

Policy Circular

Document No 16/07

Owner: Strategy & Communications Directorate

Subject: Residence and Presence

Version: 2 of 2

Last Amended: 10 June 2010

Date Reviewed: 10 June 2010

Next Review: July 2012

Please note: From 17 June 2010 the ILF is closed to new applications.

1.0 Background

In the First Schedule Part II of the ILF 2006 Deed are the Common Eligibility Criteria which apply to all groups of ILF users and applicants.

The third criterion states:

3. A person must satisfy the following residence and presence requirements:
 - (a) he or she is ordinarily resident in the UK;
 - (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 the UK; and
 - (d) he or she has been present in the UK for a period of not less than 26 of the preceding 52 weeks.

Provided that the Trustees shall have discretion to dispense with requirements (c) and/or (d) if in the reasonable opinion of the Trustees, it is established that a

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person's absence from the UK 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 the UK is temporary and for the specific purpose of being treated for incapacity or for a disabling condition which commenced before he or she left the UK."

This policy will split the test into two parts:

- The first part of the residence and presence test means (a), (b), (c) and (d) of the above text.
- The second part of the residence and presence test refers to the last paragraph of the above text which outlines circumstances in which (c) & (d) of the first part of the test can be dispensed with.

2.0 Policy

All ILF users and applicants must satisfy the residence and presence test as outlined above.

Where an applicant or user does not meet (c) of the first test because they are not present in the UK, but can demonstrate that they are not present only because they are temporarily abroad and the absence does not last for a continuous period exceeding 26 weeks, then the application can be accepted or current payments can continue.

Where an applicant or user does not meet (c) and/or (d) of the first test because they are not present in the UK and/or have not been present in the UK for at least 26 of the last 52 weeks, but can demonstrate that they are not present or have not been present as outlined, only because they have been or are being treated for incapacity or for a disabling condition which commenced before he or she left the UK, and the absence is or was a temporary absence, then the application can be accepted or current payments can continue.

3.0 Procedure

Application forms should be checked at the point of receipt to ensure that the residence and presence question (covering a) – d) of the test) has been completed before a visit is allocated. An application should not automatically be rejected if the residence and presence question is answered negatively, the section AA should pass such application forms

to the case holder for them to check whether or not an application can be accepted on the basis of the second part of the test being met.

ILFA reports should also be checked to ensure ongoing eligibility. Where the residence and presence question is answered negatively, case holders should check whether or not payments can continue on the basis of the second part of the test being met.

Where the case holder notices that the user is abroad for a continuous period lasting more than 26 weeks in a 52 week period (eg 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 parts 1 or 2 of 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 an application does not meet the criteria of either the first or the second part of the residence and presence test, the application should be refused.

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

4.0 Source

ILF 2006 Deed

Trustees' Meetings 12 September 2007 & 9 June 2010

5.0 History Date Reviewed

17 December 2007

10 June 2010

Equality Impact Assessment

Screening Template

This preliminary impact assessment form is to help you screen your policy, project, function or new service. It should help you consider whether a full Equality Impact Assessment is required by looking at whether there is a potential negative or positive impact on any of the equality groups, if there is an opportunity to promote equality, and whether further data is needed.

Title of policy, project, function or service:

Residence and Presence

Short description of aims and objectives

The policy explains how the eligibility criteria within the ILF Trust Deed relating to residence and presence within the UK and immigration control should be applied.

Thinking about each group below, does (or could) the policy, project, service or function have an impact on members of each equality group? If so, how?

Equality Group	Yes – negatively	Yes – positively	Unclear	No impact
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Transgender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Socio-economic groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

What information or research has been considered in judging these impacts?

See below.

You should consider a full Equality Impact Assessment (EIA) if:

- (a) you feel one or more equality groups will be negatively impacted by the policy, project or service, or
- (b) there is an opportunity to promote equality and eradicate discrimination.

You may also consider further research if it is unclear, at this stage, what the impact may be.

Based on your findings, is a full EIA required?

Yes

No

Please provide a short summary of your decision-making below:

The ILF Trust Deed sets out the eligibility criteria for ILF users. These include provisions relating to residence and presence within the UK and immigration control. The provisions mirror the residence and presence requirements for various disability benefits.

The content of this policy is a procedural explanation of mandatory provisions and does not include any decisions made by the Trustees or ILF management.

The Trustees do have discretion to continue payments where a person is (a) temporarily absent from the UK for a period not exceeding 26 weeks or (b) temporarily absent from the UK for the specific purpose of being treated for incapacity or a disabling condition. Their discretion is limited to deciding whether either of these two exceptions applies.

Notes:

- The completed EIA Screening Template should be sent to Jon Duckworth, User Liaison Manager for approval by the Equality Impact Assessment Board (EIAB).
- We will contact you with any comments or queries about the completed form.

**This form was
completed by:**

Michael Beacroft