



**Skills
Funding
Agency**

i For information

**Agency Funding Guidance
2010/11:**

Learner Eligibility Guidance

Of interest to everyone involved in delivering funded provision

Published by the Young People's Learning Agency and the Skills Funding Agency

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Paragraph 102 (d) has been amended to show current working family tax credit limit for fee remission as Version 1 incorrectly showed the 2008/09 rather than the already published 2009/10 figure and some incorrect references to the LSC have also been removed in this version. The bottom of the back page has been amended in June 2010 to match other YPLA funding guidance publications.

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Executive Summary

This document, Learner Eligibility Guidance (referred to hereafter as ‘the Learner Eligibility Guidance (LEG)’), sets out the approach of both the Young Peoples Learning Agency (YPLA) and the Chief Executive of Skills Funding to, and the authoritative guidance for, learner eligibility across all funding streams for the teaching year 2010/11. It is a technical reference document, and should be used with the various funding stream guidance booklets issued for 2010/11. All colleges, providers and other organisations that receive funding that comes from either Agency for the provision of further and adult education are required to comply with the Guidance.

This guidance is being issued as a joint publication by the YPLA and the Chief Executive of Skills Funding to assist all providers and Local Authority (LA) staff who are involved in the enrolment of eligible learners. The term Agency will be used throughout the document to refer to both YPLA and the Chief Executive of Skills Funding and the term funding body where the reference may refer to either Agency or LA to simplify the document as much as possible. This guidance is similar to the Learning and Skills Council (LSC) publication: *LSC Funding Guidance 2008/09: Learner Eligibility Guidance*.

At the time of first publication the term funding body has usually been used as a generic term where the document suggests providers should seek further guidance from their funding agency as the advice may need to come from either Agency or the LA depending on its content.

This Guidance applies to all Agency programme-funding streams, including 16-18 learner-responsive, adult learner-responsive and employer-responsive funding models. This includes Train to Gain, personal and community development learning (PCDL) and European Social Fund (ESF) funded provision. Additional specific eligibility guidance on ESF is given in paragraph 25. This Guidance should also be applied to any learners on other projects funded by the Agency unless specific alternative guidance is issued by either Agency. It provides the Agency consolidated learner eligibility funding guidance for 2010/11.

The Agency Funding Guidance 2010/11 will be published as a series of booklets, (of which this document is one), in line with their business cycles, outlining the main features of their funding arrangements for 2010/11. Under the main heading *Funding Guidance for 2010/11* each separate booklet will be available from each separate website.

YPLA Guidance (note -names to be updated when final publications known)

<http://www.ypla.gov.uk/aboutus/ourwork/fundingpolicy/df/>

- *Learner Eligibility Guidance*
- *Funding Rates*
- *Additional learning Support*
- *Funding Principles, Regulations, Rules and the Formula*
- *LR Funding Claims and Audit Returns*

Skills Funding Agency Guidance Notes

<http://skillsfundingagency.bis.gov.uk/funding/allthelatest/guidancenotes/>

For the convenience of all providers, the guidance on fee remission is included in Section 4 of this booklet in recognition of the fact that learner eligibility and fee remission eligibility are often established at the same time.

This Guidance is set out as follows:

- **Section 1** provides an introduction to the document.
- **Section 2** provides guidance on learner eligibility.
- **Section 3** provides guidance on compliance evidence of eligibility.
- **Section 4** provides guidance on fee remission.
- **Annex A** confirms those countries that are members of the EU, European Economic Area and eligible dependent overseas territories.
- **Annex B** gives some further guidance on Section 4 (of the Immigration and Asylum Act 1999) support for asylum seekers and provides references to the Home Office website for their full guidance.

Intended Recipients

This guidance is intended for all providers delivering post -16 education and training

1 Introduction and Background

- 1 This document (the Guidance) sets out the Agency's learner eligibility guidance for 2010/11 and is very similar to the previous LSC guidance on Learner Eligibility. The document recognises the recent Machinery of Government (MOG) changes although the exact interpretation of the compliance section will vary according to funding stream. For adult and employer responsive funding the evidential requirements should be seen as mandatory requirements whereas for 16-18 learning the evidential requirements maybe seen as a national example of good practice. For 2010/11 all providers are encouraged to consult with their individual funding body in respect of their individual compliance and audit requirements in advance of their educational delivery. All colleges, providers and organisations that receive any programme funding from the Agency for the provision of education and/or training are required to comply with Section 2: Learner Eligibility for Funding.
- 2 This document provides detailed guidance on the learner eligibility approach for 2010/11 together with guidance on compliance in evidencing learner eligibility to assist providers in their enrolment processes. This document is expected to be used by funding body auditors in their audit testing of colleges and other providers for the necessary evidence of compliance with the Guidance and it is expected that funding audit approaches developed for 2010/11 will be based on previous LSC funding audit approaches to learner existence and eligibility.
- 3 The document makes reference to data returns and these should be read to include either Individualised Learner Record (ILR) returns or school census returns. For providers claiming Agency funding for any particular Agency funding stream, this Guidance should be read with the other *Funding Guidance 2010/11* documents. For ESF co-financed projects only, providers should also refer to their individual project specifications.

2 Learner Eligibility for Funding

Determination of Learner Eligibility

- 4 For funding purposes, the eligibility of the learner must be established at the start of his or her programme. In order for a learner to be eligible for Agency funding for their learning programme, the learner must have the legal right to be resident in the United Kingdom at the start of their programme. Any person subject to a Home Office deportation order will ordinarily be ineligible for funding until their situation has been resolved to the satisfaction of the Home Office, as funding should only be claimed for learners who can complete their programmes. Learners who can evidence making legal applications and appeals against Home Office decisions may, however, be eligible under paragraph 22 of this Guidance.
- 5 In determining learner eligibility, providers should also satisfy themselves that there is a reasonable likelihood that the learner will be able to complete their programme of study before seeking funding for the learner. This should include the practicality of providing a place for a learner who may be unable to complete their programme if they are likely to leave the country permanently during their learning programme. Once a learner is enrolled by a college or provider, then colleges and providers are expected to take all reasonable steps to ensure that the learner can complete their programme.
- 6 Learners **who are attending programmes of more than one term's duration**, and are eligible for Agency funding at the start of their programme, will usually be eligible for funding for the whole duration of their learning programme as well as any subsequent Agency-funded programmes studied immediately end-on to their initial funded programme. This includes learners switching between Agency funded programmes. This includes learners studying consecutive programmes with no break in studies other than normal holiday periods. Similarly, learners who are not eligible for Agency funding at the start of their programme are very unlikely to become eligible for funding during the period of their learning programme.

Provider's normal recruitment area

- 7 The Agency expects all colleges and providers, in determining their enrolment priorities, to take account of the funding body's duties and responsibilities to their local population of learners.
- 8 The providers funding body will usually regard a provider's normal recruitment area as the area the provider is physically situated which is expected to also take account of learners in their normal travel to learn patterns. This may include parts of Scotland or Wales where a provider is situated close to the border and this is explained in more detail in paragraph 31.
- 9 Historic funding eligibility problems have more often arisen where learners are attending providers outside of their normal recruitment area. In such cases additional safeguards are required from providers for all such delivery as set out in section 3.
- 10 This definition may be varied more tightly or loosely by the funding body, depending on the provider location, and each funding body can help providers to agree a reasonable definition of their normal recruitment area.
- 11 This definition should be applied strictly in 16-18 and adult learner-responsive models. A wider discretion may have been given by The Agency, in advance of delivery, to providers for approved delivery solely within employer-responsive funding.

Assessing eligibility

- 12 The main basis for assessing learner eligibility is their ordinary residence and the following paragraphs set out the Agency funding eligibility criteria.
- 13 Colleges and providers are reminded that they should seek advice from their funding body regarding any case where they are having difficulty assessing learner eligibility.

Spouses and Civil Partners

- 14 All eligibility references to a spouse should now be read to include a person who has participated in either a formal state-recognised marriage or a state-recognised civil partnership ceremony.

Definition of 'relevant date'

- 15 In the learner eligibility paragraphs below, the term 'relevant date' refers to 'the first day of the first academic (or teaching) year of the course' and this is defined as:
- 1 September if the academic year starts between 1 August and 31 December;
 - 1 January if the academic year starts between 1 January and 31 March;
 - 1 April if the academic year starts between 1 April and 30 June;
 - 1 July if the academic year starts between 1 July and 31 July.

EEA, Switzerland and the Overseas Territories

- 16 For funding eligibility purposes, the EEA is defined as all members of the EU and Iceland, Liechtenstein, Switzerland and Norway and each of their overseas territories as listed in Annex A. The Fees and Awards Regulations now confer extended eligibility on EEA citizens and their extended family members (such as grandchildren and grandparents). Learners who are nationals of certain British Overseas Territories and of certain European Overseas Territories will also be eligible for funding, subject to the usual three-year rule on residency. Qualifying territories are listed in Annex A.
- 17 Learners who are nationals of any new countries that join the EU (or EEA) or who become nationals of the EEA during their programmes will usually be eligible for funding at the 'home' rate from the start of the next teaching year, subject to the learner meeting the normal three-year residency requirements in the then defined EEA, and for programmes that start on or after the date they become a EEA national.

Definition of Ordinarily Resident

- 18 For funding purposes, the Agency regards as ordinarily resident in a given country any person who habitually, normally and lawfully resides from choice and for a settled purpose in that country. Temporary absences from the relevant area should be ignored. Someone who has not been ordinarily resident because he or she or the person's parent or spouse or civil partner was working temporarily abroad will be treated as if the person had been ordinarily resident in the relevant area.

Learners Eligible for Funding

- 19 The following persons will be eligible for funding (these groups correspond to the groups listed in the Education (Fees and Awards) (England) Regulations 2007), namely:
- a A person on the 'relevant date' who is 'settled' in the UK, and who has been ordinarily resident in the UK and Islands (that is including the Channel Islands and the Isle of Man) for the three years preceding the 'relevant date' (see paragraph 15 above), and whose main purpose for such residence was not to receive full-time education during any part of the three-year period. 'Settled' means having either indefinite leave to enter or remain (ILE/R) or having the right of abode in the UK. British citizens and certain other people have the right of abode in the UK:
- those with European Community–United Kingdom of Great Britain and Northern Ireland passports;
 - British Dependent Territory Citizens (now known as British Overseas Territory Citizens);
 - those whose passports have been endorsed to show they have right of abode in the UK;
 - those who have a certificate of naturalisation or registration as a British Citizen.
- b A national of any European Union (EU) country or the spouse, civil partner or child or grandchild or dependant parent or grandparent of an EU national, or of the EU national's spouse or civil partner, where the learner has been ordinarily resident in the European Economic Area (EEA) for the three years preceding the 'relevant date'.
- c An EEA migrant worker or the spouse, civil partner or child or dependant parent or grandparent of an EEA migrant worker, or of the

- EEA migrant worker's spouse or civil partner, where the learner has been ordinarily resident in the EEA for the three years preceding the 'relevant date'.
- d Anyone who is recognised as a refugee by the UK Government (granted refugee status) who has remained ordinarily resident in the UK and Islands since being so recognised, or the spouse or civil partner or child of such a refugee.
 - e Anyone refused refugee status but who has been granted leave to stay by the Secretary of State, granted humanitarian protection (HP) or discretionary leave (DL), or was granted exceptional leave to enter or remain (ELE/ELR) by the UK Government, and who has remained ordinarily resident in the UK and Islands since being so recognised, or the spouse, civil partner or child of such a person.
 - f Learners studying under reciprocal exchange agreements.
 - g Learners who are children of Swiss nationals where the learner has been resident in the EEA for the full three-year period prior to the commencement of their programme.
 - h Learners who are children of Turkish workers where the Turkish worker has been lawfully employed and resident in the UK at any time in the past and where the learner has been resident in the EEA and Turkey for the full three-year period prior to the commencement of their programme.
- 20 The Agency will also treat a non-EEA national who is in the UK with work-related immigration permission as eligible for funding after completing three years of residence in the UK with any work-related permission, or the spouse, civil partner or child of such a person.
- 21 In addition to considering the groups outlined above, the Agency will also consider the following groups of learners to be eligible for funding:
- a People with humanitarian protection (HP) or discretionary leave (DL) or exceptional leave to enter or remain (ELE/ELR), their spouses, civil partners and children.
 - b People with recently settled status (this means those having been granted indefinite leave to enter or remain, right of abode or British citizenship within the three years immediately preceding the start of the course).
 - c The spouse or civil partner of a person with settled status, who has been both married (or has undertaken a recognised civil partnership ceremony) and resident in the UK for one year.
 - d The spouse or civil partner of an EEA national living within the UK, who has been both married (or has undertaken a recognised civil partnership ceremony) and resident in the UK for one year.

22 The Agency will also consider the following groups of learners to be eligible for funding:

- a Asylum seekers who have legally been in the UK pending consideration of their claim by the Home Office for longer than six months.
- b Asylum seekers refused asylum but eligible and granted support under Section 4 of the Immigration and Asylum Act 1999.

All learners accepted as eligible under this paragraph must be reassessed for eligibility at the start of each and every programme they undertake. The concession available to learners under paragraph 6 is not available to this group of learners as their circumstances are expected to be confirmed before they undertake subsequent programmes.

23 In addition to the groups above, the Agency will also consider the following groups of 16–18 year-old learners as eligible for funding:

- a 16-18 year-olds who are accompanying or joining parents who have the right of abode or leave to enter or remain in the UK (or accompanying or joining parents who are EEA nationals), or those who are children of diplomats.
- b 16-18 year-olds who are dependants of teachers coming to the UK on a teacher-exchange scheme.
- c 16-18 year-olds entering the UK (where not accompanied by their parents) who are British (or EEA) citizens, or 16-18 year olds whose passports have been endorsed to show they have the right of abode in this country.
- d All 16–18-year-olds asylum seekers.
- e All 16-18 year-old learners (including unaccompanied asylum seekers) who are placed in the care of social services.

24 In addition to considering learners in the categories listed in paragraphs 19-23 above, the funding body will consider other exceptional circumstances. Where a provider believes that a learner should be considered for funding under exceptional circumstances, it should contact its funding body.

European Social Fund

25 This paragraph applies solely to Agency co-financed ESF learners to take account of ESF rules and regulations. These require learners to be ordinarily resident and able to work in the UK to be eligible for ESF

assistance. The guidance in the paragraphs above on learner eligibility is amended to take account of the separate ESF guidance as follows.

- **Additional learner eligibility entitlement:** workers who have come to the UK with valid work permits are usually eligible for ESF co-financing assistance without the normal three-year waiting period.
- **Reduced learner eligibility entitlement:** learners (asylum-seekers) eligible under paragraph 22 above will not usually be eligible for ESF co-financing funding as they will not have the right to work in the UK.
- **Individual co-financed ESF project guidance:** providers will also need to check their specific individual project guidance for any additional learner eligibility guidance contained within their individual project specifications as this may extend learner eligibility guidance for a small number of projects each year.

Parents-to-be

26 Learners who are expecting to be unavoidably absent from learning for a period of time, such as for maternity or paternity leave, should not be discouraged from entering into a learning agreement. Providers should ensure that the planned start and end dates for the learner's programme, **as agreed at the commencement** of the programme, reflect the overall planned duration of study.

No Recourse to Public Funds

27 Someone who has 'no recourse to public funds' included in their passport stamp would not be in breach of their immigration conditions if they had access to state-funded education in the UK. 'Public funds' are defined in the immigration rules, and the benefits and services listed do not include education or any education funding. This condition in a passport therefore makes no difference to a learner's eligibility, which must be determined under the normal eligibility criteria described in paragraphs 19-23 above.

Learners Not Eligible for Agency Funding

- 28 Learners undertaking full-time programmes fully funded either by the Higher Education Funding Council for England (HEFCE) or one of the Agency funding models are usually ineligible for other Agency funding models, as the funding provided is intended to cover the whole of their learning programmes. All and any additional educational programmes that are appropriate for individual learners should be claimed through their full time provider. For example, a school sixth form learner will be ineligible for other 16-18 learner -responsive funding.
- 29 Learners from overseas (outside the EU and EEA) whose main reason for residence in England or the EU has been attendance at a fee-paying school or non-maintained school will not usually be eligible for funding. Periods spent in the UK as overseas fee-paying learners in either public or private education do **not** count towards the three year period of legal residency in the UK that is usually required from non EEA learners to be eligible for Agency funding. This includes all those requiring a Confirmation of Acceptance of Studies (CAS) in order to obtain Home Office 'Tier 4 student immigration permission' to remain in UK.
- 30 Hong Kong nationals are ineligible for Agency funding until they have been resident in the UK for three years unless they fit into one of the provisions in paragraphs 19-23 above.

Learners from Wales, Scotland or Northern Ireland

- 31 Colleges and providers are reminded that Wales, Scotland and Northern Ireland have their own funding arrangements. There may be exceptional circumstances where, on occasion, individual Scottish or Welsh learners may wish to travel to or reside in England to study when specialist provision is not offered locally. Reciprocal funding arrangements exist with the funding councils for Wales and Scotland for colleges and providers close to the borders (such parts of Wales and Scotland form part of some providers normal recruitment area as set out in paragraphs 7-11). However, it is not expected that colleges and providers in England will recruit entire groups of learners from outside

their local area. Such learners should be referred to the possibility of a distance-learning or Ufi programme delivered by their local provider or hub in Wales or Scotland. If the learning programme is not available through this route, permission to enrol the learners must be sought from the funding body. For employer-responsive funding - the Agency is generally content to fund non-English resident learners (usually those learners resident in Wales, Scotland or Northern Ireland) whose usual work premises are in England and where other learners resident in England are in receipt of employer-responsive funding at similar times and for similar programmes.

- 32 All learners whilst living in the Channel Islands and Isle of Man remain ineligible for Agency funding as the funding responsibility for their programmes remain with their own independent governments.

Overseas Learners

- 33 For funding purposes, an 'overseas' learner will be defined as one who does not meet the criteria defining a 'home' learner as set out in paragraphs 19-23 above. Overseas learners are not eligible for Agency funding, and the provider may wish to charge full-cost fees.
- 34 Colleges and providers should ensure that they have at least one member of staff who is familiar with and able to advise the provider on the funding of learners from abroad. Where a learner is eligible for Agency funding, the appropriate level of fees should be charged. To avoid any inconsistency of approach, full-cost fees cannot be charged to a learner for whom Agency funding is also being claimed.

Study Outside England

Learners in the Armed Forces, Ministry of Defence or Civil Servants

- 35 The Agency recognises that British Armed Forces (Armed Forces) personnel may wish to continue in education and training while serving their country and will fund eligible programmes of study for service personnel, Ministry of Defence (MoD) personnel or civil servants, their

spouses and civil partners and dependants via a sector provider in the following circumstances:

- where the individual normally resides in other parts of the UK but is on a posting in England;
- where an individual normally resides in England but is posted outside England as part of his or her work with the Armed Forces. This includes both cases where the individual begins a programme in England and is posted elsewhere while enrolled on this programme, and cases where the individual commences a programme while posted outside England. In both cases, the Agency will fund the programme to completion. It is expected that such provision will be made through distance learning or learndirect, other than in exceptional circumstances. Franchised delivery to members of the Armed Forces overseas will not be eligible for funding.

36 The expectation that the study will be distance learning or learndirect will not apply to basic skills provision, where learners are studying towards nationally approved qualifications. These learners may be taught directly in an arrangement that has been agreed with the MoD. The arrangement applies to Armed Forces personnel, MoD personnel or civil servants and their spouses and civil partners and dependants via a sector provider using direct provision.

37 Learners of other nationalities serving as members of the Armed Forces should be considered eligible for funding throughout their period of service on the same basis as their British national counterparts. This includes the funding eligibility provided under the conditions described in the above two paragraphs and extends to their spouses and civil partners and dependants on accompanied postings. This does not apply to spouses and civil partners and families who do not join members of the Armed Forces and instead remain in their own country.

Learners employed temporarily outside England

38 Where, as part of the requirements of employment, a person who is ordinarily resident in England is required to work outside England for

short periods, that person and his or her spouse and dependants will be considered eligible for funding, provided that the person continues to pay taxation in England. It is expected that such provision will be made through distance learning or learndirect, other than in exceptional circumstances.

Periods of study outside England

39 The Agency recognises that learners who are eligible for funding as ordinary residents and are undertaking a substantial Agency-funded programme in England may, as part of this programme, spend a short period of time outside England. The Agency will consider such provision eligible for funding where this provides a minor but essential part of a qualification, which cannot be provided in England. Colleges and providers seeking to make such provision should seek advice from their funding body before entering into arrangements. An exception to this guidance will be made for learners serving in the Armed Forces (see paragraphs 35-37 above).

Unforeseen events and special cases

40 The Agency will issue guidance in-year in response to directives from government that identify exceptional circumstances that may result in additional groups of learners becoming eligible for funding. Any such guidance will be issued by the funding body for forward transmission to providers and posted on the Agency's website funding page.

Age

41 The Agency through their funding arrangements assists in the delivery of proper and reasonable facilities for education (other than higher education), training and organised leisure-time occupation connected with such education suitable for the requirements of people who are above compulsory school age.

Learners of compulsory school age

42 There is a single date when young people can legally leave school in England, which is the last Friday in June for those people who have

completed Year 11. For the purposes of funding, 'under 16' means 'of compulsory school age'.

- 43 Where parents seek to enrol a young person of compulsory school age on a full-time programme, colleges and providers are advised to involve the school and local authority (LA) in discussions as appropriate. Colleges and providers are reminded that the dedicated school grant (DSG) calculated for each LA contains funds for each learner of compulsory school age in a maintained school, excluded from school, or educated 'otherwise'. In most cases, a provider wishing to enrol a learner of compulsory school age should seek funding from the LA or school if appropriate.

Exceptional circumstances

- 44 The Agency may fund provision for learners of compulsory school age. The Secretary of State would expect the Agency to exercise its power to secure provision for such learners only in exceptional circumstances. The learner numbers underlying the proposed grant to the Agency do not allow for any general expansion in the number of learners 'under 16'. For the purposes of the funding agreement, the term 'under 16' means 'of compulsory school age'. Funding will usually be agreed for learners who have completed their statutory education and hold qualifications at least equivalent to a full Level 2.
- 45 In exceptional circumstances, the Agency will consider provision for learners of compulsory school age to be eligible for Agency funding, subject to the following conditions.
- The provision must meet an individual learner's needs, bearing in mind the learner's aptitude and ability, and the provision must be included on the Section 96 list as suitable for pre-16 as well as post-16 learners.
 - It is not envisaged that groups of learners would be eligible for funding, since by inference such circumstances are unlikely to be exceptional.

- Where learners of compulsory school age enrol on basic skills summer-schools programmes, the provider must obtain prior agreement from its funding body.

Learners enrolled in schools

- 46 A learner who is enrolled in a school but who wishes to undertake a part-time learning aim outside school hours that is not connected with the learner's full-time programme at school, for example by enrolling on an evening class, will be eligible for funding provided he or she is over compulsory school age. The Agency will not fund evening resit GCSE programmes at a further education provider for such learners.
- 47 The Agency will not fund learners who are enrolled full time in a school and who wish to follow part of their programme at an FE provider during school hours. In such circumstances, whatever the age of the learner, this provision should be treated as link provision, and the school is expected to meet the costs of this provision.
- 48 The Agency may separately fund a small number of special projects for 14–18-year-olds.

Groups of Learners

Higher education learners

- 49 The Agency does not expect to fund FE qualifications or other programmes for groups of higher education (HE) learners. The funding provided by the HEFCE for HE learners is intended to fund all of the learners' programmes. If, in order to gain their HE qualifications, a group of learners requires, for example, key skills, additional tuition in mathematics or sports coaching awards, then this would normally be funded out of the resources provided by the HEFCE for the HE programme.
- 50 Responsibility for the funding of all prescribed HE and higher national certificates (HNCs) and higher national diplomas (HNDs) was transferred to the HEFCE from August 1999.

51 The Agency has the power to fund non-prescribed HE learning aims in Agency-funded colleges and providers. Non-prescribed learning aims are those that fall outside the schedule of prescribed learning aims of HE as defined in the Education (Prescribed Learning Aims of Higher Education) (Wales) (Amendment) Regulations 1998. These higher-level vocational learning aims are generally professional learning aims leading to accreditation by a professional body and do not include, for example, part-time certificates in HE. Changes in the volume and type of this provision should be considered by the funding body in the context of local needs analyses.

Staff employed by a provider as learners

52 Where the provider wishes their staff to engage in employer-responsive activity then they should ensure that any funded learning undertaken must be 'occupationally relevant' to the role of the employee. This learning would take place during an employee's normal working hours as required by the Train to Gain and Apprenticeship guidance. This includes Skills for Life qualifications delivered as part of Train to Gain and Functional Skills as part of an Apprenticeship. Within learner-responsive funding staff employed by an institution may be funded on eligible programmes, provided that attendance is normally outside their contracted working hours, or that they are released for training and make up the time, or are replaced. The exceptions are basic skills learning aims and teaching qualifications, as described below.

- Basic skills learning aims are available to all staff during working hours. Teachers and support staff are both eligible for funding.
- Teaching qualifications are available to staff employed as teachers or trainers during working hours. Only staff employed as teachers or trainers are eligible for funding where the teaching qualification is studied during working hours.
- All other types of learning aims must be studied in the staff's own time for them to be eligible for funding. This applies to all staff; teachers and support staff are eligible for funding only if they make up the time, that is, they follow the course in their own time.

Enrolment at more than one Agency-funded provider

53 While the Agency recognises that learners may occasionally enrol at more than one provider, groups of learners enrolled on a full-time programme at one provider should not be enrolled on part-time programmes with other providers, especially through franchised provision. For example, it would not be appropriate for several learners enrolled on a full-time sports and leisure programme to be enrolled at another provider to undertake a first-aid or sports coaching qualification, especially through franchised provision. This could lead to an over claim for funding.

Provision by health authorities or social services

54 The Agency's remit does not extend to funding types of provision for people with learning difficulties and/or disabilities that are the responsibility of other agencies such as health authorities or social services. Joint funding of integrated packages of learning and care, however, will continue to be appropriate in some circumstances. The Agency will encourage agencies to work together at local level to develop joint packages of funding for programmes and activities for individuals. Colleges and providers should consult their funding body when planning such provision.

Provision for offenders

55 Offenders' learning and skills is now one of the Agency's key priorities. To assist in delivering this priority and reduce bureaucracy, any provider delivering agreed Agency-funded programmes to learners detained in English prisons may treat detainees as learners eligible for Agency funding without the usual evidence required under paragraphs 19-23 above. This concession only applies to learners detained in prison and not to learners serving community sentences, those under supervision in the community or those detained in immigration centres.

3 Evidence of Learner Existence and Eligibility

This guidance is for all Providers and for all Learners. This guidance on evidencing existence of learners is included here for ease of reference for all Agency funded provision.

Evidence of Learner Existence and Eligibility

56 The Agency recognises that different procedures and emphasis will be appropriate to different types of learner, but evidence will be required of the process used for the enrolment and record of teaching activity for each learner. It is for each provider to decide what procedures to carry out, but any provider that chooses not to carry out any procedures at all will put their programme funding at risk.

Compliance evidence for learner eligibility

57 Providers should not claim funding for learners who are not members of the 'home' population of England, irrespective of their mode of attendance.

58 The Agency does not generally fund learners who are not UK or EEA nationals living in England ('from overseas'), unless they meet the residency requirements specified in Section 2.

59 Providers are required to scrutinise applications for study by learners to ensure that they are eligible for Agency funding under Section 2 and to support the learner's case for consideration as ordinarily resident in England. Good practice is for providers to record (rather than photocopy) documentation to prove eligibility, including any relevant documentary evidence to support any individual learner eligibility granted for learners not meeting the normal three-year residency requirement. Where documentation is recorded as having been seen, providers need to be fully aware of the implications of the documents they are approving. In particular, providers are advised that the **Agency does not require or expect passports to be photocopied by providers**, although passport numbers or references may be recorded by providers where necessary.

60 Foreign nationals will have Home Office documentation that outlines their status, for example refugee status, humanitarian protection, discretionary leave or exceptional leave to enter or remain (ELE/ELR) in the UK. Providers are reminded that adult asylum seekers are only eligible for funding if they meet the conditions set out in paragraph 22 above. Further information on eligibility and documentation is provided in Annex B, which provides further details of the full range of Home Office documentation that should evidence learner eligibility. Alternatively, the following advice may help providers to evidence eligibility more simply under paragraph 22(a) or 22(b) above.

- Asylum seekers will be able to produce an application registration card (ARC) which is issued on or close to the date of their asylum claim. The date of issue will be recorded on the ARC. To demonstrate that they are currently supported under the Immigration and Asylum Act 1999 and thus eligible for Agency funding, a recent (that is, less than one month old) copy of a person's post office receipt of Asylum Support (AS) assistance will be required. The ARC is used to evidence the asylum seeker at the post office before obtaining the receipt. Up to April 2007, AS was known as the National Asylum Support Service (NASS) and may still be referred to as such. The post office receipt will usually need to be dated at least six months after the ARC issue date to comply with eligibility under paragraph 22(a). It should not usually be necessary to see post office receipts for each month since the ARC was issued, merely a post office receipt issued for the same month as the learner enrolment. It is likely that the post office receipt will identify the AS support as Section 95 support.
- To demonstrate that they are currently supported under Section 4 of the Immigration and Asylum Act 1999 and thus eligible for Agency funding, learners will need to produce confirmation from the Home Office of Section 4 support within three months of the issue date. Section 4 support is often given to asylum seekers who have been refused asylum but who cannot return home. As a result, individuals may no longer have an ARC. Further guidance on Section 4 support is available in Annex B.

- 61 Provider management should check enrolment forms to see if evidence has been gathered on the residency status and eligibility of the learner.
- 62 Learners from overseas (outside the EU and EEA) whose main reason for residence in England has been attendance at a fee-paying school will not be considered eligible for funding. Non-EEA or EU learners who are granted residency in the UK as overseas full fee-paying students (or learners) at other institutions are also usually ineligible for Agency funding.
- 63 Learners of compulsory school age are eligible for Agency funding only in exceptional circumstances and where written approval has been provided by the Agency. Providers should have evidence for every learner of compulsory school age showing that the Agency has agreed to fund them.
- 64 Providers should not claim Agency funding for provision delivered outside England. This restriction applies to provision delivered in Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man as well as in other countries.

Funding implications

- 65 Where Agency funding has been claimed for ineligible learners and/or programmes, the provider would be expected to revise their data return to record such learners listed above as not eligible for Agency funding. This includes among others:
- learners under 16 for which the provider has no evidence that the Agency has agreed to recognise them as exceptional cases;
 - learners attending provision delivered outside England;
 - overseas learners.

Records of Learner Existence and Eligibility

Learning agreement

- 66 The Agency considers it essential that learners have access to clear and full information on the costs of their programme before enrolment

and that they are provided with pre-entry advice and guidance. The successful outcome of pre-entry advice and guidance is a learning agreement signed by the learner and the provider. While recognising that different types of learner may require different approaches to advice and guidance, the learning agreement should provide confirmation that the following broad areas have been covered:

- the choice of learning programme;
- entry requirements for each learning aim within the learning programme;
- an assessment of the suitability of the learning programme;
- support for the learner; and
- the nature of the procedures involved in the process of advice and guidance.

67 A provider should retain a learning agreement signed on behalf of the provider and by the learner as compliance evidence to support its funding claim. While all learners funded by the Agency should have a learning agreement, the detail should be proportionate to the length of the learning programme. Learning agreements may also be combined with enrolment forms as complementary documents to prevent any unnecessary document duplication. The learning agreement should include the following key details:

- the learner's name and address;
- evidence, where appropriate, that the learner is eligible to receive Agency funding;
- the learning programme and expected learner outcomes, including start and end dates for all learning aims;
- the number of guided learning hours planned in each year of the programme for each learning aim (this includes both listed and unlisted provision);

- the average weekly guided learning hours planned for the programme and how long in which it is planned to complete the programme;
- a summary of any additional support to be provided to the learner;
- where relevant, a statement that the learner falls within the Agency's tuition fee remission policy and that the provider has agreed to remit 100 per cent of the tuition fee that would otherwise be charged to the learner;
- where provision for the learner is delivered by a 'partner-provider', the name of the partner organisation; and
- evidence of the assessment and guidance process by which the learning agreement was reached.

68 Providers should be able to evidence that they are delivering good-quality information, advice and guidance (IAG) to their learners through good retention and achievement levels. This should provide supporting evidence that any basic skills and additional support needs have been properly identified and have led to good progression opportunities for the learners. For learners receiving IAG directly from partner-providers, Agency providers should make sure that IAG of an equivalent quality is being delivered to these learners. Providers are also reminded that they should not seek to divide programmes artificially in order to increase the amount of funding being claimed.

Enrolment form

69 Each learner should have completed and signed an enrolment form relating to the learning programme for which Agency funding is being claimed (this may for some providers or learners be a combined document with the learning agreement). The enrolment form for funding eligibility purposes should indicate as a minimum:

- the learner's name, address (including the postcode and time spent at that address), age and residency status, which will indicate whether the learner is a home or overseas learner. For learners not

resident in the United Kingdom for the three years prior to the commencement of their programme, providers must be able to evidence alternative learner eligibility as set out in paragraphs 19–24.

- The data protection statement included in the ILR Specification Document Appendix F must be included in all enrolment forms for learners to sign in accordance with that guidance (this includes all cases where providers have combined enrolment forms and learning agreements as set out in paragraph 67).
- 70 The provider may wish to use the enrolment form to collect other information as necessary for their learner record and monitoring purposes. An enrolment form completed online by the learner should be printed out at the provider (or learning) centre and posted to the learner's home address. It should then be signed and returned in the post by the learner.
- 71 Providers should pay particular attention to ensuring that there is appropriate evidence of assessment and guidance for short courses. Providers may wish to consider including information on their assessment and guidance procedures in their prospectus, so that learners can be made aware of the matters to be considered when they enrol at the provider.
- 72 All providers must make sure that they and all of their partner-providers fully understand the rules on learner eligibility. Enrolment forms completed by partner-providers must fully address the issue of evidencing learner eligibility. This is particularly important if the partner-providers are usually only recording that they have seen any necessary supporting documentary evidence, rather than copying the documentation with the enrolment form to the provider. Providers should ensure that their partner-providers make available, on a sample basis at least, either clear records or actual copies of the documentation being used to support the eligibility of their learners.
- 73 The enrolment form and the learning agreement may be combined to form one document, which should contain all the relevant information.

Learner attendance

- 74 There should be evidence that individual learners were undertaking the specified learning programme during the learning period for which funding is being claimed.
- 75 For most learners this will take the form of registers of attendance. Experience has shown these to be key legal records in supporting the accuracy of data returns. Regular management review of registers may, therefore, be of benefit to providers in ensuring the accuracy of ILR returns and reducing the risk of making ineligible funding returns or claims to the funding body.

Register

- 76 All providers should consider the benefits of a good register system to help them to monitor learner attendance and progress. This will also support materially accurate data returns and funding claims. Register systems need to be proportionate in delivering benefits to providers that offset the costs involved in running these systems and appropriate to the mode of delivery. The Agency offers no advice or preference on types of systems, which may be either paper-based or electronic, or a mixture of such systems.
- 77 It is very important that all providers ensure that any partner-providers can evidence claimed learner contact time with tutors to avoid any eligibility issues over their partner-provider provision.
- 78 The following advice on registers is compulsory and accounting officers may find this advice helpful in considering appropriate controls over their own provision.
- Each specific course should have a register, including the title of the course, the course code, the qualification aim and the intended start and end date, the day, time and duration of each session, and the number of guided learning hours to be delivered.
 - Each register should include the name of the learner, the learner reference number and the name of the tutor. It should be completed at the start of each session with the relevant date and

should indicate attendance, absence or lateness. In the case of authorised absence, appropriate evidence of prior approval should be available.

- The register should be signed or initialled by the tutor at each session.
- It should also include the location at which the provision is being delivered.
- Consideration should be given to sample checks on learner attendance in classes. Checks are especially important in the case of any partner-provider assisted delivery or provision.

Ceasing to attend, withdrawal from course and learning agreement amendment forms

79 Where a learner withdraws from their programme or course, transfers to another programme or changes one of their learning aims or their mode of study, this should be indicated on an appropriate form used by the provider. This should be signed by the tutor, and used to ensure that the information on the data return is correct and that the learning agreement is amended correctly. Providers should consider whether learners should sign as well to confirm their consent to the change in their programme. Further advice on withdrawals is given in the main Funding Guidance documents.

Achievement

80 The funding arrangements from 2010/11 continue the historical process of recording actual achievement in data returns (but in the learner-responsive funding model this is then used to calculate the success factor part of the provider factor). The advice on evidence of achievement is therefore still applicable, for both funding and inspection purposes. Evidence that a learner has achieved their learning goal should be available. This could be:

- evidence of entry to and completion of a relevant programme;

- an official results list or slip, or a certificate issued by the awarding body;
 - for provider-accredited programmes, a record of achievement, provider certification and/or progress reports indicating achievement of the learner's learning programme.
- 81 Achievement should be accurately recorded and substantiated by appropriate compliance evidence.
- 82 Providers are required to have evidence that supports records or claims for achievement of non-accredited learning aims to be as robust as that for nationally recognised and approved qualifications on the National Qualifications Framework.
- 83 Where achievement is to be recorded or claimed, providers should retain learning outcomes' records with the associated initial assessment records or learning agreements, showing that the learner has met the agreed learning aims and achieved the appropriate objective.
- 84 A learning aim may be recorded as partially achieved only where the learner has achieved at least one of the credits or modules towards the final award.
- 85 Evidence should exist to show that records or claims for achievement were supported by the attainment of approved qualifications for the first time at the provider by learners.
- 86 Achievements may not be recorded or claimed where the learner is merely seeking an improved grade and the provider has previously claimed achievement(s) for the learner.
- 87 Providers are reminded that achievement may not be recorded or claimed against any Agency funding methodology for any learner where there is no corresponding claim for on-programme funding.

Fee Remission

Compliance evidence

88 It is the responsibility of the provider to establish eligibility for tuition fee remission at the start of each academic year both for learners who are starting and those who are continuing their programmes. Evidence should be available to show that:

- checks are carried out to ensure that learners are eligible for fee remission;
- the fee remission status of the learner is accurately recorded at the start of their programme and each subsequent academic year, as appropriate;
- claims or records for fee remission funding are justified under the Agency's policy, as set out in paragraph 102; and
- for fee remission being claimed or recorded on the basis that the learner is attending their first full Level 2 programme or for learners aged under 25 at the start of their programme their first full Level 3 programme (see paragraph 91 below), the learner needs to either sign a self-declaration that they have not already achieved this level or the provider will need to keep documentary evidence that supports their fee remission return.

89 Acceptable evidence of unemployment benefit or a means-tested state benefit would be official documentary evidence of the relevant means-tested state benefit. **Providers are reminded that evidence of low income, such as pay slips, is insufficient to claim Agency fee remission funding and such learners should be referred to other government agencies for determination of means-tested state benefits.**

90 At colleges (usually sixth-form colleges) where all learners are aged between 16 and 19, thereby qualifying automatically for fee remission, providers should ensure that the age of learners is correctly recorded.

91 The Agency has included guidance on the definition of a full Level 2 and Level 3 qualification in the ILR specification and this is reproduced as Table 1 at the end of this section.

Documentation: All Providers and Partner-Providers

92 In all circumstances, the provider must retain original documents including, for example, attendance records, enrolment records and learning agreements. Under no circumstances must these be retained by partner-providers or at partner-providers' premises. It is normally expected that the provider itself will be registered with the awarding body for the qualification being studied and learners must be registered with the awarding body in order to be eligible for Agency funding. In considering how long these documents should be retained, all providers are reminded that documentation that underpins funding claims or returns needs to be treated as financial and legal records. Methods and decisions relating to retention should be consistent with the provider's usual rules and methods for financial record retention.

Funding implications: all providers

93 Where data or evidence is identified as being incorrectly recorded in the data return, the provider is expected to revise their data return and funding claim accordingly.

Funding Compliance Advice and Audit

Guidance 2010/11

94 The full Agency advice on funding compliance and audit guidance for 2010/11 is being drafted and until this is published providers should plan to apply the previous advice published in documents to their 2010/11 delivery arrangements:

- LSC Funding Guidance 2009/10: Section 6 and in Annex M;
- LSC Funding Guidance 2008/09: ILR Funding Compliance and Audit Guidance for Providers

95 Table 1: Prior attainment levels (see also Appendix G of 2010/11 ILR Specification for the full table).

| NVQ level | Academic qualification equivalent | Vocational qualification equivalent | Code number for L35 |
|-----------|---|--|---------------------|
| Level 0 | Word Power/Number Power | | 07, 09 |
| Level 1 | GCSE/O-level grades D–G (or fewer than 5 at grades A–C) CSE below grade 1 1 AS-level | BEC General Certificate BEC Diploma BTEC First Certificate City & Guilds Operative Awards CPVE Year 1 (Technician) GNVQ Foundation LCCI Elementary/First Level NVQ Level 1 PEI Elementary/First Level RSA Elementary/First Level RSA Vocational Certificate | 01 |
| Level 2 | GCSE/O-level (5 or more at grades A–C) CSE Grade 1 (5 or more) 1 A-level 2 or 3 AS-levels | BEC General Certificate with credit BEC Diploma with credit BTEC First Diploma City & Guilds Higher Operative/Craft GNVQ Intermediate LCCI Certificate (Second Level) NVQ Level 2 PEI Stage 2 Pitmans Intermediate Level 2 Diploma Certificate RSA Diploma | 02 |
| Level 3 | 2 or more A-level passes 4 or more AS-levels | BEC National ONC/OND BTEC National ONC/OND City & Guilds Advanced Craft GNVQ Advanced LCCI Diploma (Third Level) NVQ Level 3 Pitmans Level 3 Advanced Higher Certificate RSA Stage 3 Advanced Diploma TEC Certificate/Diploma Access to HE courses ESOL and foreign languages Advanced awards | 03 |
| Level 4 | Teaching qualifications (including PGCE) First degree | BEC National HNC/HND BTEC National HNC/HND HE Certificate HE Diploma LCCI Advanced Level NVQ Level 4 Nursing (SRN) RSA Advanced Certificate RSA Higher Diploma | 04 |

4 Fee Remission

Learner-responsive Funding Models

- 96 Fee remission is applicable to all 16–to 18-year-olds learners, including those on part-time programmes, and continues to be available for adult learners who meet specified criteria (see paragraph 102 below). Where fees are remitted for learners who meet these criteria, the provider should not charge the learners tuition fees. In these cases, the fully-funded national funding rate will be payable.
- 97 Where a learner’s learning aim is a basic skills qualification that is not English for speakers of other languages (ESOL), this automatically attracts full tuition fee remission. In addition, the learner should not be charged for any other aspect directly relating to his or her basic skills learning aim. If the learner wishes to undertake an additional learning aim that is not basic skills, fee remission may not be claimed for the additional learning aim unless the learner is otherwise eligible for fee remission.
- 98 A learner in receipt of an eligible benefit on enrolment shall be eligible for fee remission for the whole of the academic year. If a learner becomes eligible for tuition fee remission during the academic year, the provider can claim tuition fee remission from the next academic term until the end of the academic year, and the ILR should be amended accordingly.
- 99 It remains the responsibility of the provider to establish eligibility for tuition fee remission at the start of each academic year, both for learners who are starting and for those who are continuing their studies.
- 100 Providers are reminded of the need to ensure that recruitment of learners is undertaken in a fair and non-discriminatory manner and the question of eligibility for fee remission should not be used to give preferential enrolment treatment to particular groups of learners on any Agency-funded programmes.
- 101 Providers are also encouraged to ensure that they offer support to all learners in considering their eligibility for fee remission. This is

particularly important for learners unable to prove eligibility for fee remission because of language difficulties, or cultural or other reasons. Many providers exercise discretion by enrolling such learners and then working with them to gather the evidence required to claim fee remission prior to the commencement of the learner programme. In some cases, this may require providers to seek evidence of learners' financial circumstances (such as pay slips, P60s and other tax forms) in order to assist learners to obtain the necessary evidence of means-tested state support. Providers are encouraged to work locally with other government agencies to ensure that all eligible learners can evidence their entitlement to fee remission.

- 102 The categories of learners who are entitled to fee remission are (to be eligible, learners who fall into one of the following);
- a 16–to 18-year-olds (the Secretary of State does not expect tuition fees to be charged to full-time or part-time 16–to 18-year-olds).
 - b Learners studying their first full Level 2 qualification. Full Level 2 qualifications are identified on the learning aims database (LAD) (available at <http://providers.Agency.gov.uk/lad>).
 - c 19–to 25-year-olds learners studying their first full Level 3 qualification (it should be noted that, for the purpose of the entitlement, four AS-level qualifications are not regarded as equivalent to a full Level 3 and that AS-level qualifications are eligible within the entitlement only where they form steps towards the achievement of two or more A-levels).
 - d Those in receipt of any income-based benefits listed below, formerly known as means-tested benefits, that is:
 - unemployed people in receipt of income-based Jobseeker's Allowance;
 - those in receipt of Council Tax Benefit;
 - those in receipt of Housing Benefit;
 - those in receipt of Income Support;

- those in receipt of Working Tax Credit with a household income of less than **£15,276**; and
 - those in receipt of Pension Credits (Guarantee Credit only)
 - those in receipt of income-related Employment and Support Allowance (ESA); a new allowance from 27 October 2008.
- e Unemployed people in receipt of contribution-based Jobseeker's Allowance.
- f The unwaged dependants (as defined by Jobcentre Plus) of those listed above.
- g Offenders who are serving their sentence in the community.
- h Those taking learning aims that are funded as basic skills as defined in Section 3 of *Principles, Rules and Regulations*, excluding ESOL.
- i Asylum seekers eligible for Agency FE funding according to paragraph 18 above and in receipt of the equivalent of income-based benefit (assistance under the terms of the Immigration and Asylum Act 1999) and their dependants.
- j Certain learners participating in Agency-funded projects where identified in the project specification.
- K Level 3 jumpers (those taking a full Level 3 without having a full Level 2 qualification).
- 103 The Agency will discuss with various government departments and agencies any relevant changes to state benefits in 2010/11 and the above paragraph may need to be amended during 2010/11 to reflect any agreed changes. The Agency does not expect this to remove any existing entitlement to fee remission for individual learners.

Employer-responsive Funding Models

- 104 The guidance on whether learners are fully or co-funded in the employer-responsive funding model reflects guidance that the Agency can only afford to fully fund learners in designated priority groups. For

learners in lower priority groups employers are expected to make contributions that recognise the benefits to them of the training all their employees are undertaking at public expense. Table 2 below provides guidance on the priority groups eligible for full Agency funding. If learners are not included in Table 2 then they will be co-funded learners. The assumed employer contribution for each individual qualification for all co-funded learners will be clearly visible in the Learning Aims Database (LAD) 2010/11.

Table 2: Employer-responsive funding model learner fee or employer contribution guidance

| Type of Funding | Learners aged 16-18 only | Learners aged 19 and over |
|--|--|--|
| Apprenticeships only | Eligible for full Agency funding | All will be co-funded learners except a very small cohort of learners who are eligible for Enhanced Funding |
| Train to Gain (and all other employer-responsive Learners (non-Apprenticeships). | Not eligible for this funding as will be funded within 16-18 learner-responsive or as an Apprenticeship. | <p>The following groups will be fully funded in 2010/11:</p> <ul style="list-style-type: none"> First Target Bearing (full) Level 2; Level 3 jumpers (those taking a Target Bearing (full) Level 3 without having a full Level 2 qualification); Eligible Train to Gain learners aged under 25 at the start of their first Target Bearing (full) Level 3 qualification. |

Annex A:

Defining EU, EEA and Eligible Overseas Dependent Territories

- 1 This annex lists the qualifying countries and/or areas that establish learner eligibility for Agency programme funding.

Member States of the European Union

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom

Notes on certain territories that fall within the EU

- 2 The following notes help to further define those territories which should be regarded as part of the EU for the purposes of the fees regulations.
- Finland: includes Aland Islands.
 - France: the French Overseas Department (DOMS) (Guadeloupe, Martinique, French Guiana (Guyana), Reunion and Saint-Pierre et Miquelon) is part of metropolitan France and is part of the EU.
 - Germany: includes territory of the former German Democratic Republic prior to German unification. The tax-free port of Heligoland is included within the EU.
 - Portugal: Madeira and the Azores are part of the EU. Macao is not.
 - Spain: the Balearic Islands, the Canaries, Ceuta and Melilla are part of the EU.

- UK: Gibraltar is part of the territory of the EU. The Channel Islands and Isle of Man are not part of the EU, nor are the sovereign bases on Cyprus.
- Other territories: Andorra, Monaco, San Marino and the Vatican are not part of the EU.

Member states of the European Economic Area

3 This includes all the EU countries and territories listed above, together with the following countries.

Iceland

Liechtenstein

Norway

* Switzerland

** For simplicity, for providers that have to assess learners for eligibility for Agency funding, Switzerland is treated as within the EEA. In law, Switzerland is not part of the formally recognised EEA but its nationals are similarly eligible under various international treaties signed by the UK and Swiss governments.*

Agency Eligible Overseas Territories

4 These will be either UK or EU overseas territories for which the Agency will allow providers to claim funding (please refer to paragraph 16 in the main guidance).

Eligible British Overseas Territories

Anguilla

British Virgin Islands

South Georgia and the South Sandwich Isles

Bermuda

Cayman Islands

British Antarctic Territory

Falkland Islands

St Helena and its Dependencies

Montserrat

British Indian Ocean Territory

Pitcairn, Ducie and Oeno Islands

Turks and Caicos Islands

Eligible overseas territories of other EU member states

Denmark

Greenland and Faroe Isles

Henderson Island

Netherlands

Antilles (Bonaire, Curacao, Saba, St Eustatius and St Maarten) and Aruba

France

New Caledonia and Dependencies

French Polynesia

Wallis and Fortuna

Mayotte

French Southern and Antarctic Territories

Annex B: Agency Advice on Evidencing Eligibility

- 1 This annex provides some eligibility compliance advice to Agency providers for learners claiming eligibility as asylum seekers and refugees. This annex is principally about support provided under Section 4 and Section 95 of the Immigration and Asylum Act 1999 (and any subsequent amendments).
- 2 In addition to the advice below, providers may also find the following websites helpful.

General Home Office UK Border Agency website at: www.ind.homeoffice.gov.uk/ and also the particular advice regarding Section 4 support available at: www.ind.homeoffice.gov.uk/asylum/support/apply/section4/.

- 3 The advice below is included for 2010/11 to respond to a number of questions previously raised by providers.
- 4 Providers are advised that the National Asylum Support Service (NASS) has been replaced from April 2007 with Asylum Support (AS) and all references in this booklet are now to AS documentation although any older documentation produced by learners will still use the NASS heading.

Agency Advice on Evidencing Eligibility

- 5 Learners who are successful in their asylum applications and/or appeals will usually be eligible and able to produce the necessary documentary evidence (such as Home Office letters or documents) under one of the following paragraphs:
 - a 19(d): if granted full refugee status;
 - b 19(e) or 21(b): if granted humanitarian protection or discretionary leave to remain.

- 6 Learners who are unsuccessful in their asylum applications and/or appeals may be eligible under paragraph 22 in the main document if they can:
- provide documentary evidence that the Home Office has taken more than six months to decide on their application (see paragraph 7 below);
 - produce evidence of Section 4 support – it is likely that some asylum seekers whose application and/or appeal is refused may be eligible under this paragraph.
- 7 To gain eligibility for Agency funding under paragraph 22(a) in the main part of this Guidance, all asylum seekers awaiting decisions for more than six months will need to produce documentary evidence:
- the date that they registered for asylum (usually within a short period of time of arrival in the UK as required by the Home Office regulations); **and**
 - that their case is still under review by the Home Office after the Agency six-month qualifying period and that no decision has been made. In many cases, the Home Office may have been engaged in correspondence seeking further information or documentation from the applicant.
- 8 Alternatively, as described in paragraph 60 in the main part of this document, the following may help providers to evidence eligibility more simply under paragraph 22(a) or (b).
- Asylum seekers will be able to produce an application registration card (ARC) which is issued on or close to the date of their asylum claim. The date of issue will be recorded on the ARC. To demonstrate that they are currently supported under the Immigration and Asylum Act 1999 and thus eligible for Agency funding, a recent (that is, less than one month old) copy of a

person's post office receipt of Asylum Support (AS) assistance, which is received by using the ARC, will be required. Up to April 2007, AS was known as the National Asylum Support Service (NASS) and may still be referred to as such. The post office receipt will usually need to be dated at least six months after the ARC issue date to comply with eligibility under paragraph 22(a). It should not usually be necessary to see post office receipts for each month since the ARC was issued, merely a post office receipt issued for the same month as the learner enrolment. It is likely that the post-office receipt will identify the AS support as Section 95 support.

Or:

- To demonstrate that they are currently supported under Section 4 of the Immigration and Asylum Act 1999 and thus eligible for Agency funding, learners will need to produce confirmation from the Home Office of Section 4 support within three months of the issue date. Section 4 support is often given to asylum seekers who have been refused asylum but who cannot return home. As a result, individuals may no longer have an ARC.

Agency Response to Questions on Application Registration Cards Raised by Providers

9 The following answers to questions raised by providers since this booklet was originally made available on the Agency website may help to clarify the funding compliance issues.

Q What is an application registration card (ARC)?

A The ARC is a credit-card-sized plastic card issued as an acknowledgement of an asylum or Article 3 application made to the UK Border Agency (formerly the Immigration and Nationality Directorate (IND)). The ARC is issued on or close to the date of someone's asylum claim. The date of issue will be recorded on the ARC. It contains information about the identity and immigration status of the holder (recorded when the card was created). The following information is also included: the holder's personal details, a number of security features

including two digital images of the holder on the face of the card, the holder's fingerprint details on the chip and optically variable printing, but **not** the Home Office reference number or AS/NASS number. All ARCs issued since mid-January 2005 show on the reverse whether or not the holder is an asylum claimant.

Q An ARC will include the date of the asylum claim, which should identify how long the learner has been seeking asylum. If the learner loses their ARC card and is issued with a replacement, what date is shown on the card?

A Lost ARCs that have to be reissued will have the new date that the card was issued as opposed to the date of the asylum claim. For those learners seeking eligibility under the six-month rule where this is an issue, providers should seek alternative evidence to support the earlier date, such as post office receipts showing evidence of support at least six months before the current enrolment date or other alternative evidence that supports the fact that the learner has been waiting at least six months for a decision. Alternatively, local Voluntary Refugee Council or Forum groups or the learner's solicitor may be able to assist in confirming details.

Q An ARC may have the word 'disputed' printed against one of the data fields, such as the learner's date of birth. How should providers treat learners claiming to be 16–18 where the date of birth is disputed?

A The provider should apply reasonable discretion in these cases when undertaking usual IAG and/or enrolment to determine whether the learner is in the age group 16–18. If the provider is not reasonably satisfied the learner is in the age group 16–18, then evidence will be needed to ensure that the learner satisfies the eligibility criteria in paragraph 22 of the main guidance before any Agency funding is claimed for the learner. Young people supported by social services can be asked for a letter to confirm that they are considered to be a child.

Q If an asylum seeker cannot produce an ARC, is there any alternative documentation that they should have?

A This may apply to learners who have been resident since before 2002 or to learners waiting for an ARC to be issued. Where an ARC cannot be issued within three days of a claim being lodged, a standard acknowledgement letter (SAL) 1 or 2 or IS96 is issued instead to acknowledge asylum.

Q What is a standard acknowledgement letter (SAL)?

A A SAL displays the name, date of birth and nationality of the claimant and any dependants, the date of arrival (if known), the date of application, their address in the UK and their Home Office reference. Photographs of the claimant and any dependants are also attached. SALs issued now are normally valid for just two months from the date of issue (known as a time-limited SAL). The time limiting is to enable

arrangements to be made for the claimant and any dependants to attend and be issued an ARC.

Q What is an IS96?

A An IS96 is issued if an asylum application is made and the applicant is not being detained at their port of entry. An IS96 paper grants 'temporary admission' into the UK. This allows them to remain in the country while their asylum application is being assessed and is usually subject to certain conditions, such as residing at a particular address and the requirement to report to a designated immigration reporting centre, or a local police station, at specified intervals. It does not contain a photograph.

Home Office Advice on Section 4 Support

- 10 All asylum seekers whose applications have been refused and whose appeal rights are exhausted are required to leave the UK. It is accepted that there will be some failed asylum seekers who are destitute and unable to leave the UK immediately owing to circumstances beyond their control. In these circumstances, the failed asylum seeker can request the provision of support under Section 4 of the Immigration and Asylum Act 1999 (IAA 1999).
- 11 Families with minor dependants under 18, who were in receipt of asylum support under Section 95 of the IAA 1999 at the time appeal rights were exhausted, continue to receive support in accordance with Section 94(5) of the IAA 1999. Where a minor dependant is born or added within the prescribed period (21 days if the decision is served in person; 23 days if served by post) following a negative outcome on the asylum application, Section 95 support will continue. If the minor dependant is born or becomes part of the household outside the prescribed period, the family will not be eligible for Section 95 support. Support may be provided to the family under Section 4, provided the eligibility criterion is met.
- 12 Section 4 support is intended as a limited and temporary form of support for people who are expected to leave the UK. This support is detailed in the Section 4 grant letter which supports learner eligibility.

13 To date there are 11 grant letters (see Table B1 below).

Table B1: Grant letters.

| Grounds for grant | Letters |
|---|--|
| The applicant is taking steps to leave the UK | Grant letter – VARRP (Voluntary Assisted Return and Reintegration Programme) |
| | Grant letter – Taking steps to leave |
| The applicant is unable to leave the UK | Grant letter – No viable route of return |
| | Grant letter – Pregnancy |
| | Grant letter – Medical |
| Judicial review, or grant of interim support by court order | Grant letter – Judicial review |
| | Grant letter – Court order |
| Human rights' grounds | Grant letter – Human rights (other) |
| | Grant letter – Human rights (fresh claim) |
| | Grant letter – Human rights (late appeal) |
| The applicant has applied for bail | Grant letter – Bail |

14 Section 4 support is subject to a review process to ensure that only those applicants who remain eligible are supported. This review is carried out by executive officer (EO) caseworkers on a regular basis, including normally:

- after two weeks, where the applicant has yet to register for assisted voluntary return (AVR) and is supported on the basis that they are taking all reasonable steps to leave the UK;
- six weeks after the applicant has registered for AVR, and again after a further six weeks (support would not usually be discontinued until three months have elapsed, as usually a person remains approved for AVR for three months and applicants can usually leave the UK within this time if they cooperate fully with the International Organisation for Migration (IOM));
- six weeks from the expected date of delivery (EDD) (or birth where they have been notified of the date) in the case of pregnant mothers;

- as advised by the AS medical advisor or on medical evidence presented with the application, where the applicant is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason.

15 A person whose application for support under Section 4 is rejected, or whose support under Section 4 is discontinued for a reason other than their departure from the UK, has a right of appeal to the Asylum Support Tribunal (AST) if the decision to refuse or discontinue support was taken on or after 31 March 2005. If the appeal is dismissed, the applicant will not be able to remain in accommodation provided by the UK Border Agency and will be required to support themselves until they leave or are removed from the UK, unless they subsequently become entitled to Section 4 support because of a material change in circumstances.

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