

Policy 32 Residence and Presence Scotland and Northern Ireland

Version: 2

Last Amended: 31 March 2021

Next Review Date: 31 March 2022

1.0 Background

A person must satisfy the following residence and presence requirements:

- (a) he or she is ordinarily resident in Scotland/Northern Ireland (NI)
- (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/NI and
- (d) he or she has been present in Scotland/NI for a period of not less than 26 of the preceding 52 weeks.

Provided that ILF Scotland shall have discretion to dispense with requirements (c) and/or (d) if in its reasonable opinion, it establishes that a person's absence from Scotland/NI:

- is / was from the beginning, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks, or
- is temporary and for the specific purpose of receiving treatment for incapacity or for a disabling condition that began before they left Scotland/NI.

2.0 Policy

All ILF Scotland recipients must satisfy the residence and presence test as outlined above. Where a recipient 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 recipient does not meet paragraph(s) (c) and/or (d) because they have been absent from Scotland/NI for 26 or more of the previous 52 weeks, then ILF Scotland 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

ILF Scotland will check for ongoing eligibility at each review. Depending on how recipients answer the residence and presence question, ILF Scotland will determine if payments can continue. If an absence is temporary or to receive treatment, ILF Scotland’s management team must consider the case for ongoing eligibility.

If a recipient 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), ILF Scotland will establish the reasons for the absence. If the recipient does not satisfy the residence and presence test, they will no longer be eligible and ILF Scotland will suspend the award.

ILF Scotland will close the award after three months if the recipient does not confirm they are eligible again for funding. ILF Scotland can restart the award if the recipient regains eligibility within 3 months of the date of suspension. On exception, it can extend this to a further period of 3 months, to a maximum of 6 months in total.

Where a recipient 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/NI, ILF Scotland will immediately close the award.

4.0 History Date Reviewed

Version 1: 1 July 2015
Version 2: 31 March 2019
Version 3: 31 March 2021