



# SCOTTISH EXECUTIVE

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Funding For Learners Division

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Your ref:  
Our ref:

30 April 2004

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Dear Sir/Madam

## **CONSULTATION ON RESIDENCY DOCUMENTS FOR THE EDUCATION MAINTENANCE ALLOWANCES (EMAs) PROGRAMME IN SCOTLAND.**

The Deputy First Minister and Minister for Enterprise and Lifelong Learning, Jim Wallace, recently launched the national rollout of EMAs in Scotland, which will begin in academic year 2004/05. The programme will be rolled out to eligible young people attending post-compulsory non-advanced education in school or further education college.

Final versions of the EMA Scotland Business Model, Guidance and Good Practice Guides were issued to stakeholders on 5<sup>th</sup> April, providing information on the design and administration of the programme. These can be accessed via the EMA website at [www.emascotland.com](http://www.emascotland.com).

The EMA Scotland Guidance document and Business Model contained a draft section on the proposed residency criteria for the programme. The residency criteria will be the same across the sectors, but will be slightly different to the criteria already used for Higher School Bursaries and further education bursaries. For this reason, a new Education Maintenance Allowances (Scotland) Regulations 2004 will be introduced under the Education (Scotland) Act 1980 for the schools sector, with a new Education Maintenance Allowances (Scotland) Direction 2004 under the Further and Higher Education (Scotland) Act 1992 for the further education sector.

We are issuing the Regulations and Direction for a limited consultation to key stakeholders in the schools and FE sectors respectively, and would be happy to receive your comments on these documents. In order for the documents to be in place for the start of the academic year, this consultation will be for a period of 3 weeks, to allow the Regulations to be laid before Parliament ahead of summer recess, and the Direction to be adopted in the same timeframe.

Section 1 constitutes the part of the consultation paper relevant to the schools sector, and section 2 the part relevant to the further education sector. We look forward to receiving your comments on the paper by the closing date of **21<sup>st</sup> May 2004**.

I have attached below information on the Scottish Executive consultation process and the procedure for submitting responses (please state whether you are responding to Section 1 or 2, or both).

Yours faithfully

Kathleen Robertson

Encl:

- |                  |   |
|------------------|---|
| <b>Section 1</b> | <b>Schools sector</b>   |
| Annex A          | Introduction  |
| Annex B          | Copy of draft Education Maintenance Allowances (Scotland) Regulations 2004            |
| Annex C          | Summary of differences in the residence criteria for EMAs and Higher School Bursaries |
| <br>             |   |
| <b>Section 2</b> | <b>Further Education sector</b>   |
| Annex D          | Introduction  |
| Annex E          | Copy of draft Education Maintenance Allowances (Scotland) Direction 2004              |
| Annex F          | Summary of differences in the residence criteria for EMAs and FE student support      |

## Responding to this consultation paper

We are inviting written responses to this consultation paper by 21<sup>st</sup> May 2004. **Please send your response to:**

[valerie.sneddon@scotland.gsi.gov.uk](mailto:valerie.sneddon@scotland.gsi.gov.uk)

or

Funding For Learners Division  
Enterprise, Transport and Lifelong Learning Department  
Scottish Executive  
1<sup>st</sup> Floor, Europa Building  
450 Argyle Street  
Glasgow  
G2 8LG

If you have any queries contact Valerie Sneddon on 0141 242 0113.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to (using the consultation questionnaire if appropriate) as this will aid our analysis of the responses received.

This consultation, and all other SE consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Executive now has an email alert system for [SE consultations](#) ([SEconsult](#)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new [SE consultations](#) (including web links). [SEconsult](#) complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all [SE consultations](#) activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library by 25 June 2004, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

## RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title:

1. Are you responding as: (please tick one box)

- (a) an individual  (go to 2a/b)  
(b) **on behalf of** a group or organisation  (go to 2c)

### 2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- Yes (go to 2b below)   
No, not at all

**2b. Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available   
Yes, make my response available, but not my name or address   
Yes, make my response and name available, but not my address

### 2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondents **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes   
No

## SHARING RESPONSES/FUTURE ENGAGEMENT

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

- Yes   
No

## The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, [Scottish Executive consultations](#) involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses<sup>1</sup>. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comment about how this consultation exercise has been conducted, please send them to Valerie Sneddon at the address above.

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<sup>1</sup> <http://www.scotland.gov.uk/consultations>

## CONSULTATION ON THE EDUCATION MAINTENANCE ALLOWANCES (SCOTLAND) REGULATIONS 2004

### INTRODUCTION

The Deputy First Minister and Minister for Enterprise and Lifelong Learning, Jim Wallace, recently launched the national rollout of EMAs in Scotland, which will begin in academic year 2004/05. Final versions of the EMA Scotland Business Model, Guidance and Good Practice Guides were issued to stakeholders on 5<sup>th</sup> April, providing information on the design and administration of the programme. These can be accessed via the EMA website at [www.emascotland.com](http://www.emascotland.com).

The EMA Scotland Guidance document and Business Model contained a draft section on the proposed residency criteria for the programme, which was also discussed at the Implementation Meetings to which representatives from your local authority were invited. There are a number of differences between these and the criteria currently set out for Higher School Bursaries in the Education Authority Bursaries (Scotland) regulations 1995 (as amended 1997). An important difference is that EMAs are to be administered by local authorities to all eligible students undertaking education in that local authority area, whereas Higher School Bursaries were paid by the local authority in which that student was resident. In addition, EMAs will be a UK wide programme, and it has been agreed that there will be reciprocal arrangements to allow non-Scottish UK nationals to receive an EMA in Scotland. In addition, the European Union Council Directive 2001/55/EC of 20 July 2001 requires that students under the age of 18 who hold a new immigration class of Temporary Protection are granted access to the education system under the same terms and conditions as nationals of the host member state.

To take account of the differences in the programme, a new Education Maintenance Allowances (Scotland) Regulations 2004 (attached at Annex A) will be introduced, under the Education (Scotland) Act 1980. The differences between this and the 1995 Regulations are outlined in more detail at Annex B. The same criteria for the programme will apply in the further education sector, where a new Education Maintenance Allowances (Scotland) Direction 2004 will be introduced under the Further and Higher Education (Scotland) Act 1992.

We are issuing the statutory instrument for a limited consultation to key stakeholders in the schools sector, and would be happy to receive your comments on this document. In order for the document to be in place for the start of the academic year, this consultation will only be for a period of 3 weeks, to allow the Regulations to be laid before Parliament ahead of summer recess. Annex B and Annex C constitute the relevant part of the consultation paper for the schools sector, and we look forward to receiving your comments on the paper by the closing date of 21<sup>st</sup> May 2004.

**2004 No.****EDUCATION****The Education Maintenance Allowances (Scotland)  
Regulations 2004**

<i>Made</i>	2004
<i>Laid before the Scottish Parliament</i>	2004
<i>Coming into force</i>	2004

The Scottish Ministers, in exercise of the powers conferred on them by sections 49(3), 73(f) and 74(1) of the Education (Scotland) Act 1980 <sup>(2)</sup>, hereby make the following Regulations:

***Citation and commencement***

1. These Regulations may be cited as the Education Maintenance Allowances (Scotland) Regulations 2004 and shall come into force on 2004.

***Interpretation***

- 2.—(1) In these Regulations—

“the Act” means the Education (Scotland) Act 1980;

“education maintenance allowance” means a maintenance allowance or similar form of financial assistance granted under section 49(1), section 49(2) or section 73(f) of the Act;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(3)</sup> as adjusted by the Protocol thereto signed at Brussels on 17th March 1993<sup>(4)</sup>;

“EEA migrant worker” means a person who is a national of an EEA State who has taken up an activity as an employed person in the United Kingdom—

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<sup>(2)</sup> 1980 c.44. Section 73(f) was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) section 3(2). Section 74(1) was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), Schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46)

<sup>(3)</sup> Cmnd.2073.

<sup>(4)</sup> Cmnd.2183.

- (a) under Council Regulation (EEC) No. 1612/68<sup>(5)</sup> on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement); or
- (b) in circumstances where as a national of the United Kingdom he or she has an enforceable Community right to be treated no less favourably than a national of another EEA State in relation to matters which are the subject of the above mentioned Regulation;

“EEA State” means a state which is a Contracting Party to the EEA Agreement;

“employment” shall include the holding of any office and any occupation for gain; and

“employed” shall be construed accordingly;

“European Economic Area” means the area of the EEA States, and includes those States at any time before the EEA Agreement came into force in relation to them;

“Islands” means the Channel Islands and the Isle of Man;

“national of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Economic Community (including the United Kingdom) as constituted from time to time;

“parent” is to be construed in accordance with the definition below of person’s child;

“person’s child” includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild, and a child in whose case the person concerned has admitted paternity or has been adjudged the putative father;

“qualifying date” means the first day of the term of the course of study for which an education maintenance allowance is sought;

“refugee” means a person who is recognised by Her Majesty’s Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(6)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(7)</sup>; and

“temporary protection” means a person who is granted temporary protection by Her Majesty’s Government in terms of Council Directive 2001/55/EC of 20 July 2001.

- (2) In these Regulations, except where the context otherwise requires, any reference—
  - (a) to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations; and

<sup>(5)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968 (II), p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1.)

<sup>(6)</sup> Cmnd.9171.

<sup>(7)</sup> Cmnd.3906.(Out of Print: photocopies are available free from the Students Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, Edinburgh EH12 9HH

- (b) in a regulation or Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule, as the case may be.

***Exercise of power to grant an education maintenance allowance***

3.—(1) The power of an education authority to grant an education maintenance allowance in accordance with section 49(1), section 49(2) or section 73(f) of the Act—

- (a) shall, subject to paragraph (3), be exercised in relation to persons deemed under section 33 of the Act (School leaving dates) to have attained the age of sixteen years but who have not attained the age of twenty years;
- (b) shall be exercised in accordance with the following provisions of these Regulations; and
- (c) shall not be exercised except in relation to a person described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at or for a particular time.

(3) The power of an education authority to grant an education maintenance allowance in accordance with section 49(1), section 49(2) or section 73(f) of the Act to persons described in paragraph 7 of Schedule 1 shall only be exercisable in relation to persons who have not attained the age of eighteen years.

***Amount of education maintenance allowances***

4.—(1) The amount of an education maintenance allowance shall be determined by the education authority and may include sums in respect of the maintenance of the holder during periods of full-time study excluding vacations.

(2) In determining the amount of an education maintenance allowance, the education authority may take account of the sums, if any, which in their opinion the holder of the education maintenance allowance, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(3) In paragraph (2) above the 'holder's spouse' shall, where the education authority consider it appropriate, include the other member of a couple who are not married to each other but who are living together as husband and wife.

(4) The amount of an education maintenance allowance may be revised at any time if the education authority think fit having regard to—

- (a) the failure of the holder to comply with the conditions of the education maintenance allowance; or
- (b) all the circumstances of the holder or his or her parents or both as the case may be; or

- (c) any error made in the computation of the amount of the education maintenance allowance.

***Conditions of education maintenance allowance***

**5.—(1)** Every education maintenance allowance shall be held subject to the following conditions:—

- (a) the holder shall attend in accordance with any requirements specified by the educational establishment for the course of study in respect of which the education maintenance allowance is awarded;
- (b) the education authority shall be satisfied as to the conduct and progress of the holder; and
- (c) the holder shall provide the education authority with such information and such documents as they may from time to time require to enable them to exercise their functions under these Regulations.

(2) If the conditions specified in paragraph (1) are not complied with or if the holder receives from any other source any sum which, in the opinion of the education authority, makes it unnecessary for the holder to be assisted by means of an education maintenance allowance, the education authority may suspend payment of the education maintenance allowance or terminate the education maintenance allowance.

(3) It shall be a condition of payment of an education maintenance allowance that the applicant gives a written undertaking to pay to the education authority any amount of which they may request repayment in the circumstances specified in paragraph (4).

(4) Where the education authority are satisfied that there has been an overpayment of education maintenance allowance for any reason and request repayment of the overpayment or so much thereof as they think fit, and the holder of the education maintenance allowance has given an undertaking under paragraph (3), the holder of the education maintenance allowance shall be obliged to pay to the education authority the amount requested.

A member of the Scottish Executive

Victoria Quay,  
Edinburgh  
2004

## SCHEDULE 1

## PERSONS ELIGIBLE FOR EDUCATION MAINTENANCE ALLOWANCES

1. A person who—
  - (a) is ordinarily resident in the United Kingdom and Islands on the qualifying date in relation to the course of study in respect of which he or she seeks an education maintenance allowance; and
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years preceding the qualifying date; and
  - (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971<sup>(8)</sup> on the qualifying date; and
  - (d) seeks an education maintenance allowance in respect of a course of study in the area of the education authority.
  
2. A person who is an EEA migrant worker who—
  - (a) is entitled to the payment of an education maintenance allowance for the course in respect of which he or she seeks the education maintenance allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement) or, where he or she is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
  - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date and seeks an education maintenance allowance in respect of a course of study in the area of the education authority.
  
3. A person who is the spouse of an EEA migrant worker and who—
  - (a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date;
  - (b) is installed in the United Kingdom with his or her spouse; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date and seeks an education maintenance allowance in respect of a course of study in the area of the education authority.

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<sup>(8)</sup> 1971 c.77; amended by the British Nationality Act 1981 (c.61), section 39 and Schedule 4, the Immigration Act 1988 (c.14), sections 1, 3, 4, 6 and 10 and the Schedule, the Asylum and Immigration Appeals Act 1993 (c.23), sections 10 to 12, the Immigration and Asylum Act 1999 (c.33) sections 1 to 3, 7, 8, 18, 19, 28 to 30, 38, 54, 128 to 140, 165 and Schedule 16, the Adoption (Intercountry Aspects) Act 1999 (c.40) Schedule 2 and the Nationality Immigration and Asylum Act 2002 (c.41) sections 10, 58, 62 to 64, 73, 75, 118, 119, 121, 143, 144, 148 to 156, 158 and Schedule 9.

4. A person who is the child of an EEA migrant worker and who–
- (a) is entitled to the payment of an education maintenance allowance by virtue of Article 12 of the above mentioned Council Regulation or, where his or her migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12;
  - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date and seeks an education maintenance allowance in respect of a course of study in the area of the education authority.
5. A person who–
- (a) at the date of the education authority receiving his or her application for an education maintenance allowance is–
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, or child, of such a refugee; and
  - (b) (i) is ordinarily resident in Scotland on the qualifying date; and
    - (ii) seeks an education maintenance allowance in respect of a course of study in the area of the education authority.
6. A person who–
- (a) (i) has been informed in writing by a person acting under the authority of the Scottish Ministers that although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
  - (ii) is ordinarily resident in Scotland on the qualifying date and seeks an education maintenance allowance in respect of a course of study in the area of the education authority; and
  - (iii) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the qualifying date; or
  - (b) is the spouse or child of a person of the kind described in sub-paragraph (a) and who meets the requirements specified in sub-paragraphs (a)(ii) and (a)(iii).
7. A person who–

- (a) at the date of the education authority receiving his or her application for an education maintenance allowance is a person entitled to temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as entitled to temporary protection; and
- (b) is ordinarily resident in the United Kingdom and Islands on the qualifying date; and
- (c) seeks an education maintenance allowance in respect of a course of study in the area of the education authority.

**8.** A person to whom, or in respect of whom, an education maintenance allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course provided that the current application will not result in such a person has being in receipt of an education maintenance allowance for more than 3 years.

## SCHEDULE 2

## ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1–
- (a) a person shall be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the education authority are satisfied that he or she was not so resident only because their spouse or parents was for the time being–
    - (i) employed outside the United Kingdom and Islands; or
    - (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom and Islands; and
  - (b) a person shall not be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the education authority are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence in the United Kingdom and Islands within 3 years immediately preceding the qualifying date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.
- 2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b), 3(a), 4(b), 6(a)(iii) and 7(a) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (“the specified period”) in either the United Kingdom and Islands or the European Economic Area (hereinafter referred to in this paragraph as ‘the relevant area’).
- (2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period if the education authority are satisfied that he or she was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.
- (3) A person shall be treated as having been “ordinarily resident” in the relevant area for the specified period if the education authority are satisfied that–
- (a) the person was born in and spent the greater part of his or her life in the relevant area and that either–
    - (i) that person’s parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent person; or
    - (ii) whether or not that person is an independent person, he or she has been ordinarily resident for at least one year of the specified period in the relevant area provided that the education authority are also satisfied that he or she has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
  - (b) the person was not so resident only because he or she, his or her spouse, or his or her parent was for the time being–

- (i) employed outside the relevant area; or
- (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

(4) In paragraph 2(3)(a)(i) an “independent person” means a person who prior to the qualifying date has–

- (a) been married on the commencement date of the course for which the education maintenance allowance is made; or
- (b) no parent living.

**EXPLANATORY NOTE**

*(This note is not part of the regulations)*

These Regulations regulate the exercise by education authorities of their powers under sections 49 and 73(f) of the Education (Scotland) Act 1980 to pay education maintenance allowances to persons aged 16 to 19 who are attending courses of study. They prescribe that education maintenance allowances may only be paid to persons who fulfil certain criteria as to eligibility and they prescribe the conditions and requirements subject to which such education maintenance allowances may be paid.

The eligibility criteria are detailed in Regulation 3 and Schedule 1. Regulation 4 provides that the amount of an education maintenance allowance is to be determined by the education authority and specifies matters to be taken in to account. Regulation 5 specifies certain conditions on which education maintenance allowances are to be held. Schedule 2 makes provision as to when a person is to be treated as “ordinarily resident”.

These Regulations provide power to the education authorities in addition to their powers to grant a bursaries under the Education Authority Bursaries (Scotland) Regulations 1995.

## Differences in the Residence Criteria for EMAs and Higher School Bursaries

For the purposes of this annex, “the 2004 Regulations” will refer to the Education Maintenance Allowances (Scotland) Regulations 2004, and “the 1995 Regulations” will refer to the Education Authority Bursaries (Scotland) Regulations 1995, as amended 1997.

### 1. Qualifying Date

The EMA programme is designed for students who are in post-compulsory education, and so there will be two intakes of eligibility to correspond with the two school leaving dates in the Scottish school education system. In deciding a student’s residential eligibility, reference will therefore be made to a “qualifying date” in the 2004 Regulations, which is defined as the first day of the term of the course of education for which an EMA is sought. This is different to the separate “qualifying day” and “relevant dates” which were used in the 1995 Regulations.

### 2. Amount of education maintenance allowances

The Interpretation section **Amount of EMAs 4 (1)** will reflect the nature of EMAs, which are in respect of the maintenance of the holder during term time. This differs from the 1995 Regulations

### 3. Administration of Programme according to place of education

The EMA programme will be administered by local authorities to all eligible students undertaking a course of education **within that local authority area**. This is different to the 1995 Regulations, where local authorities were responsible for paying higher school bursaries to students who were **resident** within that area. This is reflected in **Schedule (Sch) 1 Para 1-8** where there is an added requirement that the applicant seeks an EMA in respect of a course of study in the area of the local authority.

### 4. Reciprocal arrangements with other UK administrations

EMAs will be rolled out nationally across the UK from 2004/05. It has been agreed that there will be reciprocal arrangements to allow non-Scottish UK students to receive an EMA in Scotland, and vice-versa. For this reason, **Sch 1 Para 1 (a)** is different in the 2004 Regulations, requiring the applicant to be ordinarily resident **in the UK** on the qualifying date, rather than in Scotland as in the 1995 Regulations. There is a corresponding change in **Sch 2 Para 1**.

### 5. EU Nationals (non-EEA migrant workers)

Under Sch 1 Para 4 of the 1995 Regulations, EU nationals are eligible to receive support towards fee costs only. As the EMA programme only offers maintenance support, this paragraph has been removed in the 2004 Regulations.

### 6. EU Temporary Protection

The UK has signed up to Council Directive 2001/55/EC of 20 July 2001, regarding the giving of temporary protection by Member States in the event of a mass influx of displaced persons. Article 14 (1) of the Directive states that member states “shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same terms and conditions as nationals of the host Member State”. The 2004 Regulations reflect this at **Interpretation 3 (3)** and **Sch 1 Para 7** to cover students under the age of 18 who hold Temporary Protection.

7. **Students who held an award the previous year**

**Sch 1 Para 5** of the 1995 Regulations allows students to be eligible for support where they have received support in the preceding year. Students can receive a maximum of 3 years EMA support, and this paragraph in the 2004 Regulations reflect this.

8. **Definition of Independent**

**Sch 2 Para 4** of the 1995 Regulations offers a definition of “independent” for deciding residential eligibility. The elements of this which are not applicable to the EMA programme, including the further definition in **Sch 2 Para 5** of the 1995 Regulations, do not appear in the 2004 Regulations.

## **CONSULTATION ON THE EDUCATION MAINTENANCE ALLOWANCES (SCOTLAND) DIRECTION 2004**

### INTRODUCTION

The Deputy First Minister and Minister for Enterprise and Lifelong Learning, Jim Wallace, recently launched the national rollout of EMAs in Scotland, which will begin in academic year 2004/05. Final versions of the EMA Scotland Business Model, Guidance and Good Practice Guides were issued to stakeholders on 5<sup>th</sup> April, providing information on the design and administration of the programme. These can be accessed via the EMA website at [www.emascotland.com](http://www.emascotland.com).

The EMA Scotland Guidance document and Business Model contained a draft section on the proposed residency criteria for the programme. This is broadly the same as exists for FE student support in the Further Education Bursaries (Scotland) Direction 2003. However, one important difference is that EMAs will be a UK wide programme, and it has been agreed that there will be reciprocal arrangements to allow non-Scottish UK nationals to receive an EMA in Scotland. In addition, the European Union Council Directive 2001/55/EC of 20 July 2001 requires that students under the age of 18 who hold a new immigration class of Temporary Protection are granted access to the education system under the same terms and conditions as nationals of the host member state.

To take account of the differences in the programme, a new Education Maintenance Allowances (Scotland) Direction 2004 (attached at Annex E) will be introduced under the Further and Higher Education (Scotland) Act 1992. While broadly similar to the 2003 Bursary Direction, there are differences to take account of the particular requirements of the EMA criteria (these are outlined in more detail at Annex F). The same criteria for the programme will apply in the schools sector, where a new Education Maintenance Allowances (Scotland) Regulations 2004 will be introduced under the Education (Scotland) Act 1980.

We are issuing the direction for a limited consultation to key stakeholders in the FE sector, and would be happy to receive your comments on this document. In order for the document to be in place for the start of the academic year, this consultation will only be for a period of 3 weeks, to allow the Regulations to be laid before Parliament ahead of summer recess, and the Direction to be adopted in the same timescale. Annex E and Annex F constitute the relevant part of the consultation paper for the further education sector, and we look forward to receiving your comments on the paper by the closing date of 21<sup>st</sup> May 2004.

***EDUCATION MAINTENANCE ALLOWANCES (SCOTLAND) DIRECTION 2004***

The Scottish Ministers, in exercise of the powers conferred on them by section 21 of the Further and Higher Education (Scotland) Act 1992<sup>(9)</sup> and of all other powers enabling them in that behalf, hereby direct the board of management of each college of further education as follows:–

***Citation and commencement***

1. This Direction may be cited as the Education Maintenance Allowances (Scotland) Direction 2004 and shall come into force on 2004.

***Interpretation***

2.—(1) In this Direction, except where the context otherwise requires–

“the Act” means the Further and Higher Education (Scotland) Act 1992;

“education maintenance allowance” means a maintenance allowance or similar form of financial assistance provided under section 12(2)(c) of the Act;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(10)</sup> as adjusted by the Protocol thereto signed at Brussels on 17th March 1993<sup>(11)</sup>;

“EEA migrant worker” means a person who is a national of an EEA State who has taken up an activity as an employed person in the United Kingdom–

- (a) under Council Regulation (EEC) No. 1612/68<sup>(12)</sup> on freedom of movement for workers within the Community (which was extended to apply to the whole European Economic Area by the EEA Agreement); or
- (b) in circumstances where as a national of the United Kingdom he or she has an enforceable Community right to be treated no less favourably than a national of another EEA State in relation to matters which are the subject of the above mentioned Regulation.

“EEA State” means a state which is a Contracting Party to the EEA Agreement;

“employment” shall include the holding of any office and any occupation for gain, and “employed” shall be construed accordingly;

“European Economic Area” means the area of the EEA States, and includes those States at any time before the EEA Agreement came into force in relation to them;

“Islands” means the Channel Islands and the Isle of Man;

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<sup>(9)</sup> 1992 c.37.

<sup>(10)</sup> Cmnd.2073.

<sup>(11)</sup> Cmnd.2183.

<sup>(12)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968 (II), p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1.)

“national of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Economic Community (including the United Kingdom) as constituted from time to time;

“parent” is to be construed in accordance with the definition below of person’s child;

“person’s child” includes a reference to a person adopted in pursuance of adoption proceedings, a stepchild, and a child in whose case the person concerned has admitted paternity or has been adjudged the putative father;

“qualifying date” means the first day of the term of the course of education for which an education maintenance allowance is sought;

“refugee” means a person who is recognised by Her Majesty’s Government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(13)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(14)</sup>; and

“temporary protection” means a person who is granted temporary protection by Her Majesty’s Government in terms of Council Directive 2001/55/EC of 20 July 2001.

(2) In paragraph 1(a) of Schedule 1 and paragraph 1 of Schedule 2 “United Kingdom and Islands” excludes the local authority areas of Orkney Islands and Shetland Islands.

(3) In this Direction, except where the context otherwise requires, any reference—

- (a) to a numbered paragraph or Schedule is a reference to the paragraph or Schedule so numbered in this Direction; and
- (b) in a paragraph to a numbered sub-paragraph is a reference to the sub-paragraph so numbered in that paragraph.

### ***Exercise of power to grant an education maintenance allowance***

3.—(1) The power of a board of management to grant an education maintenance allowance under section 12(2)(c) of the Act—

- (a) shall, subject to sub-paragraph 3(3), be exercised in relation to persons deemed under section 33 of the Education (Scotland) Act 1980 to have attained the age of sixteen years but who have not attained the age of twenty years;
- (b) shall be exercised in accordance with the following provisions of this Direction; and
- (c) shall not be exercised except in relation to a person described in one or more paragraphs of Schedule 1.

(2) Schedule 2 shall have effect as regards determining whether a person is to be treated, for the purposes of Schedule 1, as being, or having been, ordinarily resident in a place at or for a particular time.

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<sup>(13)</sup> Cmnd.9171.  
<sup>(14)</sup> Cmnd.3906.

(3) The power of a board of management to grant an education maintenance allowance in accordance with section 12(2)(c) of the Act to persons described in paragraph 7 of Schedule 1 shall only be exercisable in relation to persons who have not attained the age of eighteen years.

#### ***Amount of education maintenance allowances***

4.—(1) The amount of an education maintenance allowance shall be determined by the board of management and may include sums in respect of the maintenance of the holder during periods of full-time study excluding vacations.

(2) In determining the amount of an education maintenance allowance, the board of management may take account of the sums, if any, which in their opinion the holder of the education maintenance allowance, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses.

(3) In sub paragraph (2) above the 'holder's spouse' shall, where the board of management consider it appropriate, include the other member of a couple who are not married to each other but who are living together as husband and wife.

(4) The amount of an education maintenance allowance may be revised at any time if the board of management think fit having regard to—

- (a) the failure of the holder to comply with the conditions of the education maintenance allowance; or
- (b) all the circumstances of the holder or his or her parents or both as the case may be; or
- (c) any error made in the computation of the amount of the education maintenance allowance.

#### ***Conditions of education maintenance allowance***

5.—(1) Every education maintenance allowance shall be held subject to the following conditions:—

- (a) the holder shall comply with the requirements of the course of education in respect of which the education maintenance allowance is awarded;
- (b) the board of management shall be satisfied as to the conduct and progress of the holder; and
- (c) the holder shall provide the board of management with such information and such documents as they may from time to time require to enable them to exercise their functions under this Direction.

(2) If the conditions specified in sub-paragraph (1) are not complied with or if the holder receives from any other source any sum which, in the opinion of the board of management, makes it unnecessary for the holder to be assisted by means of an education maintenance allowance the board of management may suspend payment of the education maintenance allowance or terminate the education maintenance allowance.

(3) It shall be a condition of payment of an education maintenance allowance that the applicant gives a written undertaking to pay to the board of management any amount of which they may request repayment in the circumstances specified in sub-paragraph (4).

(4) Where the board of management are satisfied that there has been an overpayment of education maintenance allowance for any reason and request repayment of the overpayment or so much thereof as they think fit, and the holder of the education maintenance allowance has given an undertaking under sub-paragraph (3), the holder of the education maintenance allowance shall be obliged to pay to the board of management the amount requested.

Paragraph 3(1)

## SCHEDULE 1

## PERSONS ELIGIBLE FOR EDUCATION MAINTENANCE ALLOWANCES

1. A person who—
  - (a) is ordinarily resident in the United Kingdom and Islands on the qualifying date in relation to the course of education in respect of which he or she seeks an education maintenance allowance;
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years preceding the qualifying date; and
  - (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971<sup>(15)</sup> on the qualifying date.
2. A person who is an EEA migrant worker who—
  - (a) is entitled to the payment of an education maintenance allowance for the course in respect of which he or she seeks the education maintenance allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement) or, where he or she is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
  - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
3. A person who is the spouse of an EEA migrant worker and who—
  - (a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date;
  - (b) is installed in the United Kingdom with his or her spouse; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
4. A person who is the child of an EEA migrant worker and who—
  - (a) is entitled to the payment of an education maintenance allowance for the course in respect of which he or she seeks the education maintenance allowance by virtue of Article 12 of the above mentioned Council Regulation or, where that person's migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12;

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<sup>(15)</sup> 1971 c.77.

- (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
- 5. A person who–
  - (a) at the date of the board of management receiving his or her application for an education maintenance allowance is–
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, or child, of such a refugee; and
  - (b) is ordinarily resident in Scotland on the qualifying date.
- 6. A person who–
  - (a)
    - (i) has been informed in writing by a person acting under the authority of the Scottish Ministers that although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
    - (ii) is ordinarily resident in Scotland on the qualifying date; and
    - (iii) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the qualifying date; or
  - (b) is the spouse or child of a person of the kind described in sub-paragraph (a) and who meets the residence requirements specified in sub-paragraphs (a)(ii) and (a)(iii).
- 7. A person who–
  - (a) at the date of the board of management receiving his or her application for an education maintenance allowance is a person entitled to temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as entitled to temporary protection; and
  - (b) is ordinarily resident in the United Kingdom and Islands on the qualifying date.
- 8. A person to whom, or in respect of whom, an education maintenance allowance has been provided by the board of management in accordance with this Direction, within the year preceding the first day of the academic year of the course provided that the current application will not result in such a person has being in receipt of an education maintenance allowance for more than 3 years.

## Paragraph 3(2)

## SCHEDULE 2

## ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1–
  - (a) a person shall be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the board of management are satisfied that he or she was not so resident only because their spouse or parent was for the time being–
    - (i) employed outside the United Kingdom and Islands; or
    - (ii) attending a course of study or undertaking postgraduate research outside the United Kingdom and Islands; and
  - (b) a person shall not be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the board of management are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence in the United Kingdom and Islands within 3 years immediately preceding the qualifying date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.
- 2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b), 3(a) 4(b), 6(a)(iii) and 7(a) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (“the specified period”) in either the United Kingdom and Islands or the European Economic Area (hereinafter referred to in this paragraph as ‘the relevant area’).
  - (2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period if the board of management are satisfied that he or she was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.
  - (3) A person shall be treated as having been “ordinarily resident” in the relevant area for the specified period if the board of management are satisfied that–
    - (a) the person was born in and spent the greater part of his or her life in the relevant area and that either–
      - (i) that person’s parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent person; or
      - (ii) whether or not that person is an independent person, he or she has been ordinarily resident for at least one year of the specified period in the relevant area provided that the board of management are also satisfied that he or she has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
    - (b) the person was not so resident only because he or she, his or her spouse, or his or her parent was for the time being–
      - (i) employed outside the relevant area; or

- (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

(4) In paragraph 2(3)(a)(i) an “independent person” means a person who prior to the qualifying date has—

- (a) been married on the commencement date of the course for which the education maintenance allowance is made; or
- (b) no parent living.

EDUCATION MAINTENANCE ALLOWANCES (SCOTLAND) DIRECTION 2004

## CONSULTATION ON THE EDUCATION MAINTENANCE ALLOWANCES (SCOTLAND) DIRECTION 2004 – PAPER 2

### Differences in the Residence Criteria for EMAs and FE student support

For the purposes of this annex, “the 2004 Direction” will refer to the draft Education Maintenance Allowances (Scotland) Direction 2004, and “the 2003 Bursary Direction” to the Further Education Bursaries (Scotland) Direction 2003.

#### 1. Qualifying Date

The EMA programme is designed for students who are in post-compulsory education, and so there will be two intakes of eligibility to correspond with the two school leaving dates in the Scottish school education system. In deciding a student’s residential eligibility, reference will therefore be made to a “qualifying date”, which is defined as the first day of the term of the course of education for which an EMA is sought. This is a different definition and terminology to that used in the 2003 Bursary Direction.

#### 2. Amount of education maintenance allowances

The Interpretation section **Amount of EMAs 4 (1)** is different from the 2003 Direction to reflect the nature of EMAs, which are in respect of the maintenance of the holder during term time.

#### 3. Reciprocal arrangements with other UK administrations

EMAs will be rolled out nationally across the UK from 2004/05. It has been agreed that there will be reciprocal arrangements to allow non-Scottish UK students to receive an EMA in Scotland, and vice-versa. For this reason, **Schedule (Sch) 1 Para 1 (a)** is different in the 2004 Direction, requiring the applicant to be ordinarily resident **in the UK** on the qualifying date, rather than in Scotland. There is also a corresponding change in **Sch 2 Para 1**.

#### 4. EU Nationals (non-EEA migrant workers)

Under Sch 1 Para 7 of the 2003 Bursary Direction, EU nationals are eligible to receive support towards fee costs only. As the EMA programme only offers maintenance support, this paragraph does not appear in the 2004 Direction.

#### 5. EU Temporary Protection

The UK has signed up to Council Directive 2001/55/EC of 20 July 2001, regarding the giving of temporary protection by Member States in the event of a mass influx of displaced persons. Article 14 (1) of the Directive states that member states “shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same terms and conditions as nationals of the host Member State”. The 2004 Direction reflects this at **Interpretation 3 (3)** and **Sch 1 Para 7** to cover students under the age of 18 who hold Temporary Protection.

#### 6. Students who held an award the previous year

The final paragraph of Schedule 1 of the 2003 Bursary Direction allows students to be eligible for support where they have received support in the preceding year. Students can receive a maximum of 3 years EMA support, and this is reflected in this paragraph in the 2004 Direction.

**7. Definition of Independent**

Sch 2 Para 4 of the 2003 Bursary Direction offers a definition of “independent” for deciding residential eligibility. The elements of this which are not applicable to the EMA programme do not appear in the 2004 Direction.