

## Policy 32 Residence and Presence

**Owner: ILF Scotland**

**Subject: Residence and Presence**

**Version: 1.0**

**Last Amended: 1 July 2015**

**Date Reviewed:**

### 1.0 Background

A person must satisfy the following residence and presence requirements:

- (a) he or she is ordinarily resident in Scotland;
- (b) he or she is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999;
- (c) he or she is present in Scotland; and
- (d) he or she has been present in Scotland for a period of not less than 26 of the preceding 52 weeks.

Provided that ILFS shall have discretion to dispense with requirements (c) and/or (d) if in the reasonable opinion of ILFS, it is established that a person's absence from Scotland is and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or it is established that a person's absence from Scotland. is temporary and for the specific purpose of being treated for incapacity or for a disabling condition which commenced before he or she left Scotland.

### 2.0 Policy

All ILF users must satisfy the residence and presence test as outlined above. Where a user does not meet paragraph (c) of the test, but can demonstrate that they are not present only because they are temporarily abroad and the absence does/will not last for a continuous period exceeding 26 weeks, then current payments can continue.

Where a user does not meet paragraph(s) (c) and/or (d) because they have been absent from Scotland for 26 or more of the previous 52 weeks, then ILFS may agree to the continuation of funding if the absence was for treatment or care for their existing "incapacity or disabling condition".

### 3.0 Procedure

Assessor reports should be checked to ensure ongoing eligibility. Where the residence and presence question is answered negatively, case holders should check whether or not payments may be able to continue on the basis of the second part of the test being met. If the absence is temporary or to receive treatment, the case should be referred to the Head of Appeals and Reviews for consideration.

Where the case holder notices that the user is abroad for a continuous period lasting more than 26 weeks in a 52 week period (e.g. because of replacement holiday awards or suspensions), a letter should be sent to the user to establish the reasons for the absence. If enquiries show that the user has not satisfied the residence and presence test, the user is no longer eligible for payments and the award should be suspended.

A user should be informed that if they do not regain eligibility within 3 months of the date of suspension, the file will normally be closed unless they can demonstrate that within a further 3 months eligibility will be restored, in which case the file will remain suspended for a further 3 months. If after this 6 month period the user still has not regained eligibility, the file would normally be closed.

Where a user informs us that they will not meet the residence and presence test and they anticipate this to be a permanent arrangement, e.g. they are moving to live outside Scotland, payments should cease and the file should be closed on the day after they lose eligibility.

### 4.0 Source

### 5.0 History Date Reviewed

1 July 2015