court of Justice, which extends maintenance support to non-UK EU nationals. Fee and living cost support for UK nationals living in Scotland, England, Wales and Northern Ireland will continue to be provided by the award-making body in the country in which the applicant is ordinarily resident.

### **Ordinary Residence**

Defined by the courts as 'habitual and normal residence in one place'. Effectively, this means living in a country year after year by choice throughout a set period. A person who meets these criteria will be defined as '**ordinarily resident**'. A student may not be treated as ordinarily resident if they would normally live elsewhere, and their main purpose in coming to Scotland is to study.

### **Person not supporting themselves from their earnings**

Someone who participated in training for the unemployed, received unemployment benefit, registered to entitle them to participate in training or to receive benefits, received a pension, allowance or other benefit as a result of a disability, held a Scottish Studentship Award (or equivalent) or cared for a dependant under 18 and therefore could not support themselves out of their own earnings.

### **Refugee**

A person who is recognised by the Government as a refugee within the meaning of the Geneva Convention relating to the Status of Refugees (1957). Essentially, a person who because of fear of persecution on grounds such as race, religion, or politics, is outside the country of their nationality and is unable or unwilling to return.

### **Relevant Area**

The area in which a person is expected to have been ordinarily resident for a specific period of time before a bursary can be awarded. Schedule 2 of the Student Awards regulations names these 'relevant areas' as the United Kingdom and Islands and the EEA/Switzerland. For UK nationals, the relevant area is the United Kingdom and Islands. For EEA migrant workers and EU nationals, the relevant area is the European Economic Area (EEA) and Switzerland (can include the EU Overseas Territories for EU nationals and Turkey for children of Turkish workers).

### **Relevant Date**

The first day of the first academic year of the course for which a bursary is sought. For FE courses this is generally the first day of the course (for HE courses this is one of four set dates throughout the academic year).

The student must be ordinarily resident in Scotland on the first day of the first academic year of the course.

**Right of Permanent Residence**

A person has the right of free movement as defined in EC Directive 2004/38, and may have a right of permanent residence if they are settled in that country for a period of 5 years.

**Settled Status**

A person who is settled in the United Kingdom within the meaning of the Immigration Act 1971, for example is a naturalised British Citizen, has indefinite leave to enter or remain.

**Specified period**

The length of time a person is expected to have been ordinarily resident in one place before a bursary can be awarded.

**Temporary Absence**

The student may be considered to be temporarily absent for the purposes of their parents' employment or if either of them were studying abroad. If the family moved abroad because the student's father or mother was posted abroad by their company and they are not considered as permanent residents in that country due to the nature of their employment contract, the student may then be considered as temporarily absent from the UK.

**Temporary Protection**

Limited leave to enter or remain in the UK under Part 11A of the Immigration Rules.

**Turkish Workers**

A Turkish Worker is a Turkish national who is ordinarily resident in Scotland and is, or has been, lawfully employed in the UK. This can include both employment by an employer and self-employment.

**Young unaccompanied asylum seekers**

An unaccompanied minor or separated child, i.e. someone under the age of 18 who has no legal guardian in the UK and who has made an application for asylum.

*Further residency criteria can be found in the EMS Residency Supplement*

**FINANCIAL ASSESSMENT**

EMA is means tested. Gross taxable income governs the eligibility for an award. Eligibility for £30 per week will be for those in households of income of up to £24,421 for households with one dependent child and income of up to £26,884 for households with more than one dependent child (as well as applying to all children under the age of 16, “dependent child” includes those who are over the age of 16 and up to the age of 25, if they are in further or higher education and are parentally supported). Payments will be made in two weekly instalments in arrears into the bank account of the student.

Original documents provided as part of an application form for EMA must be copied and then stored with the application. Originals can then be returned to the applicant.

**Whilst the term “household income” is used it should be noted that the Regulations and Determination define that “In determining the amount of an EMA, the Scottish Ministers may take account of the sums, if any, which in their opinion the holders of the EMA, the holder’s parents and the holder’s spouse or the holder’s civil partner can reasonably be expected to contribute towards the holder’s expenses.”**

The following should be used as a guide to assessing household income:

- If applicant’s parents live together, use both incomes
- If applicant’s parents are separated, divorced or no longer live together, use the income of the parent the applicant normally lives with the majority of the time
- If applicant’s parent is married or lives with a partner, use both incomes
- If applicant is married or lives with a partner, use both incomes

**Note: Sibling income should not be included when calculating EMA. The exception to this is when a sibling gains parental responsibilities, but this is in limited circumstances.**

There will be two methods of determining income and these are detailed below. The Department for Work and Pensions are implementing significant changes to the benefits system that includes the roll out of Universal Credit which replaces the current suite of benefits and their notification forms such as Job Seekers Allowance.

**a) Those who can provide an Inland Revenue derived income figure through an earlier claim for Tax Credits.**

The majority of applicants will provide Tax Credit Award Notices (TCAN) i.e. TC602 supplied by Her Majesty’s Revenue and Customs (HMRC) after having their income assessed for tax credits for the

relevant tax year. The relevant tax year will be the last complete tax year before the date of application for EMA.

In year 2019-20 the relevant Tax Year will be 2018-19. **Original** documentation will be required.

The TCAN will contain a statement of income as assessed by HMRC. This figure will form the income to be used for EMA purposes. The majority of EMA-eligible households will fall into this category. A proportion of these may be self-employed. Provisional TCANs should not be accepted.

**LAs and colleges can also request additional information or evidence such as P60s, payslips, Annual Tax Summary etc. for clarification.**

**b) Those who will receive a TCAN but TCAN not yet issued by HMRC**

If a TCAN is not available at the time of application then other documentation such as a P60, payslips, bank statements, Annual Tax Summary etc. should be used.

**c) Those who cannot provide an HMRC derived income figure through an earlier claim for Tax Credits**

Applicants who cannot provide a TCAN which shows an income figure for the relevant tax year will be asked to provide alternative income evidence for the relevant tax year. There are two distinct groups within this category:

**Employed**

This group will be asked to provide relevant evidence such as P60, payslips, bank statements, Annual Tax Summary etc. Printouts of E-payslips are acceptable as evidence.

**Self-employed**

Any parent(s)/guardian(s) and their partners in the household who are employed or self-employed will need to provide evidence of income. A Self-Assessment Tax Calculation Form (SA103S or SA103F) will be the only acceptable evidence. Confirmation will also be sought about any benefits or pension income for all those people who provide details on the application form. More information may be found on: <https://www.gov.uk/self-assessment-forms-and-helpsheets>

**Other Income**

Details on “other income” (such as share dividends; bank interest; property; overseas investments) may be required depending upon certain conditions.

### **Evidence of Other Dependent Children in Household**

Households with more than one dependent child will have to provide evidence if this is not shown on the TCAN. As well as applying to all children under the age of 16, this applies to those who are over the age of 16 and up to the age of 25, if they are in further or higher education and are parentally supported. Other acceptable evidence would be the Child Benefit notification, birth certificate (for those under the age of 5) or a Letter of Award from the Student Awards Agency for Scotland (SAAS) or relevant college.

**Note:** Income evidence provided with an application must be copied and stored with the application.

### **EXCEPTIONS TO THE FINANCIAL ASSESSMENT PROCESS**

Local authorities and colleges will need to assess the income of some young people in their own right, for example estranged or vulnerable young people, care leavers or teenage parents receiving benefits.

All eligible young people who are either Looked After or care leavers should be treated as "independent" for the purposes of EMA, and are automatically eligible for EMA without recourse to parental income assessment. Students receiving the "Pathways" allowance should also receive EMA. Such students are required to provide a letter at the time of application from the local authority or the care provider confirming their status.

**Foster Carers:** For the purpose of household income assessment, do not take a student's foster parent's/carer's income into account. However, if the student's parents are foster carers/carers for a child who is not the student, we would take the foster income into account and would ask the parent(s) to declare their taxable profit from their self-assessment (net business profit for tax purposes).

The fee that the parent receives for fostering for EMA purposes would be included as income, however any allowance granted for maintenance of the child is exempt.

**Kinship care** is when a child is looked after by their extended family or close friends, if they cannot remain with their birth parents. Under the **Looked After Children (Scotland) Regulations 2009**, kinship carers are defined as "a person who is related to the child (through blood, marriage or civil partnership) or a person with whom the child has a pre-existing relationship".

Kinship care includes children who are **looked after** and are placed in a formal kinship care arrangement by the local authority. The **Looked After Children (Scotland) Regulations 2009** gave local authorities the power to pay an allowance to kinship carers of looked after children living in kinship care, for the first time. If a young person is in a formal arrangement and therefore considered

Looked After, they will be automatically entitled to EMA without a household income assessment being carried out.

Kinship care also includes **non-looked after** children, who live in an informal kinship care arrangement. These children may be subject to a Section 11 of the Children (Scotland) Act 1995 or may be living in a completely private arrangement with extended family, with no local authority involvement at all. In this case a household income assessment would be necessary.

### **PROVISIONAL ASSESSMENT**

Provisional awards may be made for applicants with parent(s) who are unable to provide the correct income documentation at the time of application. This mainly, although not wholly, applies to those applicants whose parent(s) are self-employed. In such cases the LA and college will have the discretion to request further evidence during the provisional award period, or later in the year, to confirm current household income remains within the threshold limit for payments to continue.

If household circumstances have changed during the year and income has fallen to within the EMA thresholds this would be classed as a new application. It is the responsibility of the student to notify the local authority or FE college. Relevant evidence will need to be provided confirming both the change in circumstances and the current level of household income.

For provisional award payments paid to those whose parents are self-employed during the Autumn term, a stop on payments should be made on 31 December and no further payments should be made until income has been finalised. Note: Self-assessment online tax returns are due by 31 January each year.

Local authorities have the discretion to review provisional assessments at any time, but generally mid-year, to ensure that financial circumstances have not changed. Appropriate evidence will be required to verify current financial circumstances. Where it can be established that income remains within the appropriate income threshold, payments may continue.

If an applicant is paid an EMA provisional award that is not finalised then applies for EMA again in another year, the amount already paid should be deducted before any further payments are paid. Local authorities must keep records of provisional payments made during FY19-20 and submit to Scottish Government on Schedule 7 of the grant letter by 30 April 2020.

**Provisional awards should also be used in cases where the household has experienced a change in financial circumstances as a result of redundancy.** Administrators should request evidence of redundancy and any other evidence they require to satisfy themselves that there has been a change in circumstances/household income.

## **INCOME TAX LIABILITY**

For income tax purposes, young people in receipt of an EMA will be treated the same as any other taxpayer. However, in calculating an EMA recipient's tax liability, Her Majesty's Revenue and Customs (HMRC) will disregard the EMA.

## **BENEFITS**

Under no circumstances should EMA students have benefits withdrawn due to receiving EMA. Young people receiving education who are Looked After by the local authority or who are classed as "care leavers" by the local authority, are eligible for the full EMA without having to provide evidence of parental household income; this also includes students who are in receipt of Income Support or income-related Employment and Support Allowance in their own name and students receiving a Pathways allowance from the local authority. Further guidance on Looked After young people and Care Leavers is provided in Section 7.

In addition if a household is in receipt of a grant from the Scottish Welfare Fund (crisis grants and community care grants to people on low incomes) this should be disregarded from EMA household calculations.

## **OTHER AWARDS**

A young person on an EMA may still be entitled to other forms of financial support for non-maintenance costs (such as a travel allowance) from existing local authority or college bursary funding. Young people in full-time employment, in receipt of Job Seekers Allowance (JSA) or in receipt of a training allowance, such as the Employability Fund will **not** be eligible for an EMA.

## **WHAT TO TAKE INTO ACCOUNT WHEN CALCULATING HOUSEHOLD INCOME**

When establishing what benefits should be taken into account when calculating eligibility to receive EMA, the Scottish Government follows the same criteria as set by HM Revenue and Customs for calculating Child Tax Credit and Working Tax Credit.

For ease of reference, the following table states which benefits should, and should not, be included when calculating household income for the purposes of EMA.

| Yes   | No  |
|---|---|
| Carers Allowance  | Child Benefit                               |
| Contribution-based Jobseeker's Allowance  | Attendance Allowance                        |
| Contribution-based Employment and Support Allowance   | Disability Living Allowance                 |
| Incapacity benefit<br><i>-paid after the first 28 weeks of incapacity (at the short-term higher and long-term rates, including any child dependency increases paid with these benefits)</i> | Personal Independence Payment (PiP)         |
| Income Support<br><i>-Only taxable if it is payable to a member of a couple and the recipient (but not the recipients partner) is on strike</i>   | Council Tax Benefit                         |
| Industrial Death Benefit  | Housing Benefit                             |
| Widow's pension   | Income-related Employment Support Allowance |
| Widowed Mother's Allowance<br><i>-including any children's dependency increase</i>  | War pension                                 |
| Widowed Parent's Allowance<br><i>-including any child dependency increase</i>   | Student loans of parents (re-payable)       |
| Bereavement Allowance   | Foster Carers Allowance                     |
| Foster Carers salary/fees   |   |

\*Delivery partners should refer to the HMRC website for any changes to the benefits list compiled by the Scottish Government.

## **ACTIVITY AGREEMENTS**

Activity Agreements (flexible, tailored learning plans) have been delivered in each local authority in Scotland since 2011/12. Detailed guidance on Activity Agreements can be found on the EMA website [www.mygov.scot/ema](http://www.mygov.scot/ema) and at <http://www.youthlinkscotland.org/Index.asp?MainID=13700>

### **ASSESSMENT**

The same rules for income assessment apply to young people on Activity Agreements as those receiving an EMA in school or college and is based on Her Majesty's Revenue and Customs Tax Credits Awards, which also takes into account household income.

### **AGE**

Young people undertaking Activity Agreements who are eligible to receive EMA also qualify under the school leaving dates in relation to their 16<sup>th</sup> birthday.

### **VULNERABLE YOUNG PEOPLE**

All young people undertaking Activity Agreements are considered vulnerable. These young people will require extra support in the application process in addition to developing and undertaking their tailored learning plan.

### **DURATION OF ALLOWANCE**

Payment of EMA will normally be restricted to a maximum period of 3 years and recipients must be between 16 and 19 years old. Vulnerable young people may be eligible for up to 4 years support up to their 20<sup>th</sup> birthday .

For Activity Agreements, payments can be made for a full year (i.e. up to 52 weeks per year). Young people on Activity Agreements can receive payments out-with the normal school and college term time as their learning may not follow the academic year.

**If the young person undertakes a Skills Development Scotland (SDS) Employability Fund training course as part of their Activity Agreement and receives the £55 training allowance for this, they cannot claim EMA at the same time.**

**Young people on Activity Agreements can have their EMA payments back dated, to the day of first engagement in the relevant activity within the current financial year. Scottish Government will not pay claims, or part of a claim which relates to the previous financial year.** If a local authority decides to make backdated payments to the previous financial year, this cost will need to be met from the local authority budget.

A new EMA application should be submitted each year.

### **MAKING PAYMENTS**

The young person's advisor or learning centre is responsible for authorising or stopping payments. For young people undertaking an Activity Agreement, we would generally expect a trusted professional to make this decision, although for some there may be someone else who is more appropriate. It is essential, in all cases, that there is a clear process – similar to the process which operates between schools and the local authority – for authorising or stopping payments.

It will be the responsibility of the student to notify changes in their circumstances such as Name and Address or Bank Account to the learning centre or LA. Changes to standing data, particularly Bank Account details, cannot be made without the signed authority of the student. Notification of changes must be stored as audit trail.

### **INFORMATION MANAGEMENT**

Local Authorities need a record of young people on Activity Agreements receiving EMA. This information should be recorded in the same way as for young people attending independent schools or who are home educated. This may be that a dummy student candidate number (SCN) is assigned to each young person so that they can be included in the information management system.

### **WELFARE BENEFITS**

Young People on an Activity Agreement and claiming Jobseekers cannot receive an EMA (see separate Activity Agreement Guidance).

### **RE-ASSESSMENTS**

As a young person on an Activity Agreement can enter and leave at any point during the course of the year, it may be necessary to carry out a reassessment of their circumstances. This may be needed to ensure household income information is up to date particularly if they have been on an Activity Agreement for some time, possibly more than 52 weeks. There is no cut-off date for this set nationally, but local authorities may find it helpful to carry this out around the time that new applications are being sent out to the school sector for the new academic year.

## **STUDENTS IN HOME EDUCATION**

EMA will be available to eligible young people who are undertaking full-time non-advanced level study by home education. The EMA programme will be administered for these students by the local authority in which the home education is based. Applications should be made to the local authority. In relation to the efficiency and suitability of education being delivered at home, local authorities should take into account the current Scottish Government guidance (<http://www.scotland.gov.uk/Resource/Doc/207380/0055026.pdf>) and the local authority's own guidance, where available.

Students applying for EMA as a home educated student must have a history of home education prior to reaching their official school leaving date. The onus is on the applicant to provide evidence of a history of home education.

The programme for EMA across the local authority and FE sectors is largely the same. This will also be the case in relation to home education. However, given the nature of home education, there will be particular elements of the programme which will vary. Vulnerable young people may be home educated and further guidance is in Section 7.

### **ELIGIBILITY OF STUDENT**

Students who are home educated will be subject to the same age criteria as students in the schools and Further Education sectors. Students will become eligible for an EMA from the start of the **local authority school term** under the autumn or winter intake, as appropriate. While it is recognised that home education may not follow the same terms as school or college education, this will ensure **all** eligible local authority students begin to receive their EMA at the same point in the year, regardless of the form of education they are undertaking. Likewise, EMA payments to home educated students should cease at the same point they would if they were in standard schooling.

Home educated students will also be eligible to a maximum of 42 weeks of EMA support over the year in the same way as other students who are awarded an EMA.

### **ELIGIBILITY OF COURSE LEARNING**

Eligible students can be home-educated on a full-time basis, or in conjunction with attendance at a recognised learning centre. The local authority should be content that the home education is efficient and suitable for the child, and on a full-time basis.

The course of learning should be at non-advanced level. If the student attends college courses part-time as part of their home education programme, this must also be at a non-advanced level.

## **ATTENDANCE REQUIREMENTS**

In order to be eligible for the weekly allowance home educated EMA students will be required to meet the 100% attendance requirement.

Responsibility for ensuring 100% attendance in home education will lie predominantly with the education provider, and local authorities should refer to their existing policy on home education to ensure this is appropriate. Where a student also attends a part-time college course as part of their programme, they will be required to meet the 100% attendance criteria for that course (also see Section 6 on Absences).

## **PROGRESSION AND QUALIFICATIONS**

Home educated students may not be working towards a recognised qualification. However, the programme of learning should be appropriate to the age, ability and aptitude of the student. Local authorities may choose to ensure that this remains the case throughout the student's period of eligibility.

## **LEARNING AGREEMENT**

In order to receive an EMA, **all** students must have a signed Learning Agreement (or equivalent) in place. For home educated students, this may be a plan of education agreed between the responsible adult and the student. The EMA Learning Agreement sets out the responsibilities of both the learning centre and the student.

The education provider should submit a Learning Agreement or similar plan of education provision to the local authority as part of the application for an EMA. Once the local authority is satisfied that this meets the Learning Agreement requirements (see Section 5 and below), the EMA should be granted.

The local authority or college may discontinue EMA payments where the information supplied states that the student has failed to comply with their Learning Agreement.

## **REQUIRED SIGNATURES**

The Learning Agreement (or equivalent) should be signed by the young person and the adult educator or parent responsible, and by a representative of the local authority if required. Where the student attends college part-time the Learning Agreement should also be signed by an appropriate representative of the institution. Where a student attends more than one by the learning centre in which the majority of their agreed learning takes place (the "lead" learning centre). All signatories should understand fully their responsibilities within the agreement. The responsible parent/guardian and external education provider should ensure the learning agreement is clear and unambiguous about the proposed programme of learning. Parent/guardian signature is not required in college sector or for those deemed to be living independently, such as care leavers

**Part 1** of the EMA Learning Agreement must be signed, recorded and returned to the learning centre/local authority before any weekly payments can be made.

**Part 2** of the EMA Learning Agreement must be signed by the end of November for the August intake, and the end of March for the January intake, otherwise payments will be suspended.

## **REQUIREMENTS**

The Learning Agreement (or equivalent) should incorporate the main features as outlined in Section 5. However, this should allow for the nature of home education, e.g. that home education may not lead to a recognised qualification. References may be incorporated to documents where such things as timetabled learning programmes are set out, but this is not a prerequisite given the alternative nature of many forms of home education. Learning Agreements may also reference the guidance for local education authorities in dealing with home educators (<http://www.scotland.gov.uk/Resource/Doc/207380/0055026.pdf>) and may incorporate the suggested characteristics of an efficient and suitable education.

It remains the education provider's responsibility to ensure that all the criteria highlighted in the Learning Agreement are met. Local authorities may seek details of the provision as per their normal responsibilities (as outlined in this document) but should not seek to impose school or college structures, programmes or outcomes. If concerns are raised regarding the efficiency and suitability of the programme provided, then local authorities should investigate as normal and if these are justified then the EMA allowance may be withheld or reviewed.

**Note:** A copy/original of the EMA Learning Agreement should be held by the local authorities/SFC and learning centre.

## **WITHHOLDING PAYMENTS**

Education providers (for example, parents) will be required to advise local authorities to withhold payments in any week where the student does not meet the attendance criteria or other requirements set out in the Learning Agreement.

## **RETENTION CRITERIA**

For home educated students, this would be a return to their agreed learning programme.

## **PROGRESSION/ATTAINMENT CRITERIA**

As students who are home educated may not be working towards a recognised qualification, there should be scope for variation to suit different home education expectations and capabilities of students. This should be outlined in the Learning Agreement.

## **MANAGEMENT INFORMATION**

Local authorities should refer to guidance on the Management Information requirements for the EMA Scotland programme.

Local authorities should also make reference to existing policy in relation to contact with home educated pupils. The education provider will be responsible for informing the local authority when a student fails to meet the requirements for the weekly allowance, or otherwise stops being eligible for an EMA. Again, local authorities should refer to existing policy on this.

## **ELIGIBLE COURSES OF LEARNING**

### **FULL-TIME**

Within the school sector, young people should be enrolled as full-time. This usually means at least **21** guided learning hours per week, although there will be a degree of flexibility around the number of hours making up a full-time course. The number of hours for a full time course at college will vary.

### **PART-TIME**

On 1 January 2016, part-time non-advanced college courses became eligible for EMA. Part-time is defined as a course of 12 hours of study or less per week.

Students should be on a course that is eligible for SFC funding. To be eligible for SFC funding, students should be on a course that leads to a recognised qualification, meets an employer need or is a formal access course. Students on leisure courses and taster courses are not eligible for SFC funding. Students on evening or weekend courses may be eligible for an EMA but only where they meet the above criteria and where their attendance on the course is monitored. Students on part-time distance learning programmes will not qualify for support.

Colleges operate on a credit basis and they should refer to their own policies and the guidance issued by the SFC to determine whether a course is part-time.

### **CURRICULUM DIVERSITY**

For college students only, a student can attend separate courses provided they make up a full or part-time timetable, they are integrated into the EMA Learning Agreement and the institution is satisfied that they are not undertaking full-time work or training.

### **TEMPORARY EXTENUATING CIRCUMSTANCES**

In temporary extenuating circumstances, for example when a student is pregnant or has restricted mobility through illness, education of less than the stipulated course learning hours per week may be allowed. The school or college must be satisfied that all other aspects of the Learning Agreement can be met and that the course can be completed successfully. (Please refer to Section 5 on Learning Agreements and Section 7 on special consideration for Vulnerable Young People)

## **SHORT COURSES**

There may be cases where a student is following a course that is shorter than one academic year. Providing the course meets all the other criteria, the student may be accepted for an EMA. Eligible students participating in a short course will only receive EMA for the duration of the course.

## **QUALIFICATIONS**

EMA is intended to support non-advanced learning. The following levels of courses are all eligible:

- a course which prepares students to obtain a vocational qualification
- a course within or drawing upon the new National Qualifications programme
- a course which prepares students for entry to a course of further and higher education
- a course for basic literacy in English
- a course to teach independent living and communication skills to persons having learning difficulties, which prepares them for entry to another course
- a programme of home education which is appropriate to the student's age, ability and aptitude
- a programme of learning in a community and voluntary setting which prepares young people to enter training or further learning in a more formal setting.

## **COURSE CHANGE AND STUDENTS MOVING INSTITUTION**

### **IF A STUDENT LEAVES A COURSE**

If a student leaves a course early they are still eligible for future funding, up to a total period of support of 3 years. When they apply for EMA for their second course, provided they satisfy all the eligibility criteria, they can be considered from the start of their new course, up to the point at which they have received payments for a period of three years in total.

### **IF A STUDENT CHANGES COURSE**

Where a student changes course mid-way through, they will still be eligible for an EMA for the new course provided both the student and course continue to meet the eligibility criteria. An amended or renewed Learning Agreement would require to be set up and signed.

### **YOUNG PEOPLE WHO MOVE INSTITUTION DURING THE ACADEMIC YEAR**

This will not affect their entitlement to an EMA, provided that they renew their EMA Learning Agreement (with appropriate signatures). The new college/local authority would take on responsibility for payments.

Where a student moves institution mid-week, responsibility for payment of EMA for the week would rest with the college at which the student spends the majority of that week. However, it is likely that these cases will be considered on an individual basis.

## CHANGE IN COURSE OR INSTITUTION

Where review of the learning programme results in a change of course at the same institution, the Learning Agreement will be amended and remain valid for EMA payments provided that the amendment is signed by the student and the institution concerned. Where a student changes institution mid-year a new Learning Agreement will be required.

On notification of a change of learning centre, the student must be linked to the new learning centre. If, on changing learning centre, a student has outstanding payments due, these must be authorised by the exporting (old) learning centre. The exporting learning centre must not be able to authorise a payment on or from the date that the student has joined the importing (new) learning centre.

The importing learning centre must ensure that an EMA contract is established and recorded before it can make any payments.

## **ADMINISTERING EMA APPLICATIONS**

### **SCHOOLS**

Young people should apply to the local authority in the area in which they attend school. Where a young person is living in one local authority area and attending an educational institution in another, responsibility for payments falls with the local authority in which that institution is situated. For example, if the student lives in East Ayrshire but attends school in South Ayrshire then South Ayrshire will be responsible for making the payments. This also applies to young people who are Looked After but placed outside their responsible local authority area and may therefore be educated in another local authority area.

If a student is attending both a school and a college, the local authority in which the school is situated will be responsible for making the EMA payments.

### **COLLEGES**

Students at colleges of further education should apply directly to the college they are attending. For students attending colleges in Orkney and Shetland, students should apply to the relevant local authority.

### **SCOTLAND'S RURAL COLLEGE (SRUC)**

Applications for students attending SRUC should be managed by either South Ayrshire or Aberdeen City Councils for the appropriate campus

### **COMMUNITY AND VOLUNTARY ACTIVITY**

For young people who are taking part in community and voluntary activity which is recognised as a course of education by the local authority for the purposes of EMA, the local authority will be responsible for payment.

### **CUT OFF DATES FOR RECEIVING EMA APPLICATIONS (SCHOOL SECTOR)**

Students are eligible to apply for an EMA within the academic year. However, the cut off dates for LAs to process application forms will be 31 March. No applications should be processed after 31 March for the academic year .

### **LATE APPLICATIONS**

Applications received after the start of a course may be eligible for back-payment. Autumn intake (August) applications received up to and including 30 September are eligible for back-payment to the beginning of the term provided that attendance criteria has been met. Applications received from 1 October onwards are eligible for back-payment from the Monday of the week in which the original application was received provided that the course has started and attendance criteria has been met.

For winter intake (January) applications received on or by the last day in February may be eligible for back payment to the start of the term.

It is possible that a student might start their course and only hear about EMAs afterwards. The following arrangements apply.

**(i) Autumn Intake**

If applications are made: **Schools** on or by 30 September

**Colleges** within first 6 weeks from start of course

payments can be backdated to the beginning of the academic year or FE course, provided that the student meets the eligibility requirements. If the application is received after these cut-off points, payments will be made from the Monday of the week in which the application was received.

**(ii) Winter Intake**

If applications are made: **Colleges** within first 6 weeks from start of course,

**Schools** on or by last day in February

payments can be backdated to the beginning of the term provided that the student meets the eligibility requirements. If the application is received after these cut-off points, payments will be made from the Monday of the week in which the application was received.

In all cases, **the onus is on the student** to prove that they have satisfied the conditions of the EMA Learning Agreement from the beginning of that term. **Arrears will not be considered for any previous term.**

**Note:** Local Authorities should remain mindful of operational factors with SEEMiS when it comes to inputting dates for applications to ensure students receive payment for that week. **LA's are responsible for working with the system to ensure that back payment is paid correctly to recipients.**

**The Scottish Government has no responsibility or ownership for the SEEMiS system, and it is the responsibility of LA's to ensure that the system is fit for purpose.**

## **ATTENDANCE RECORDING AND PAYMENT AUTHORISATION**

The learning centres are responsible for authorising or stopping payments. Attendance data must be captured each week by the learning centres. Learning centres may adopt whatever method of recording attendance they choose. The application of the rules in respect of interpreting collected attendance data will be the same for schools, colleges and any other learning centres deemed a part of the EMA programme. Attendance data, absence and other information must be retained as part of the audit trail at the learning centre. Conditions set out in the Learning Agreement must also be satisfied EACH week before payment is authorised. The learning centre is the decision maker on payment or stoppage.

Though the learning centre must record the reason for a stopped payment, and notify the student, there is no requirement to hold the reason for a stopped payment on the central database.

If student leaves school/stops attendance at the course of education, family/student must notify learning centre.

The learning centre must ensure that:

- all due weekly payments are authorised;
- they place a stop on further weekly payments.

**Note:** At the start or finish of an official holiday students can only receive payment for a week which constitutes 3 or more relevant days.

### **LEARNING AGREEMENT**

A Learning Agreement is an agreement between a student and the learning provider that sets out the learning that will be offered and the responsibilities of both parties. It is each student's responsibility to ensure that he/she has a valid Learning Agreement. The local authority and/or the learning provider should ensure that the student is aware of this.

To be eligible for an EMA, students must have agreed and signed a Learning Agreement and must also be countersigned by:

- an appropriate representative of the institution (or institutions) at which the student is studying
- the student's parent or guardian if the student is attending a school (colleges may choose to include this at their discretion)

Where the learning programme is undertaken at both a school and a college, the student's Learning Agreement is the responsibility of the school, and the local authority would be liable for making EMA payments. If the student attends two institutions, representatives from both should sign the Learning Agreement.

The requirement for a student signature may be waived when the student has additional support needs that make it impractical or if the student is not currently residing with their parent or guardian and has been assessed as independent for Benefits Agency purposes. This may apply to students in care or care leavers.

Vulnerable young people may not be able to obtain the essential signatures from a parent or guardian to authorise the EMA application. Examples include parental illness, young carers, those who are estranged from their parents.

LAs will need written confirmation from the learning centre and/or support worker confirming the young person's circumstance and this must be filed accordingly. Only then can an application be considered.

## **GENERAL FEATURES**

Education providers should ensure that the text of the document is clear and unambiguous. Each Learning Agreement should provide enough detail to ensure that the signatories understand fully their responsibilities within the agreement while avoiding unnecessary legalistic, contractual language. The Learning Agreement does not need to include all details, such as a timetabled learning programme, provided that reference is made to existing documents where these are clearly set out.

The Learning Agreement may incorporate:

- enrolment details
- minimum attendance targets
- agreed attainment targets
- the requirements of any home-based tuition or learning
- any other elements that the local authority or the learning provider may wish to include

The Learning Agreement is expected to be a “living” document, to be amended as necessary throughout the academic year. A new Learning Agreement will be required for each academic year.

## **SPECIFIC REQUIREMENTS**

The Learning Agreement must include, or refer to documents that include, the following core elements:

- the student’s name, address and date of birth
- course study aims and goals and, where possible, longer term career aims
- study programme, including attendance and course work requirements
- the weekly EMA entitlement (this can be stated in the letter to the student confirming entitlement)
- evidence of the assessment and guidance process by which the Learning Agreement has been reached (or a timetable setting out the proposed process)
- a statement of the student’s, and parent’s or guardian’s (where appropriate), commitment to ensuring that the requirements of the study programme are met and to supporting the institution’s aims and standards of conduct
- commitment by the student, and parent or guardian (where appropriate), to notify the institution about absences before or on the first day of absence
- a clear statement of understanding that the EMA may be withheld if the terms of the Learning Agreement are not met
- the arrangements for regularly reviewing the Learning Agreement, including a statement that if the student changes course or institution, they will seek appropriate careers advice
- the arrangements for appeals against withholding payment of EMAs
- an explanation of the criteria to be used for assessing retention
- a standard statement about compliance with the Data Protection Act and fraud avoidance

## COLLATION OF LEARNING AGREEMENTS

**Colleges:** The college will collate the Learning Agreements for its eligible students.

**Schools and other learning providers:** The Learning Agreement for students will be sent onto the local authority by the school or other learning providers as proof to start payments.

Please note that EMA payments will not be made until a Learning Agreement has been completed and sent back to the relevant learning centre.

## OTHER CONSIDERATIONS

Institutions should also be satisfied that the student is fulfilling the requirements set out in the student's Learning Agreement.

The learning centre must confirm that the course is within those defined by local authorities or SFC as appropriate. Assuming this to be the case, the learning centre and student will agree the EMA Learning Agreement (and notify the local authority in the case of school students). The student will present the Notice of Entitlement and Learning Agreement to the learning centre. In order for a student to receive EMA payments they must sign Part 1 of the Learning Agreement (see below). A copy of the Learning Agreement will be sent with the Notice of Entitlement/Letter of Award.

The EMA Learning Agreement has two components:

- Part 1 should either include conditions on attendance linking to receipt of the **weekly payment** or refer to the document which does. This will be signed by the student and the learning centre;
- Part 2 is an agreement which is tailored to the individual student for agreed learning goals, possibly specifying behaviour but more normally focussed on progress. This Learning Agreement will be signed by the student, their parent/guardian (in the case of school students) and the learning centre. The Learning Agreement must be signed by 30 November following the August intake. If Part 2 is not signed and completed by this time, payments will be suspended. Similarly, the Learning Agreement must be signed by 31 March following the January intake.

Part 1 should be completed as soon as the student enrolls on the course and notification should be sent to the local authority in the case of schools. Part 2 must be completed by 30 November for the August intake, and 31 March for the January intake. Parts 1 and 2 may be part of the same document. Completion of the relevant part of the Learning Agreement is the vital trigger to the payment processes. Thus, weekly payments cannot begin until Part 1 of the contract Learning Agreement is processed, completed and signed.

For a young person who has previously applied to the LA/college and has been issued with a Notice of Entitlement/Letter of Award, if there is no evidence that Part 1 of the Learning Agreement has been signed by 30 September for the August intake, then the LA/college will send a reminder to the student. No further reminders will be sent and payments will not start until the Learning Agreement is received.

If the signing of Part 2 of the Learning Agreement has not been notified to the LA/college by end November for the August intake, then the LA/college will send a reminder. It is the responsibility of the Learning Centre to ensure that Part 2 of the Learning Agreement is agreed and signed.

The LA/college must be informed if the student has left the learning centre; this will cause the suspension of weekly payments. If students move to another learning centre during the course of the year, there will be a need to link these students to their new learning centre and ensure payment authority is transferred from one learning centre to the other.

Parts 1 and 2 of the Learning Agreement for each student should be forwarded to the local authority, in the case of schools, and a copy retained at the learning centre. The student keeps a copy of Parts 1 and 2 of the Letter of Conditions.

## **EMA SUPPORT FOR “VULNERABLE” YOUNG PEOPLE AND FLEXIBILITY IN ATTENDANCE**

Meeting the additional support needs of vulnerable students is a key challenge, critical to the creation of a fully inclusive society. There is a range of difficulties that a student may face, such as those outlined below.

There should be a degree of flexibility when administering EMAs for this group of young people, although all eligibility criteria for EMA should continue to apply. EMA application forms should have a question asking applicants if they are a vulnerable student and an explanation that flexibility on attendance patterns can be agreed.

This section gives some areas of guidance, but the administering body will need to use discretion.

Vulnerable young people may require extra support in the application process and in developing the Learning Agreement, as well as throughout the year with coursework and attendance.

The role of other services, including Access Centres, Careers Scotland, key workers, social workers and educational psychologists, will be important in developing a coherent package of support, for example in developing Future Needs Assessments (professional reports that may have contributions from Careers Scotland and an Educational Psychologist).

### **DEFINITION OF “VULNERABLE”**

“Vulnerable” students are those who are at risk of non-participation and of under-achieving.

Flexibility should be extended to applicants in difficult circumstances where this will promote educational outcomes. Examples of vulnerable young people include young carers, homeless young people, those with probation orders, teenage parents, those in rehabilitation from illness, and those classed with Additional Needs.

Flexibility should automatically be extended to Looked After young people and care leavers, where their status has been confirmed in writing by a local authority or care provider. The judgement as to whether an applicant should get this additional flexibility will be made by the learning centre with support from guidance staff, Skills Development Scotland (SDS) key worker, social worker or educational psychologist who will confirm that the applicant is eligible for additional support. Where a student qualifies for extended eligibility, and there is a supporting agency, they too should be copied in on the notice.

For the LA or college it is important to recognise that such cases may be identified at several stages:

- 1) the application stage
- 2) when a student begins a course
- 3) post-application and during the course

## **ATTENDANCE**

Some vulnerable young people may require non-standard attendance patterns. For example, young carers may have a flexible attendance pattern. Flexibility should be considered when agreeing an attendance pattern for vulnerable young people and this should be agreed and written into the Learning Agreement. 100% attendance is expected within the agreed flexible attendance pattern.

For some it may be sensible to set short-term attendance targets in the Learning Agreement that are initially less than their course hours to induce them to develop good habits gradually.

A learning centre in association with guidance staff, social worker, SDS key worker or educational psychologist may agree an attendance pattern that could mean that the student does not attend as many sessions as their peers. Such students may also undertake flexible or broader course content.

## **VULNERABLE STUDENTS WHO ARE LOOKED AFTER OR CARE LEAVERS**

Young people who are Looked After, in a Continuing Care placement or defined as care leavers who continue in post-compulsory education are eligible to receive EMA for the full 4 years. Young people will normally be aged between 16 and 19 years (inclusive). Young people who are Looked After may be Looked After at home or away from home in a variety of settings, including kinship care, foster care, residential care or secure care. If there is a court order (private law) or a supervision order (public law) confirming a kinship carer has been appointed then their income should be assessed for an EMA application. Most residents in secure care accommodation are considered to be vulnerable and will be there for their own protection. Young people who are in secure care and are serving a custodial sentence are not eligible to apply for EMA. For a full definition of "Looked After" please refer to Section 17(6) Children (Scotland) Act 1995. For a full definition of those young people who are defined as care leavers please refer to Section 29 Children (Scotland) Act 1995. It is important to note that the Children and Young People (Scotland) Act 2014 changed the definition of a care leaver to a young person who ceased to be looked after on or after their 16<sup>th</sup> birthday and up to their 25<sup>th</sup> birthday. The 2014 Act also introduced a new Section 26A of the Children (Scotland) Act 1995 which adds a new legal term of Continuing Care entitling a young person who ceases to be looked after in foster, kinship or residential care to remain in their care placement with their carer up to age 21. It is important to note that young people in Continuing Care are not legally defined as "looked after" or a "care leaver" but are entitled to the same support and accommodation as when they were looked after

and should therefore be treated as if they are looked after. Local Authority Social Work Services or the care provider will be able to provide confirmation of a young person's status.

### **EXTENSION OF ELIGIBILITY PERIOD**

Local authorities and colleges will have the power to pay EMA to any young people whom it deems "vulnerable" for **up to 4 years** however EMA cannot be paid if the recipient has reached the age of 20 years on the first day of the term for which EMA is sought. An applicant will qualify for an extended period of eligibility (of 4 years) if SDS or other such local agent has designated the applicant as vulnerable. There must be a clear case stating that the applicant needs the additional support. Where the student/local agent believe there is a case for extended eligibility, this must be supported by a written confirmation from the local agent. This will apply to any young person who has a Record of Needs when they finish compulsory education. Once a student is identified as eligible for flexible arrangements, they retain these rights for their full period of eligibility, even if the reason for qualifying recedes/is removed.

Local agents must document their decision and reasons for designating applicants for extended eligibility, and retain these locally for EMA Audit purposes. They must notify the local authority or college immediately of their decision, along with certification details

Flexibility should automatically be extended to Looked After young people and care leavers, where their status has been confirmed in writing by a LA or care provider.

### **LEARNING AGREEMENTS**

If written confirmation has been received from the LA detailing that a young person has caring responsibilities (young carer) then flexibility should be built into the Learning Agreement.

The requirement for a parental/carer signature for school students will be waived for students who are estranged from their families and assessed as independent for state benefits purposes. This may include students who are in care.

A student may be classed as "independent" if:

- they are estranged from their parent or guardian.
- they are a parent to whom child benefit is being paid.
- they are married or in a civil partnership.
- they are Looked After.
- they are care leavers.
- They receive income support in their own right

Extra evidence will be required to confirm independent status, e.g. benefit notice, council tax notice, confirmation letter re Looked After/care leaver status from local authority/care provider etc. No information on parental income should be sought.

The requirement for the student's signature will be waived if the student has special educational needs that make it impractical.

Vulnerable young people may not be able to obtain the essential signatures from a parent or guardian to authorise the EMA application. Examples include parental illness, young carers, those who are estranged from their parents.

LAs will need written confirmation from the learning centre and/or support worker confirming the young person's circumstance and this must be filed accordingly. Only then can an application be considered.

Vulnerable students may not need to be working towards a recognised educational qualification in order to receive an EMA. In some circumstances the student will have had a Record of Needs during their school years. Their Learning Agreement should therefore be tailored to their needs.

**Promotion of EMA via local authorities such as:**

- Posters/leaflets in schools, council buildings, libraries, leisure centres, community centres, supermarkets, cinema, GP surgeries
- On plasma screens in council buildings
- On council website and newsletters/magazines
- Letters to age-eligible pupils
- Regular meetings with the Activity Agreement Coordinator to ensure EMA is promoted to all young people on an Activity Agreement

**Promotion of EMA via schools such as:**

- Asking schools to promote such as, in their newsletters, at assemblies, on their websites, in their handbooks, school information screens, text messaging parents of age eligible pupils
- Posters/leaflets sent to schools and Activity Agreement Co-ordinator

**Promotion of EMA via colleges such as:**

- Emails/letters to age-eligible students
- Promoting to students who highlight they have caring responsibilities, looked after or are vulnerable

**Promotion of EMA via media such as:**

- On social media, i.e. Twitter, Facebook, EMA blog
- Advertising in local newspapers and radio stations

The EMA annual statistics can be found at: <https://www.gov.scot/publications/education-maintenance-allowances-2017-18/>

## UNIVERSAL CREDIT - CALCULATING EMA ELIGIBILITY

### HOUSEHOLD INCOME

The household income of the young person will determine their eligibility for an EMA. Where the household income is £24,421 or less (for households with one dependent child) or £26,884 (for households with more than one dependent child) the young person would be eligible for a weekly payment of £30 per week. A dependent child is one who is 16 or under or is between 16 and 25 years old and is in full time further or higher education.

Refer to **Annex B** for details of the financial assessment and the EMA Regulations/Determination for further details on whose income can be taken into consideration for calculation of household income.

### UNIVERSAL CREDIT

Universal Credit is a single monthly payment for people in or out of work, which merges together some of the benefits and tax credits that recipients may be getting now.

Universal Credit replaces the following:

- Jobseeker's Allowance
- Housing Benefit
- Working Tax Credit
- Child Tax Credit
- Employment and Support Allowance
- Income Support

Claimants should apply for any other benefits to which they are eligible for as usual.

## **Universal Credit Areas**

Universal Credit is now available Scotland-wide for people, with the last roll out to Local Authority areas now complete.

## **How much will claimants receive on Universal Credit?**

The amount of Universal Credit awarded will be dependent upon the claimants circumstances and income.

It can include support:

- for housing
- for children and childcare
- if you're disabled or have a health condition
- if you care for somebody with a disability

Payments must be made directly to the claimants landlord if the claimant is on Universal Credit to help with housing.

## **Working while claiming Universal Credit**

There are no limits to the number of hours a claimant can work a week if on Universal Credit.

The payment will reduce gradually as their earnings increase earn more.

## **How claimants will be paid**

Universal Credit is paid differently from current benefits. It'll be paid once a month, usually into claimants banks, building societies or credit unions.

If a claimant lives with a partner and both claim Universal Credit, they will receive a single payment that covers both.

Claimants will receive a letter and their first payment around 6 weeks after completing their application for Universal Credit.

The letter will state:

- when the claimant will normally get paid
- how much they will receive
- which account it'll be paid into

## **Waiting period**

There is a waiting period of 7 days from submitting a claim before Universal Credit will start.

This may apply if the claimant is out of work and claim Universal Credit, unless they:

- were claiming Universal Credit as a couple and are now claiming by themselves
- were claiming Universal Credit by themselves and are now claiming as a couple
- claimed Universal Credit within the last 6 months but left because they earned too much to continue claiming

- are terminally ill
- have been the victim of domestic violence within the last 6 months
- are a carer
- are 16 or 17 years old and have no parental support
- have left prison in the last month
- were entitled to contribution based Jobseekers Allowance (JSA) or Employment and Support Allowance (ESA) within the last 3 months
- were entitled to income related JSA, ESA or Income Support within the last 3 months and stopped claiming to start working
- were entitled to income related JSA, ESA or Income Support within the last month
- were entitled to Working Tax Credit, Child Tax Credit or Housing Benefit within the last month

Claimants benefits may end before their Universal Credit starts.

They may be able to get an advance on their first Universal Credit payment if:

They have recently been receiving another benefit or are in urgent financial need. This will be repaid over a period of months deducting a portion from future payments until the advance is repaid.

**To calculate EMA eligibility from a Universal Credit Award letter, Local Authorities should use the following procedure:**

From the table titled “How your Universal Credit payments are worked out” on the claimants Universal Credit award letter...

1. Take the final figure (“Your Universal Credit monthly payment for this period”)
2. Discount the elements from the final figure that are not applicable to EMA (Housing and child elements are currently exempt)
3. Add back on the figure that states any non-work income (“Next, we take account of any non-work income and other benefits you receive, as well as savings and capital”).
4. Multiply by 12 to give annual income.

This will give you the total figure that you should then compare against EMA thresholds to calculate if the individual qualifies for the EMA programme. Please note that in some cases this may show as a negative figure. For the purposes of EMA, negative figures indicate the person(s) has a notional zero income and are thus below the EMA household threshold and (subject to meeting other eligibility criteria) entitled to EMA.

**NOTE: Universal Credit includes a carers element as part of UC. The claimant may also be in receipt of Carers Allowance. If so, the Carers Allowance amount will be deducted from the monthly payment.**

For example:

“Your payment this month is £500)

Standard Allowance - £200

Housing - £200

Carer - £100

Total - £500

Other benefits:

Carers Allowance - £200

Total of £500 - £200 to give a total of £300

Monthly payment £300”

**Contacts**

Universal Credit helpline:

Telephone: 0345 600 0723

Textphone: 0345 600 0743

| Groups                                      | Roles       | Responsibilities  |
|---|-------------|---|
| <b>Scottish Government</b><br>(policy team) | Policy Lead | <ul style="list-style-type: none"> <li>• Set EMA policy including: eligibility, allowance levels and income assessment model</li> <li>• Set programme framework through production and distribution of EMA (Scotland) Guidance and Processes</li> <li>• Carry out consultation process with stakeholders</li> <li>• Produce and issue national guidance</li> <li>• Allocate and monitor budgets</li> <li>• Establish “Terms and Conditions of Grant” with LAs to deliver EMAs in schools</li> <li>• Manage “Grant” with local authorities and monitor delivery of EMAs in schools</li> <li>• Establish “Terms and Conditions of Grant” with SFC to deliver EMAs in college sector</li> <li>• Manage “Grant” with SFC and monitor delivery of EMAs in college sector</li> <li>• Set and assess targets</li> <li>• Review unresolved appeals</li> <li>• Set policy for short, medium and long term evaluation of effectiveness of programme</li> <li>• Manage national publicity</li> </ul> |

|  |                  |   |
|--|------------------|---|
| <b>Scottish Government</b><br>(Analytical Serviced Division) | Advisory Partner | <ul style="list-style-type: none"> <li>• Design financial assessment models</li> <li>• Design reporting processes for Management Information</li> <li>• Receive and monitor Management Information</li> <li>• Provide advice on budget forecasting</li> <li>• Establish and manage short, medium and long term evaluation</li> </ul>  |
| <b>Local Authorities</b>                                     | Delivery Agent   | <ul style="list-style-type: none"> <li>• Manage and administer delivery of EMAs in schools sector including setting and applying LAs policy for: attendance; absences; courses; learning centres; student assessment in the context of EMA Learning Agreements</li> <li>• Carry out assessment and application procedures for schools sector (*Orkney and Shetland college sector also) including appeals process</li> <li>• Providing appropriate support to students/families during the application process</li> </ul> |

|                            |                 |   |
|----------------------------|-----------------|---|
|                            |                 | <ul style="list-style-type: none"> <li>• Collect schools data</li> <li>• Pay school students</li> <li>• Provide specific local level publicity information for schools</li> <li>• Provide advice and information within context of SG guidance to schools sector</li> <li>• Collate and send Management Information to Government</li> <li>• Monitor Home Educated Students in receipt of EMA</li> <li>• Submit EMA claims to the Scottish Government</li> </ul>  |
| <b>Secondary Schools</b>   | Learning Centre | <ul style="list-style-type: none"> <li>• Monitoring attendance</li> <li>• Manage and monitor Learning Agreement</li> <li>• Send attendance data to LA</li> <li>• Raise awareness of EMAs in schools</li> <li>• Retaining evidence for audit purposes</li> </ul>   |
| <b>Independent Schools</b> | Learning Centre | <ul style="list-style-type: none"> <li>• Make contact with LAs education departments</li> <li>• Monitoring attendance</li> <li>• Manage and monitor Learning Agreement</li> <li>• Send attendance data to LA</li> <li>• Raise awareness of EMAs in schools</li> <li>• Retaining evidence for audit purposes</li> </ul>  |
| <b>SFC</b>                 | Delivery Agent  | <ul style="list-style-type: none"> <li>• Manage and administer delivery of EMAs in college sector</li> <li>• Collate and send MI to Scottish Government for college sector</li> <li>• Administer funding of programme to colleges</li> <li>• Estimate initial distribution of funds to colleges</li> <li>• Make payments on basis of information from colleges</li> <li>• Provide advice and information within context of SG guidance to College sector including appeals process</li> <li>• Provide specific publicity information for college sector where required</li> <li>• Submit EMA claims to the Scottish Government</li> </ul> |
| <b>Colleges</b>            | Delivery Agents | <ul style="list-style-type: none"> <li>• Manage and administer delivery of EMAs in college sector including setting and applying college sector or college policy for: attendance; absences; courses; student assessment in the context of EMA Learning Agreements</li> <li>• Carry out assessment and applications procedures including appeals process</li> <li>• Providing appropriate support to students /families during the application process</li> <li>• Monitor attendance</li> </ul>   |

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|  |  | <ul style="list-style-type: none"> <li>• Manage and monitor EMA Learning Agreements</li> <li>• Make payments to students</li> <li>• Send Management Information to SFC</li> <li>• Raise awareness of EMAs in colleges</li> </ul> |
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| <b>Students</b>                          | EMA Client | <ul style="list-style-type: none"> <li>• Provide reasons for absence quickly and in the format requested by the particular Learning Centre</li> <li>• Notify the LA/College of any changes in circumstances they are advised to make as a result of being accepted for EMA</li> <li>• Notify the LA/College and if appropriate other parties, of any change of circumstance affecting the ability to pay monies to the student – such as change of Bank Account</li> <li>• Fulfil the terms of the learning agreement</li> <li>• Notify the school if unable to meet the attendance criteria</li> <li>• Notify school if you have caring responsibilities</li> </ul>  |
| <b>Skills Development Scotland (SDS)</b> |            | <ul style="list-style-type: none"> <li>• negotiate procedures and obtain agreement regarding respective roles and responsibilities with local education authorities, schools and colleges through the annual, joint planning process. Ensure that services are targeted so they best meet the needs of the school or college and its students. Record plans in a Partnership Agreement.</li> <li>• liaise with local authorities and schools/colleges regarding the availability of EMAs to eligible young people.</li> <li>• agree procedures with schools and colleges to ensure that students are encouraged to self-refer to SDS services which are appropriate to their career planning needs.</li> <li>• with the student's permission, supply the school or college with a copy of the Career Plan of Action, completed by the Careers Adviser following a career guidance interview.</li> </ul> |

**Useful Documents and references**

**EMA Legislation:**

The Education Maintenance Allowances (Scotland) Regulations 2007

<http://www.legislation.gov.uk/ssi/2007/156/made>

The Education (Access Funds) (Scotland) Determination 2015

The Education (Access Funds) (Scotland) Determination 2016

The Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016

<http://www.legislation.gov.uk/ssi/2016/82/made>

**EMS Statistics:**

Education Maintenance Allowances 2017-18

<https://www.gov.scot/publications/education-maintenance-allowances-2017-18/>

**Other:**

HM Revenue and Customs – A Guide to Child Tax Credit and Working Tax Credit

<https://www.gov.uk/government/publications/child-tax-credit-and-working-tax-credit-leaflet-wtc2>