

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2890

### Improving access to London's Adult Education Budget (AEB) for asylum seekers and family members of European Economic Area (EEA) and UK nationals

#### Executive Summary:

This Mayoral Decision (MD) form sets out proposed changes to the GLA's Adult Education Budget (AEB) Funding and Performance Management Rules 2021-22 (the AEB Rules) to support eligible asylum seekers with full funding for adult education, in recognition of the barriers faced in accessing provision. People seeking asylum who meet the AEB eligibility criteria are currently only eligible for co-funding. This decision proposes to remove the co-funding requirement given the significant financial constraints this poses, thus enabling all eligible asylum seekers to access Adult Education Budget (AEB) provision.

In the AEB Funding Rules for non-devolved areas, the Education and Skills Funding Agency (ESFA) has removed the waiver of a three-year ordinary residency requirement for family members of UK and European Economic Area (EEA) nationals. This means that people who were previously eligible for education and training delivered by the AEB would now have to pay for their provision if they cannot demonstrate their residency, despite being a family member of someone (including a UK national) who is eligible. This MD form also sets out proposed changes to the rules which reinstate the waiver for family members of eligible EEA and UK nationals to receive AEB funding.

#### Decision:

That the Mayor approves:

- 1) changes to the GLA AEB Funding and Performance Management Rules in Appendix A from the 2021-22 academic year onwards that:
  - a) enable the full funding of eligible asylum seekers for AEB-funded provision
  - b) waive the requirement for family members of eligible UK and EEA nationals to have three years of ordinary residency to access AEB funded provision.

#### Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

18/11/21

## PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

### Decision required – supporting report

#### 1. Introduction and background

##### Full funding of eligible asylum seekers for AEB-funded provision

- 1.1 The supported asylum population in London has increased in recent years. The number of people seeking asylum in London supported through the mainstream ("section 95")<sup>1</sup> support from the Home Office has increased between 2014 and 2021 from 2,623 to 8,375.
- 1.2 In addition, the Home Office has been supporting very large numbers of people seeking asylum through emergency hotel accommodation.
- 1.3 Many asylum seekers in London hotels have been in the country for over six months and are therefore already eligible for AEB Grant-funded provision, though slightly different rules apply to AEB Procured provision (see paragraph 1.6).
- 1.4 Anecdotal reports from providers, local authorities and civil society suggest that AEB providers in high density areas are facing a lot of pressure to meet demand for skills provision for asylum seekers.
- 1.5 The [GLA Adult Education Budget 2021-22 Funding and Performance Management Rules for Grant-funded Providers](#)<sup>2</sup> sets out eligibility criteria which pertain to people seeking asylum as set out below:
  - asylum seekers are eligible to receive funding if: they are resident in London; and have lived in the UK for six months or longer while their claim is being considered by the Home Office, and no decision on their claim has been made; or are receiving local authority support under section 23C or section 23CA of the Children Act 1989 or the Care Act 2014.
  - an individual who has been refused asylum will be eligible if: they are currently resident in London; and they have appealed against a decision made by the UK government against granting refugee status and no decision has been made within six months of lodging the appeal; or they are granted support for themselves under section 4 of the Immigration and Asylum Act 1999; or they are receiving local authority support for themselves under section 23C or section 23CA of the Children Act 1989.
- 1.6 The use of AEB Procured funding as match funding for the GLA's European Social Fund (ESF) programme places additional entry criteria upon asylum seekers wishing to access this provision. ESF requires that learners must have permission to work in the UK. As set out in the [GLA Adult Education Budget 2019-23 Funding and Performance Management Rules for Procured Providers \(Version 6\)](#)<sup>3</sup>, asylum seekers are allowed to work in the UK if their claim has been outstanding for 12 months or more through no fault of their own, or if they have appealed and the appeal has been outstanding for twelve months or more. Even then, there are restrictions on the work they can do, and ESF auditors would expect any vocational training provided to be related to the work that a learner is entitled to undertake. AEB Procured providers can still support asylum seekers under the same rules as AEB Grant-funded providers, but they have to do so from their Flexible Allocation (which is a maximum of 15 per cent of their lifetime contract value).
- 1.7 Eligible asylum seekers still face significant barriers to accessing courses. Due to the fact that they are unable to work and are not in receipt of benefits, they do not fit the GLA's AEB 'unemployed' definition as set out in the respective Funding Rules for Grant Funded and Procured providers and are, therefore, only eligible for co-funding. Many providers have waived the fees where they are able to, but many do not, which represents a considerable financial barrier for learners.

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<sup>1</sup> Under section 95 of the Immigration and Asylum Act 1999, the Home Office can provide housing and financial support to a person who has claimed asylum if they do not have accommodation and/ or cannot afford to meet their essential living needs.

<sup>2</sup> Available at: [https://www.london.gov.uk/sites/default/files/20210802\\_aeb\\_grant\\_funding\\_rules\\_2021-22.pdf](https://www.london.gov.uk/sites/default/files/20210802_aeb_grant_funding_rules_2021-22.pdf)

<sup>3</sup> Available at: [https://www.london.gov.uk/sites/default/files/20210802\\_procured\\_aeb\\_funding\\_rules\\_2019-23.pdf](https://www.london.gov.uk/sites/default/files/20210802_procured_aeb_funding_rules_2019-23.pdf)

- 1.8 This financial barrier significantly limits the accessibility of adult skills provision for asylum seekers, many of whom require English for Speakers of Other Languages (ESOL) support to help their integration into society.
- 1.9 It is therefore proposed that the AEB Grant Funding Rules from the 2021-22 academic year onwards are updated to include full funding for eligible asylum seekers.

#### Three-year ordinary residence waiver for family members of UK and EEA nationals

- 1.10 Family members of EEA and UK nationals were previously eligible to access adult education budget provision without the need to hold three years' ordinary residency. This was removed by the ESFA in the latest version of the ESFA funding rules for adult education budget provision ("ESFA Funding Rules"). The ESFA Funding Rules now require family members of EEA and UK nationals to have been ordinarily resident in the UK or EEA for at least the previous three years on the first day of learning to be eligible for AEB funded provision.
- 1.11 This represented a significant change to the ESFA Funding Rules whereby family members were previously eligible from day one of residence in the UK, provided the principal<sup>4</sup> was themselves an EEA/UK national and had been resident in the UK or EEA for three years prior. This now means dependants, including the partner, parent or adult child of an EEA or UK national would be unable to access AEB funded training that could support them in life or work unless they could justify three years of residency in the UK. Under MD2839, which authorised amendments to the AEB Rules to align with various changes to the ESFA Funding Rules, the GLA implemented this rule change.
- 1.12 Following the changes to the AEB Rules set out in 1.10 above, AEB providers have had to turn away hundreds of potential learners as they are now unable to enrol them onto courses for which they were previously eligible. These learners included many progressing ESOL learners who are now locked out of provision that supports English language development and social integration outcomes. The change also affected learners who are on spousal visas and are survivors of domestic abuse and residing in refuges.
- 1.13 The letter of delegation from the Secretary of State to the Mayor dated 6 December 2018 sets out the powers and functions that are delegated to the Mayor under the Apprenticeship, Skills, Children and Learning Act 2009, and sets out the conditions attached to the delegation. There are no specific restrictions either in this letter or the Memorandum of Understanding between the Mayor and the Secretary of State, on the GLA setting its own residency eligibility funding rules for family members. The letter of delegation provides that the Mayor must adopt rules of eligibility for awards by an institution to which the Mayor makes grants, loans or other payments in accordance with any direction given by the Secretary of State.
- 1.14 In exercising the delegated functions, the Mayor must have regard to guidance issued by the Secretary of State for this purpose (as amended from time to time or as replaced by a subsequent document). Guidance was issued in July 2019, and the Mayor must have regard to this Guidance when making a decision as a condition attached to the delegation. The Guidance does not contain any provision which is inconsistent with the proposal to waive the residency requirement.
- 1.15 It is therefore proposed that, subject to any applicable exemptions above, the AEB Rules for London be amended to reinstate the waiver for family members of an EEA or UK national.
- 1.16 A table of the proposed changes to the AEB Rules can be found in Appendix A.

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<sup>4</sup> The 'principal' refers to the EEA or UK national of whom the prospective learner is a family member.

## **2. Objectives and expected outcomes**

- 2.1 Full funding for eligible asylum seekers resident in London will enable AEB providers to help address the financial barrier to learning for these Londoners. This rule change will also enable AEB Procured providers to fully fund eligible asylum seekers as part of their Flexible Allocation.
- 2.2 Improving access to learning for asylum seekers in London will help to ensure they are able to develop the skills to better integrate in London and contribute to the communities where they live.
- 2.3 Reinstating the three-year ordinary residence waiver for family members of UK and EEA nationals would enable London's AEB providers to return to providing skills and education support to hundreds of adults in London.

## **3. Equality comments**

- 3.1 Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities—of whom the Mayor is one—must have due regard to the need to:
  - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2 Relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 3.3 The Mayor is required to comply with the duty set out above in making any decisions relating to the AEB.
- 3.4 The proposed changes to the AEB Rules will have positive equalities impact for people with relevant protected characteristics. In particular, the proposed changes will support asylum seekers and the family members of UK and EEA nationals, many of whom will have protected characteristics themselves, who with full funding will be better able to participate in education and training. The equalities impact of the GLA AEB funding programme will be kept under ongoing review.

## **4. Other considerations**

- 4.1 There is no additional AEB funding to pay for the proposal to fully fund asylum seekers so this will need to be met within the existing funding settlement to London. While this may mean that there are fewer overall learners supported through the AEB, the risk of this is minimal as many providers already defray the costs of supporting these learners. This change will also have a positive impact on providers who will no longer need to meet the uncovered costs of delivering to these learners, whilst also encouraging those previously unable to meet these expenses to deliver more provision for asylum seekers. To ensure that providers, asylum seekers and support organisations are aware of this new flexibility, the GLA will promote and raise awareness about this proposed change to minimise any confusion among AEB providers.
- 4.2 This proposed change to the AEB Rules supports the objective of the Mayor's Social Integration Strategy to support migrants and refugees by challenging the barriers to social integration they face. It would remove a specific financial barrier faced by asylum seeker communities to participating in and contributing to life in London through education and training. In particular, this will improve access to ESOL courses having a positive impact on the ability of learners to adapt to life in London as a lack of English language proficiency represents a major barrier to social integration.

4.3 While it is also proposed that relevant changes will be made to the Funding Rules for AEB Procured providers to waive the three-year ordinary residency requirement for family members of eligible UK and EEA nationals, there is a risk that not all of the intended beneficiaries of this waiver will be supported. This is because AEB Procured provision has been match funded with ESF and, regardless of the waiver, family members of UK and EEA nationals must themselves be eligible for ESF provision to be supported by AEB Procured providers. To mitigate this, the GLA will make clear that where learners are eligible for AEB provision, but not ESF provision, they can be supported within a provider's Flexible Allocation as set out in the GLA AEB Procured Funding and Performance Management Rules.

4.4 There are no conflicts of interest to note from those involved in the drafting or clearance of this decision form.

## **5. Financial comments**

5.1 This decision requests approval for proposed changes to the GLA AEB Funding and Performance Management Rules in Appendix A from the 2021-22 academic year onwards that:

- enable the full funding of eligible asylum seekers for AEB-funded provision
- waive the requirement for family members of eligible UK and EEA nationals to have three years of ordinary residency to access AEB funded provision.

5.2 There is no additional funding to pay for the proposal to fully fund asylum seekers so this will be met from within the existing AEB funding settlement to London.

## **6. Legal comments**

6.1 The Secretary of State for Education delegated by letter dated 6 December 2018 (the Letter) specified AEB functions to the Mayor of London under Section 39A of the Greater London Authority Act 1999 (GLA Act) from 1 August 2019. A particular limitation of the delegation is that the usual power of delegation by the Mayor is not available in respect of s39A delegated functions. The delegated functions include the provision of financial resources (section 100 (1)) of the Apprenticeships, Skills, Children and Learning Act 2009, to be exercised concurrently with the Secretary of State.

6.2 The Letter sets out at paragraph 7 the conditions on the exercise of the delegated functions, which include that: (1) The Mayor must adopt rules of eligibility for awards by an institution to which the Mayor makes grants, loans or other payments under section 100 of the 2009 Act in accordance with any direction given by the Secretary of State; and (2) in exercising the delegated functions, the Mayor must have regard to guidance issued by the Secretary of State for this purpose (as amended from time to time or as replaced by a subsequent document) – see paragraph 1.14 above.

6.3 Paragraph 3 above sets out the obligation imposed on the Mayor pursuant to the public sector equality duty when making this decision.

## **7. Planned delivery approach and next steps**

| <b>Activity</b>                     | <b>Timeline</b> |
|-------------------------------------|-----------------|
| Update of AEB Funding Rules 2021-22 | November 2021   |
| Promote change to AEB providers     | November 2021   |

### **Appendices:**

Appendix A – Proposed Changes to GLA AEB Funding and Performance Management Rules

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

**Part 1 - Deferral**

**Is the publication of Part 1 of this approval to be deferred? NO**

**Part 2 – Sensitive information**

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form – NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to confirm the following (✓)

**Drafting officer:**

Imman Laksari-Adams has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Halima Khan has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Jules Pipe has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**

This decision was agreed by the Corporate Investment Board on 25 October 2021.

**EXECUTIVE DIRECTOR, RESOURCES: Enver Enver of behalf of David Gallie**

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

**Signature**

**Date**



1/11/21

**CHIEF OF STAFF:**

I am satisfied that this is an appropriate request to be submitted to the Mayor

**Signature**

**Date**



17/11/21