

16-19 Transitional Arrangements – Guide for 2011/12

(for students previously in receipt of Education Maintenance Allowance)

July 2011

► For guidance

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Introduction

The Education Maintenance Allowance (EMA) scheme closed to new applicants on 1 January 2011. From September 2011, young people who need some financial support to help them to stay in education or training post-16 can apply to their school, college or training provider for the new 16-19 Bursary Fund. A separate [guide](#) is available for the 16-19 Bursary Fund at <http://www.ypla.gov.uk/learnersupport/16-19-bursary>

Transitional arrangements are in place for the academic year 2011/12 for young people aged 16-19 who were awarded EMA in 2009/10 or 2010/11. This guide sets out the transitional arrangements that will be in place to 26 August 2012). It should be read in conjunction with the [YPLA Funding Guidance 2011/12 – Funding Regulations](#).

There are two telephone helplines and a dedicated email enquiries service:

1. Learner Support Service Provider helpline: **0845 600 7979**
2. Learner Support Service student helpline: **0800 121 8989**
3. EMA@yplalearnersupport.co.uk

The helplines are open Monday to Friday, 9am to 5pm. They are closed on bank holidays.

1. Summary of revisions for 2011/12

Change	Brief Description
Students who successfully applied for EMA in 2009/10	If they are under 19 at the start of the academic year, these students will continue to be eligible for weekly payments at the level set out in their Notice of Entitlement to the end of their course of study, or to the end of the 2011/12 academic year. Students enrolling on a new course after they are 19 will not be eligible.
Students who successfully applied for the maximum weekly EMA payment of £30 in 2010/11	If they are under 19 at the start of the academic year, these students will continue to be eligible for weekly payments of £20 per week to the end of their course or the end of the 2011/12 academic year. Students enrolling on a new course after they are 19 will not be eligible.
Students who successfully applied for the weekly EMA payments of £10 or £20 in 2010/11	These students are not eligible to receive payments under the transitional arrangements.
New 16–19 Bursary Fund More information about the new 16-19 Bursary Fund can be found at http://www.vpla.gov.uk/learnersupport/16-19-bursary	Schools, colleges and training providers will be able to award bursaries to help support those young people who face the greatest financial barriers to continuing in education or training post-16. This can include students receiving weekly payments under the transitional arrangements.
New Bursary for Vulnerable Students	Young people in care, care leavers, young people in receipt of income support and disabled young people in receipt of Employment Support Allowance who are also in receipt of Disability Living Allowance will be eligible to receive a bursary of £1,200 a year. This should be paid by the provider from their Bursary Fund allocation. Students in these groups must <u>not</u> be enrolled for payments under these transitional arrangements.

2. Transitional arrangements for students previously in receipt of EMA

There are three categories of students who were awarded EMA in 2009/10 or 2010/11:

i) Students who first successfully applied for EMA in 2009/10 may continue to be eligible to receive weekly payments at the same rate (£10, £20 or £30) that they were awarded in 2009/10.

These students do not need to have enrolled in learning or received EMA in 2009/10 or 2010/11 in order to qualify for transitional payments in 2011/12.

ii) Students who first successfully applied for EMA in 2010/11 and received the weekly payment of £30 may continue to be eligible to receive £20 for each week they are in education or training.

These students do not need to have enrolled in learning or received EMA in 2010/11 in order to qualify for transitional payments in 2011/12.

iii) Students who successfully applied for EMA payments of £10 or £20 in 2010/11 are not eligible to receive any further payments in 2011/12 under these transitional arrangements.

Notices of Entitlement (NoE) will be issued to those students who are eligible to continue to receive weekly payments under the transitional arrangements.

The Learner Support Service will write to all students who will not be eligible to continue to receive weekly payments to confirm this and to advise that they may be able to receive support from the 16-19 Bursary Fund.

If the provider decides that a student receiving weekly payments under the transitional arrangements needs more financial help, they can choose to top-up the weekly payments from the 16-19 Bursary Fund.

Reassessment

All students who are entitled to EMA payments in the 2011/12 transitional year including those who first successfully applied in 2009/10 and those who first successfully applied in 2010/11 will be able to apply for an in-year reassessment if they experience one of the following changes in their circumstances:

- Where a person whose income was taken into account in determining financial eligibility has died;

- A relevant person becomes disabled, as defined in the Disability Discrimination Act 1995 (DDA);
- The young person has become estranged from their parents, guardians or someone else whose income was taken into account in determining financial eligibility;
- The young person has become a parent and is the main carer of their child.

Under the transitional arrangements, any student who first successfully applied for EMA in 2010/11 and is granted a reassessment for the circumstances described above will only receive EMA in 2011/12 if they are reassessed to the £30 EMA payment band. This will then equate to a £20 weekly payment in the 2011/12 transitional year.

Students who successfully applied for EMA in 2009/10 can receive EMA at a higher amount in 2011/12 if they have had an in-year reassessment that has resulted in a band increase.

In cases where a student has experienced one of the circumstances described above, the provider may also decide to support the student with a bursary. However, students who are eligible for the £1,200 Bursary payment because they fall within one of the vulnerable groups should not be paid transitional EMA payments as well as the £1,200 payment.

Vulnerable students – the new 16-19 Bursary Fund

Young people in care, care leavers, young people in receipt of income support and disabled young people in receipt of Employment Support Allowance who are also in receipt of Disability Living Allowance will be able to receive a bursary of at least £1,200 a year. Providers are responsible for identifying young people who are eligible for this payment. This must be paid by the provider from their Bursary Fund allocation. Vulnerable students must not be enrolled for payments under these transitional arrangements. See [16-19 Bursary Fund – Guide for 2011/12](#).

Where circumstances change during the year and a student receiving weekly payments under the transitional arrangements is identified as being in a vulnerable group, they become eligible to receive the £1,200 bursary. In these circumstances, the provider should complete an 'end of learning' on LAPS and make arrangements to make a bursary payment to the student. The learning provider should clarify with the student the level of weekly payment that has been paid to them and this should be taken into account in assessing the size of bursary they will receive. The provider may ask the student to evidence the amount of their weekly payments; the Learner Support Service is not authorised to disclose this information.

Receipt of other funding

Students cannot continue to receive the weekly payments if they are an employed apprentice, or in receipt of any of the following:

- European Social Fund programme allowances;
- A Dance and Drama Award;
- Adult Learning Grant;
- Jobseeker's Allowance;
- A flat-rate allowance for full-time volunteering;
- An NHS bursary.
- The bursary payment of at least £1,200 a year for vulnerable groups.

It is possible that some young people will have been issued with a NoE and then receive one of these other awards. If the Provider knows that the young person has one of these awards, they should not enrol them onto LAPS. If it transpires that a student who is enrolled for the transitional arrangements has in fact or subsequently received one of these awards, the Provider should inform the Learner Support Service immediately.

Part-time work

A student may undertake part-time work so long as this does not exceed 24 hours a week and is not in conflict with the terms of the EMA Agreement they have with their Provider (under Child Benefit regulations a student may work for up to 24 hours a week before being classified as being independent).

Age of students continuing on EMA

Students will only qualify for the transitional arrangements if they are under age 19 at the start of the academic year. They may continue to receive payments under these transitional arrangements to the end of the academic year (26 August 2012). However, students who enrol on a new course after the age of 19 will not be eligible for further payments under these arrangements – nor are they eligible for help from the 16-19 Bursary Fund. Students aged 19 and over may apply for support from the adult discretionary learner support funds and should speak to the learning provider in the first instance.

Residency

Providers are not required to check a student's residency eligibility. Students self-certified their eligibility when they completed the EMA application form by selecting the option relevant to their personal circumstances. However, if a

concern comes to light about the residency eligibility of a student at enrolment, the Provider should contact the Provider helpline immediately (the requirements regarding residency are set out in Annex 1).

Valid provision criteria

In order for a student to continue to receive weekly payments under the transitional arrangements, their course must meet the following criteria:

- The provision is inspected by a public body that assures quality (e.g. Ofsted, the Independent Schools Inspectorate, the Bridge Schools Inspectorate); and
- The programme of study is not less than 12 guided learning hours per week for a minimum of 10 weeks.

It must meet one of the following criteria:

- Be funded or co-financed by the YPLA or through local authorities; or
- Lead to a qualification (up to Level 3) that is accredited by the Qualification and Curriculum Authority pursuant to section 24 of the Education Act 1997; or
- Leads to a qualification (up to Level 3) that is approved by the Secretary of State pursuant to Section 98 (this includes Sections 96 and 97) of the Learning and Skills Act 2000.

Valid learning programme

A valid learning programme is:

A full-time FE course at a school or college, up to and including Level 3; a Foundation Learning programme; or a Programme Led Apprenticeship; or an Access to Apprenticeships pathway that requires not less than 12 guided learning hours per week for a minimum of 10 weeks.

There should be no new starts on PLA programmes after March 2011. Where a student is enrolled on a PLA and where they also meet the criteria to continue to receive payments under the transitional arrangements, it is possible for the weekly payments to be made beyond the previously agreed six month programme length period.

Students starting on Access to Apprenticeships may continue to receive weekly payments under the transitional arrangements, where it has been confirmed that they are eligible.

Guided learning hours

Guided learning hours are defined as all times when a member of staff is present to give specific guidance towards the learning aim being studied on a programme. This definition includes lectures, tutorials, and supervised study, for example in open learning centres and learning workshops.

Guided learning hours do not include hours where supervision or assistance is of a general nature and is not specific to the study of the students – for example, time spent undertaking enrichment activities that are not a required element of the learning aim. However, study leave can be regarded as qualifying for weekly payments (further information on study leave is included in Section 5, which sets out the requirements regarding attendance).

Students studying at home through distance learning or online courses, or who are self-educated or parent-educated, cannot receive EMA.

3. Enrolling students

Those students who successfully applied for EMA in 2009/10 or 2010/11, but have not yet enrolled in learning, are able to be enrolled onto LAPS and receive weekly payments, where they meet the criteria of the transitional arrangements.

The registration of a student on LAPS should normally be done as part of the more general enrolment process, but Providers' enrolment processes must take account of and check specific requirements related to guided learning hours, learning programme length and learning programme validity.

Where the student attends only at a sub-contractor, arrangements need to be in place to forward a copy of the signed EMA Agreement to the lead Provider. This is needed by the LAPS user to enrol the student onto the system.

Programme types available on the Learner Assessment and Payment System (LAPS)

The LAPS system operates three programme types.

- EMA Programme Led Apprenticeship (PLA) - only YPLA Employer Responsive funded courses leading to an Apprenticeship (PLA) can access this model.
- EMA Further Education (FE) - for courses that follow the standard Academic Year.
- EMA Short Course FE - for courses that do not follow the standard academic year.

Application Process for New Providers

New providers requesting approval to have access to LAPS should fully complete the 'Proforma to request a link to LAPS' confirming that all requirements of the Valid Provision Criteria have been met and email the form direct to lapsaccessrequests@ypla.gov.uk

A copy of the proforma can be found on our website at <http://ema.ypla.gov.uk/resources/>

Where a provider is working in partnership with a number of learning providers, for example as part of a consortium arrangement, or with a college as a sub-contractor then it is for the lead provider to apply to administer the continuing weekly payments on behalf of its partners. The student must be enrolled with the lead provider and the subcontracting arrangements must not be put in place solely to access the national payments system.

Where a non YPLA funded/co-financed provider (including learning programmes that are funded by a Local Authority) is seeking to administer weekly payments, the provider must include details of the qualifications to provide confirmation it meets the criteria at b) or c).

In order to check that the qualifications meet the criteria at b) or c) the following links may be helpful:

You can verify Ofqual accredited courses at:

<http://register.ofqual.gov.uk>

Section 96 at:

<http://www.education.gov.uk/section96/search/search.cfm>

All applications received will be assessed and verified by the YPLA and if approved will be submitted to the Learner Support Service (LSS).

Providers that do not meet the requirements of the Valid Provision Criteria will receive notification by email.

The LSS will contact those providers that have been approved to set up the designated users on LAPS.

Setting up an EMA Agreement (attendance, behaviour and effort)

When registering the student, a Provider needs to make sure that the student has signed an EMA Agreement, setting out the student's obligations regarding attendance and expected standards of behaviour and effort, and the Provider's obligations to report payment decisions. The content of the EMA Agreement is a matter for the Provider, but should include the criteria for lateness and any other factors that may trigger an absence being registered and therefore the loss of a weekly payment. Students should be made aware of standards of behaviour and

effort expected, attendance monitoring systems in operation, and the appeals process operated by the Provider in respect of payment decisions.

When registering for weekly payments under the transitional arrangements, the student signs the EMA Agreement and in doing so makes a commitment to the standards agreed with their Provider. The Provider must also sign the EMA Agreement and in doing so is:

- Agreeing to offer an appropriate learning programme for that student;
- Confirming that the student has enrolled on a valid learning programme; and
- Agreeing to report the student's weekly payment authorisations to the Learner Support Service within 28 days of the payment being presented for a decision.

Where a sub-contractor agrees to the EMA Agreement on a Provider's behalf, the Provider must require them to follow the process described above. It is the Provider that is accountable for the entry to LAPS and the subsequent payment decisions.

Please note, recourse is always through the Provider who makes payment decisions. The Learner Support Service will have no knowledge of the reasons for stopped payments, therefore the Provider should always inform the student, within two days, if they are not going to receive their weekly payment, and why this action is being taken. Only if the student receives an incorrect payment from the Learner Support Service, is the recourse to appeal through the Learner Helpline.

Adding students to LAPS

Providers should add students to LAPS as soon as they have enrolled on a valid learning programme (one or more valid learning programmes), but not before. In order to do so, they will need the student's EMA learner reference number. Please note, students cannot be paid until they have been added to LAPS.

A student can only be added to LAPS if:

- they have enrolled on a valid learning programme of at least 12 guided learning hours per week for a period of at least 10 weeks. This learning programme may be split between one or more Providers;
- the Provider is satisfied with the student's identity and residency status (for education funding purposes); and
- the student and the Provider have both signed the EMA Agreement.

In registering a student for weekly payments, the Provider is certifying that these conditions have been satisfied.

The Provider will also need to set up date ranges (study patterns) on LAPS to identify weeks when students are following guided learning hours and are expected to receive weekly payments. In FE, most students will be following learning programmes with common term dates that can be set up on the system before enrolment. The software provided by the Learner Support Service will prompt this in cases where students' study pattern dates will need to be set up on LAPS for these students. Please note, if the Provider does not set the exact start date it may have an impact on the student receiving backdated payments.

Additional information about enrolment

Students attending more than one Provider

Where a student attends more than one Provider, each Provider should be referenced on the EMA Agreement. In this case it is for local agreement between the Providers as to which of them will be the lead for administering the weekly payments, as a student can only be added to one Provider at any one time. This Provider will sign the EMA Agreement and report payment decisions to the Learner Support Service. The other Provider(s) involved must agree a process for reporting the student's attendance, behaviour and effort to the Provider that has been chosen to report the weekly payment decisions.

Change of learning programme

Where a review of the learning programme results in a material change of learning programme at the same Provider, the EMA Agreement will be replaced or amended but will remain valid provided that the change is signed by the student and the Provider. There is no need to notify the Learner Support Service of changes to the content generated in this way.

Where a review of the learning programme leads to a reduction in hours of study, the Provider must check that the revised learning programme duration meets the minimum required guided learning hours.

Transfer to a different Provider

If a student transfers between Providers, while continuing on the same learning programme, a relationship must exist between the two responsible Providers. The first Provider should maintain administration of the weekly payments, liaising with the second Provider regarding payments. This would function in the same way that Providers administer payments on behalf of sub-contractors, ensuring that a full audit trail of evidence for weekly payment decisions is kept. Where it is not practical for the first Provider to maintain administration functions, the Provider helpline should be consulted for guidance on how to proceed.

Where a Provider's funding contract is not renewed, the students attached to that Provider will need to be transferred in bulk if it has been agreed that they will be

taken on by a new Provider. Providers who are in this position should contact the Provider helpline as soon as possible for further advice.

Change of Provider

Please refer to the *LAPS Operating Manual*.

Leaving a Provider

Please refer to the *LAPS Operating Manual*.

Lost documents

If a student claims to have been accepted as eligible for weekly payments but has lost their documents, they can request copies from the Learner helpline. A replacement NoE, with the EMA Agreement, will be posted to the student once reasonable checks have been carried out and the student's identity has been established. Providers should not add the student to LAPS until they have signed the EMA Agreement.

4. Authorising payments

Weekly attendance

Providers need to notify the Learner Support Service about whether a student should be paid for a particular week. This decision is based on attendance, behaviour and effort. What constitutes adequate attendance, and how absences should be treated, is set out in Section 5.

Where there are problems with a student's attendance, behaviour and effort, Providers will no doubt be tackling these issues as part of their general policy, also covering students not in receipt of weekly transitional payments, in order to help students with personal problems, to confront poor behaviour and to drive up attendance and attainment.

Recording attendance information

Recording and collating attendance and absence information is central to making weekly payment decisions. Providers can use or build on any existing methods to monitor and record attendance, as long as they are sufficiently robust to capture students' attendance accurately, thus reducing the scope for student fraud. It would not be acceptable for a Provider to implement an attendance monitoring system that relies on students self-certifying their attendance. Best practice is to ensure that all staff understand that attendance monitoring will control whether weekly payments are paid, and so needs to be undertaken carefully. The minimum requirement is two attendance controls per day, for example morning

and afternoon registration. In instances where a student has incurred an unauthorised absence during a week but has made up that time during subsequent weeks, they will not qualify retrospectively for payment of the withheld weekly allowance.

Collating weekly attendance information

Providers will want to obtain sufficient weekly evidence to make weekly payment decisions, and/or to seek further information from students where there is insufficient information to make a decision.

Where a sub-contractor is required to provide information on the attendance of the student, the Provider will need to arrange for the information to be provided in time for payment decisions to be made.

Deciding on payments

Where a decision not to pay has been made on the basis of inappropriate behaviour and/or effort, Providers must ensure that this decision is reported to their EMA administrator, and must retain details of the reason for non-payment for audit purposes.

Absences may be reviewed some time after the actual event and retrospectively agreed as authorised absence (and thus counted as attendance). This might happen where the student is late in submitting relevant evidence. In such cases, where this was the only unauthorised absence in the week, the student may be eligible for back-payment of their weekly payment. This must be done within 28 days, and if an attendance pattern cannot be proved within this timeframe then a No decision should be made and put on LAPS.

Payment authorisation must be carried out by someone specifically authorised to do so. The decision is auditable. No decision should be made if there is insufficient evidence on which to base a Yes decision. Decisions relating to one week should not be used to adjust payments in order to balance an earlier decision made in error. Where Providers have sub-contracted delivery, Providers themselves are responsible and accountable for any inaccurate entries.

Notifying the Learner Support Service of weekly payment decisions

Please refer to the *LAPS Operating Manual*.

Timing

Please refer to the *LAPS Operating Manual*.

Notifying the student if weekly payment is being withheld

Where a weekly payment is withheld, the Provider must inform the student within two days in writing, or by a suitable alternative method, to ensure that the student understands why payment has been withheld. This should be communicated before payment is due. Providers are no longer required to retain documentary evidence of notification of non-payment decisions.

Additional information about payments

Payment queries

If a student does not receive a payment which they were expecting, the first step should be to check with their Provider to see if the payment was authorised. If the payment was authorised but has not been received, Providers should advise the student to call the Learner helpline.

Overpayment

If the Learner Support Service becomes aware that weekly payments have been made inaccurately – for example because of failure to disclose information on the part of the student, a misrepresentation of data, or processing or system errors – it will take recovery action. There is a responsibility on both the student and the Provider to notify the Learner Support Service of any potential overpayments.

A letter will be sent to the student explaining why they have been overpaid, detailing the amount of overpayment and asking for repayment as soon as possible.

End of year or programme

When students have finished at a Provider for the year, for example after summer exams, or have completed their programme, administrators must record on LAPS that no further payments should be made.

Student fraud

Providers should consider whether there is potential for student fraud within their processes and put strategies in place to reduce and identify such instances. Providers that operate a system where students themselves are responsible for producing attendance evidence from tutors, may have a greater risk of incidents of student fraud.

If fraud is identified, the principle will be to seek recovery of all the overpaid money. All instances of fraud should be reported to the Learner Support Service via its Provider helpline as soon as possible.

Appeals

Where a decision has been taken that a student should not receive a weekly payment, the student has a right of appeal, subject to the principles below.

The Provider **must** give the student written information about the process for appealing against payment decisions at the point of registration. Existing procedures for dealing with complaints and appeals should be used.

Students should be made fully aware of the payment conditions they must meet to receive payments **before** decisions are taken, and understand they should adhere to these rules.

Without evidence to the contrary, absences should be considered unauthorised. The burden of proof that they should be authorised lies with the student, and any relevant evidence should be submitted to the Provider within 28 days of the beginning of the absence.

The appeal should be handled within the Provider by someone other than the person who took the initial decision that the payment in question should not be made.

When there is a dispute between a sub-contractor and a student, the Provider should intervene.

The Provider must ensure that the student has been given full details of why the weekly payment has been stopped prior to any hearing taking place. The procedure should provide for the student to present their case, and for the student to be accompanied by a parent/carer, or someone else of their choosing, who may state the case on the student's behalf. Legal representation is not normally appropriate.

When communicating the decision of an appeal hearing, and in the event that a student's case has not been upheld, the Provider must include the following in the decision letter.

In the event that you are dissatisfied with the way in which your appeal has been dealt with, you may complain to the YPLA. For more information please see the YPLA website <http://www.ypla.gov.uk/aboutus/contactus/complaints/>.

Audit

Guidance for Providers on the audit arrangements for the transitional payments can be found in Annex 2.

5. Attendance, authorised and unauthorised absence

Providers must have a clear documented policy of attendance and authorising absence that fits within the framework set out below.

Providers and students are expected to sign an EMA Agreement that sets out what is required of them by way of attendance, behaviour and effort. In general, a student should receive a weekly payment only where they have attended all the learning sessions and met the standards of behaviour and effort. If the student has had an unauthorised absence for part or all of the week, they should receive no payment for that week, and the Provider should notify the Learner Support Service of this through the weekly payment decision.

Where an absence is authorised by a Provider, the student will still be entitled to the weekly payment as though they had attended in full (unless, of course, they have an unauthorised absence for a different session).

It is for Providers to decide on and implement a documented attendance policy. The attendance policy must detail any flexibility that has been tailored to an individual student's needs, for example to cover the DDA it must also refer to the minimum weekly hours and define what 'full attendance' means for their students and then apply those fairly. The policy should be made available for students, tutors and administration staff.

It is for Providers to decide whether a particular absence is authorised or not. In taking such decisions, they should take account of the guidance in this document, which forms part of the scheme arrangements.

General principles

In deciding whether or not an absence should be authorised, Providers should take account of their organisation's wider policies, which cover all their students (including those not in receipt of these weekly payments). The following are guiding principles.

Any absence should be considered to be unauthorised unless there is a valid reason otherwise.

If the claimed reason for absence could have been foreseen, the student should have applied for authorised absence in advance.

Where the claimed reason for absence could not reasonably have been foreseen, Providers should consider whether the absence was really unavoidable. An absence which could not have been notified in advance should be raised with the Provider on the day in question (and by a set time if the Provider has specified this in the EMA Agreement). Unless, exceptionally, there is a good reason why

this could not be done, the absence should not be authorised without such notification.

In all cases there needs to be a reasonableness and reality check.

In operating these principles, Providers should ensure that decision-making processes are transparent and that there is a fair application of rules across all students.

Public holidays

Where public holidays fall within a week, or where term ends part-way through a week, the Provider should make a payment authorisation for the student for that week, providing that they have attended all their scheduled learning sessions. An example of this is the May Day bank holiday, which normally falls during term. If a student has satisfactory attendance in that week other than the Monday, the payment for that week should be made. This applies even if this means that for this week the student's number of guided learning hours falls below 12.

Absence

The following are examples of legitimate reasons for absence.

- A medical or dental appointment which cannot be arranged outside Provider hours.
- A one-off caring responsibility for a close family member. Where such responsibilities are regularly interrupting attendance patterns, there is a need to explore solutions individually with the student.
- A religious holiday.
- A visit to a university either to attend an open day or for interview, or a career-related interview.
- An appointment with a careers adviser (although these should normally be scheduled to avoid disruption to studies).
- A work experience placement which is an integral part of a learning programme, and for which the student does not receive a wage.
- Participating in a significant extra-curricular activity, such as drama, music, sport or volunteering, which has been agreed in advance with the Learning Provider.
- Attendance at a probation meeting.
- Attendance at a funeral of a close family member.
- A Provider representatives' meeting, for example a governors' meeting.

- National Union of Students official business.
- Territorial Army/ Cadet Forces/ Reserve Forces events.

Study visits abroad that are an integral part of the student's learning programme. These must last for no longer than four weeks, and be set out in the student's learning agreement. Satisfactory arrangements must be put in place to accurately record and notify the Provider of the student's attendance.

Maternity/paternity leave

The weekly payments are not payable during periods of maternity or paternity leave.

Absences that cannot be foreseen

Where an absence could not be foreseen, the student should nevertheless make arrangements to tell the Provider as soon as possible on the day in question that they will be absent (and by a set time if this has been agreed between the student and their Provider, and which has been detailed in the EMA Agreement). Where a student has failed to do this, the absence should be treated as unauthorised.

Transport

Transport can cause genuine problems. Where these were known about in advance, the student might be expected to make reasonable attempts to make alternative arrangements. But sometimes this will not be possible, and Providers will want to exercise discretion about whether or not to stop a weekly payment as a result of any lateness or absence that is caused by transport problems, and especially if the problem was not foreseeable, for example, where a bus was cancelled.

Sickness

In general, isolated periods of genuine sickness need not preclude authorisation of a weekly payment. However, the payments are intended to cover the costs incurred through attendance in learning and should not be paid if a student is away for a full week. Providers are entitled to turn down applications for sickness absence if they have reason to doubt the validity. An emerging pattern of non-attendance due to sickness without explanation or evidence would be unacceptable. Experience from administering EMA has shown that a rigorous regime can be effective, and it is acceptable for a Provider to implement a policy of not automatically accepting sickness as a reason for authorised absence. Providers should set out clearly from the outset what their approach will be to absences due to sickness and be consistent in its application.

It is not acceptable for Providers to operate a quota system for sickness absence that allows a set number of sick days per term, or year. Quota systems do not allow for genuine sickness over and above a set number of days, and if students

are aware that they are allowed a set number of sick days (or authorised absences), they may be tempted to exploit this.

Long periods of sickness

It may be possible to explore with the student if some periods of learning at home would be appropriate. This is as long as the Provider sets a minimum of 12 hours study per week, oversees the student's work and monitors its completion closely. Where it becomes clear that the absence is going to be for a significant length of time, and that the student will be unable to complete the minimum number of hours required per week, then the Provider will need to consider whether it is reasonable to continue making payments during this period.

The weekly payments are also payable through many hospital schools, as long as they satisfy the Valid Provision requirements.

Disability and attendance

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA). However, the Disability Equality Duty in the DDA continues to apply.

Any learning programme should be agreed between the Provider and the young person to meet the student's needs. The 12 guided learning hours minimum should still apply. However, in respect of students who are disabled within the meaning of the Equality Act, the Provider will have to consider what reasonable adjustments should be made to facilitate the student's ability to carry out the required guided learning hours, taking into account the particular needs of the student. The Equality Act defines a disability as a physical or mental impairment which has a substantial and long-term (more than 12 months) adverse effect on a person's ability to do normal daily activities. It may be that some periods of learning at home would be appropriate as long as the Provider oversees the student's work and monitors its completion closely. Alternatively, some adjustments might be made, such as agreeing to allow the young person to miss a particular learning session because attendance in the specific circumstances is difficult – for example, because of mobility issues or because the student cannot attend for long periods because of their disability. Providers should normally class as authorised any absence which it is satisfied is directly related to the student's disability.

Learning outside term-time in FE

In the case of a short field trip (or other activity) outside term time, which is an integral part of the student's planned learning programme, the Provider must come to a decision as to whether this constitutes sufficient guided learning to warrant a weekly payment. Payments should not be made if there have been fewer than 12 hours of learning activity in the week in question. The payment authorisation is to be made by applying the same rules for authorising term time attendance. However, as the timing of the activity will fall outside the standard study pattern set on LAPS, these students will need to be set up with an

individual study pattern which includes the dates of the activity. This will allow the system to present those students for payment in the week in question.

Term time and holiday payments

Weekly payments under the transitional arrangements are made during term time but not normally during holiday periods. The exception to this is guided learning activities, which take place outside term time, such as special tuition programmes or field trips, and unpaid work experience. Payments should not be made for 'reading' and 'catch-up' weeks that coincide with half-term breaks and school holidays.

Study leave

Students should receive their weekly payment during periods of authorised study leave. Payments should cease once the student has sat their final exam if they are no longer required to attend the Provider.

Jury service

A weekly payment should not be paid for periods of jury service; if a student is called upon to attend jury service, and it will disrupt their studies, then the student may wish to seek a deferral to a holiday period.

Local area agreements

In some regions, local area agreements on attendance procedures and authorised/unauthorised absences have been put in place. Local area agreements have proved useful in clarifying and standardising interpretations of authorised and unauthorised absence for both Providers and students within a particular region. They can help avoid situations where one Provider can seem to be operating the scheme more leniently than another, which could lead to resentment and even to distortions in students' choice of Provider.

Annex 1 Residency

In order to meet the required residency criteria, the young person must be one of the following:

a British citizen who has lived in the UK for at least three years prior to the start of their learning programme; or

a person who has 'settled status' in the UK, and has been ordinarily resident in the UK for at least the three years prior to the start of their learning programme ('settled status' 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 the 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;

a national of any European Union (EU) country (including Gibraltar), or the spouse or civil partner or child of an EU national who has been ordinarily resident in the European Economic Area (EEA), or Switzerland, for at least the three years prior to the start of their learning programme;

an EEA migrant worker with the right to work in the UK, or the spouse, civil partner or child of an EEA migrant worker, who is ordinarily resident in the UK at the start of their learning programme, and has been ordinarily resident in the EEA or Switzerland throughout the three-year period prior to that;

the child of a Swiss national who is ordinarily resident in the UK at the start of their learning programme, and who has been ordinarily resident in the EEA or Switzerland for the three-year period prior to that;

the child of a Turkish migrant worker who has the right to work in the UK, and who is ordinarily resident in the UK at the start of their learning programme, and who has been ordinarily resident in the EEA, Switzerland or Turkey for the three-year period prior to that;

recognised as a refugee by the UK Government, or the spouse or civil partner or child of a refugee, or have been granted humanitarian protection, or EU temporary protection.

Students will not be eligible for any weekly payments if any of the following apply:

they are an asylum seeker; or

they have discretionary leave or exceptional leave to enter or remain (ELE/R).

It should be noted that although asylum seekers and students with discretionary/exceptional leave to enter or remain in the UK are not eligible to receive payments, they may still be eligible to participate in free education.

If a Provider has a concern about a student's residency eligibility for the weekly payments, they should notify the Learner Support Service as soon as possible by contacting the Provider helpline.

Temporary absences from the UK/EEA

Absences totalling six months are counted as temporary and disregarded for residency eligibility when determining if a student has been ordinarily resident in the UK/EEA for the three years prior to the start of their learning programme. Absences between six months and three years can be counted as temporary, provided the absence was always intended to be temporary, and evidence is available to support the claim.

Temporary absences and children of Armed Forces personnel

If a student has been accompanying a parent or carer on an official overseas posting, they will be exempt from having to have been ordinarily resident in the UK/EEA for the three years prior to the start of their learning programme.

If the circumstances described above for temporary absences are applicable to a student, they should contact the student helpline which will provide further advice and guidance on their eligibility. The helpline will also advise students about relevant information that may be required to prove their eligibility, and how to submit this for assessment.

Children of Armed Forces personnel serving overseas

Students attending a Service Children's Education school in Germany or Cyprus may be able to receive EMA as if they were studying or training in England. They should contact Service Children's Education on 0049 (0)2161 908 2294 or visit sceschools.com for further advice.

Young people resident in England, Scotland, Wales or Northern Ireland

Eligible Welsh domiciled students studying at college in England will be able to receive payments under the transitional arrangements in 2011/12 only. However, in 2011/12, these students may also be eligible to receive Welsh EMA and should contact Student Finance Wales for confirmation in the first instance.

Students cannot simultaneously receive weekly payments through the English transitional arrangements and Welsh EMA payments. The LSS is working closely

with Student Finance Wales to avoid potential double funding of Welsh EMA and English transitional payments in 2011/12. However, Providers should ensure that payment decisions for these learners are not authorised for both schemes.

English students studying at college in Wales will be able to continue to receive Welsh EMA.

If a young person intends to study in Scotland, Wales or Northern Ireland and requires financial support for the first time in 2011/12, they should contact the relevant authority for an application form:

Scotland: www.emascotland.com

Wales: www.studentfinancewales.co.uk

Northern Ireland: www.emani.gov.uk

Annex 2 Audit arrangements

Background

This annex offers audit guidance to Providers who administer weekly payments during the transitional year following the closure of EMA.

Methodology

In recognition of the need to minimise the administrative burden on Providers, it is proposed generally to conduct an audit of the administration of the transitional arrangements as an integral part of existing audit arrangements.

The audit programme involves an overview of the key controls for the administration of transitional payments and tests a random sample of students' weekly payments across a chosen defined period (usually a month).

Controls review

Through discussions with appropriate members of staff, YPLA auditors will identify and evaluate controls over the management and administration of payments. This will be used to establish what controls are in place and how effectively they are working. The following key areas will be reviewed:

- general management and administration arrangements including details of any off-site provision such as sub-contracting and the recording, input, storage and security of data relating to payment submission and authorisation, including LAPS;
- assurance that only eligible students are enrolled by the Provider;
- agreement and completion of the EMA Agreement (attendance, behaviour and effort);
- recording and reporting of attendance data, including authorised and unauthorised absence, and the controls system for the notification of payment/non-payment decisions; and
- making payment decision adjustments, and advising and reporting to the Student Support Service any factors that may influence future weekly payments or corrective actions.

Substantive testing

A sample of payment transactions extracted from LAPS will be tested for validity against the evidence held by the Provider. These tests will cover the same generic areas as the controls work already detailed above, that is:

- general management controls and sub-contracting, including off-site provision;
- eligibility;
- EMA Agreement (attendance, behaviour and effort);
- attendance recording;
- adjustments/recoveries; and
- accuracy and reliability of data.

Evidence requirements

As part of the audit testing, we would expect the following evidence to be available (and held by the Provider or its sub-contractor, if learning is delivered off-site) in order to meet the above criteria. It must be noted that the examples given below serve as a guide, and, depending on the nature of the control systems operated by the Learning Provider, other acceptable evidence may be held which is not detailed below:

- the Provider's attendance policy, detailing authorised and unauthorised absences;
- evidence to confirm that the student is eligible to receive payments, such as a completed eligibility checklist, application/enrolment documentation or initial assessment;
- copies of the student's EMA Agreement (attendance, behaviour and effort), signed by the student and Provider confirming the student's agreed timetable;
- evidence of student attendance to determine appropriate authorisation and reconciliation of payments issued; and
- evidence of recoveries action (if any) undertaken resulting from overpayments.

Feedback and reporting

Auditors aim to discuss audit findings with the auditee as the work progresses and usually hold a formal meeting at the end of the fieldwork. As well as detailing any findings, auditors will endeavour to support Providers by giving recommendations for improvement to processes and controls if necessary.

Part of the rationale for the controls work is to enable auditors to gain an understanding of how Providers control the administration of payments to students. Where errors are found, auditors will try to identify where controls have

broken down or failed to operate as intended, so that meaningful and value-added recommendations can be made.

A formal audit report will be issued that covers all the audit work carried out, including payments made under the transitional arrangements.

Summary of common pitfalls

A number of recurring issues have been identified at previous EMA audits, and are summarised below.

- Eligibility checks: Providers do not check that each student meets the eligibility requirements prior to entering the students on LAPS, and/or do not hold documentation to confirm that the eligibility checks have taken place;
- Providers do not always realise they are responsible for checking a number of eligibility criteria themselves, for example valid provision;
- A recurring weakness is that Providers do not always have a clear documented attendance policy that is available to staff and students, including guidance on authorised and unauthorised absences;
- Some Providers do not hold complete attendance evidence to support all the weekly payments decisions for all the students. There are two main aspects to this – attendance evidence might be missing or incomplete, and occasionally the attendance evidence held contradicts the payment decision made by the Provider;
- Occasionally, EMA Agreement documents have not been available for audit inspection, and some EMA Agreement documents have not been signed by the student or by the Provider.

Recommended best practice

Audit trail

Auditors will want to review evidence that Providers should already hold as part of their established systems and processes for delivering learning. This is sometimes referred to as ‘normal’ or ‘naturally occurring’ evidence. Therefore, in the interests of cutting unnecessary bureaucracy, auditors will not expect to see additional evidence prepared specifically for the transitional arrangements, because appropriate underlying evidence to support attendance payments should already be held by Providers.

Eligibility and entitlement to free learning

When Providers enrol students on their learning programmes, the Provider is responsible for checking that the students are eligible to participate in learning

and that they are eligible for free education. It is recommended that the outcome of the check is communicated to the LAPS administrator so that they are able to enrol and authorise weekly payments only to eligible students. Providers should retain evidence to support their eligibility assessment. An eligibility checklist is included at the end of this Annex.

Retention of documentation

The following documentation should be retained for audit inspection for six years following the end of the 2011/12 academic year:

- a fully completed EMA Agreement (attendance, behaviour and effort) for each student; and
- attendance evidence to support each weekly payments decision.

Eligibility checklist

It is recommended that the following checklist is completed by Providers for each student at their enrolment.

Eligibility criteria		Confirmed Yes/No
Student is aged between 16 and 19		
*Student appears to fulfil the residency criteria		
Student is not in receipt of other excluded government funding, e.g. 16-19 Bursary Fund payment as a vulnerable learner, Job Seekers Allowance (JSA), Dance and Drama Award (DaDA)		
Student is enrolled on a valid learning programme at a Valid Provider (minimum of 12 guided learning hours per week for a minimum of 10 weeks)		
Student is eligible to receive weekly payments		
Completed by:		
Position:		
Date:		

*Although there is no specific requirement for Providers to confirm that a student's residency self-certification is accurate, Providers should consider whether on the basis of the evidence seen at enrolment the student appears to be eligible both to participate in free education, and to receive weekly payments (i.e. there is no contradictory evidence).

Annex 3 Sources of further information

Additional documents are available that offer Providers further information about the EMA scheme. These are available in the supporting documents section of the EMA website at <http://ema.ypla.gov.uk/resources> and include:

- Sample NoE and the EMA Agreement
- EMA Valid Provision Criteria
- Proforma requesting a link to LAPS

YPLA Funding Guidance www.ypla.gov.uk/publications

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