

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (PERSONAL INDEPENDENCE PAYMENT) REGULATIONS
2013

2013 No.

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument provides the legislative detail to support the introduction of Personal Independence Payment (PIP) under powers taken at Part 4 of the Welfare Reform Act 2012 (c5)ⁱ (“the Act”). PIP will replace Disability Living Allowance (DLA) for people aged 16 to 64 from 8 April 2013 onwards.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This instrument is directly related to two further instruments. The Personal Independence Payment (Transitional Provisions) Regulations 2013, available as a working draft which may be subject to further revision (see Annex A), will provide for transitional arrangements in respect of assessing existing recipients of DLA for entitlement to PIP and for claimant responsibilities in that regard. The Social Security (Personal Independence Payment) (Consequential and Supplementary Provisions) Regulations 2013, currently being drafted, will provide for consequential and supplementary arrangements and amendments resulting from the introduction of PIP. Both these instruments are subject to the negative resolution procedure and will be made and laid early in 2013.

3.2 The Committee’s attention is also drawn to the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 and the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013. These Regulations provide the legal framework for the manner of claiming and administering PIP and changing decisions and managing appeals. The Claims and Payments Regulations, which are subject to the negative procedure, will be made and laid early in 2013ⁱⁱ. The Decision and Appeals Regulations, which are subject to the affirmative procedure, were laid in draft in Parliament on 10 December 2012ⁱⁱⁱ.

4. **Legislative Context**

4.1 Part 4 of the Act provides the framework for a new benefit, PIP, designed to help disabled people meet the additional costs arising from a long-term health condition or disability. This instrument is the first set of Regulations to establish the detailed rules and entitlement conditions for PIP.

5. **Territorial Extent and Application**

This instrument applies to Great Britain.

6. European Convention on Human Rights

Esther McVey, the Minister for Disabled People, has made the following statement regarding human rights:

“In my view the provisions of the Social Security (Personal Independence Payment) Regulations 2013 are compatible with the Convention Rights.”

7. Policy background

- *What is being done and why*

7.1 On 6 December 2010 the Government published a consultation document, *Disability Living Allowance reform (Cm 7984)*^{iv}, which set out its intention to replace DLA with a new benefit for disabled people, PIP. The consultation made clear that introducing PIP, rather than modifying DLA, would enable the new benefit to maintain some of the key principles of DLA, such as its tax-free, non means-tested nature, while delivering cash support in a fair, consistent and sustainable manner. There has been a great deal of public, Parliamentary and media interest in these proposals which has helped shape and finalise provisions within the Act and within this instrument and associated instruments.

7.2 DLA was introduced in 1992 and built on the rules developed for disability benefits introduced in the 1970s. It was designed to help disabled people meet the extra costs associated with their condition. DLA is no longer in step with the needs of disabled people in the 21st Century, has proved to be complex and confusing and lacks objective assessment criteria and systematic checking processes. Around 70 per cent of the current caseload are on indefinite awards with no mandatory checks in place or other arrangements which ensure regular contact with the Department for Work and Pensions. These features have resulted in an unsustainable growth in caseload and expenditure. In the last 10 years the number of people receiving DLA has risen by almost 40 per cent from just under 2.4 million to 3.2 million and expenditure for 2012/13 is estimated to be over £13.5 billion^v.

7.3 As for DLA currently, the purpose of PIP is to provide a cash contribution to individuals to help them meet the additional costs they face as a result of a long-term health condition or disability.

7.4 At the centre of the Government's proposals for PIP is the development of a transparent and objective assessment which considers people as individuals and assesses their entitlement to the benefit fairly and consistently. PIP is made up of two components, daily living and mobility, both paid at one of two rates, standard or enhanced. Individuals can receive either or both of these components. The assessment for entitlement to the two components looks at individuals' ability to carry out a range of key everyday activities that are fundamental to daily life. Ten of these activities relate to entitlement to the daily living component and two to the mobility component. When considering someone's ability to undertake an activity, the assessment will take account of any aids and appliances an individual may need to use in order to complete the activity and also where people need support from another person, such as supervision, prompting or assistance. Priority in the benefit will go to those individuals who are least able to complete the activities and/or who need the most support to do so.

7.5 The coming into force of these Regulations is dependent on the commencement of the substantive provisions of Part 4 of the Act (Regulation 1(2)). The reason for this is that

the Government's intention is to have a two-stage roll out of PIP for new claimants. The first stage will commence on 8 April 2013 to people living in postcodes which will be set out in the Commencement Order (broadly people living in the North West and part of the North East of England) and then rolled out nationally on 10 June 2013 for all other new claimants.

7.6 In addition to features of DLA which have been taken forward into PIP under provisions in the Act, this instrument brings forward provisions which: allow claimants to retain entitlement to PIP beyond their 65th birthday or retirement age, whichever is the higher; withdraw payment of both components after 28 days where claimants enter a publicly funded hospital; withdraw the daily living component where claimants enter publicly funded residential care; and provide for rules around residence and presence and periods abroad.

7.7 Other than the assessment criteria and award duration described there is one other provision which is new to PIP: benefit provision for prisoners. In order to avoid duplication of payment when prisoners have their disability-related costs met by the appropriate custodial body and/or health authority, provisions will see payment of benefit ceasing once someone has been detained in legal custody for 28 days irrespective of the outcome of the proceedings against them. Maintaining payment of the benefit for 28 days in these circumstances allows for a continued but limited contribution towards any outstanding disability-related expenditure, for example home heating bills.

- ***Consolidation***

7.8 As these are the first Regulations made under the powers in the Act there is no requirement for consolidation.

8. Consultation outcome

8.1 There have been three formal consultations and one informal consultation on the introduction of PIP. Initial proposals for the reform of DLA, including the high-level principles of the PIP assessment criteria, were first consulted on between 6 December 2010 and 18 February 2011^{vi}. Prior to the publication of this consultation a series of Ministerial and official stakeholder meetings and roundtable events were held to help inform the high level proposals contained within the consultation. A first draft of the detailed proposals for the assessment criteria and regulations were published in May 2011 and were subject to informal consultation between 16 May 2011 and 30 August 2011, including a series of discussions with disabled people and the organisations that represent them. A second draft of the assessment criteria were published in November 2011 followed by a further formal consultation from 16 January to 30 April 2012^{vii}. A formal consultation was also published on the detailed rules underpinning PIP which ran from 26 March to 30 June 2012^{viii}.

8.2 In total around 8,200 responses to the formal consultations were received, including nearly 7,400 responses from individuals. Over half of responses from individuals were standard responses^{ix}. The Government published its response to the first consultation on 4 April 2011^x and to the further two consultations on 13 December 2012^{xi}, including an assessment of the responses against the policy proposals put forward.

8.3 In addition to these formal and informal consultations the Government published a series of briefing notes^{xiii} and additional material to support understanding of the proposals and how they would be delivered. Throughout the development of the policy proposals and

implementation plans, the Government has worked extensively with disabled people, disability organisations and wider stakeholders. The Government also invited the Social Security Advisory Committee to contribute to the consultations and have been providing them with regular updates on the development of the policy detail.

8.4 As a result of these consultations and ongoing engagement with disabled people and the organisations that represent them, the Government has made a number of changes to the provisions both within the Act and the Regulations:-

- The required period condition was modified^{xiii} so that the proposed qualifying period was reduced from six to three months and the prospective test extended to nine months, maintaining an overall 12 month required period condition in line with definitions of long-term disability used in the Equality Act 2010^{xiv};
- The Government continued to receive comments in relation to withdrawing the mobility component for care home residents, as a result of which they were persuaded that the measure was not necessary^{xv};
- Substantive changes to the assessment activities following consultations on the first two drafts:
 - Taking into account specialist orientation aids such as long canes in the mobility component.
 - Broadening the approach to aids and appliances by, in certain cases, including generic aids that are not specially designed for use by disabled people.
 - The “Communicating activity” has been divided into two – ‘Communicating verbally’ and ‘Reading and understanding signs, symbols and words’. This has been done to ensure that individuals who have difficulty with both verbal communication and reading are given appropriate priority in the benefit.
 - The “Moving around” activity has been re-written to make it easier to understand and use and also to make the policy intent clearer.
- Allowing for a temporary absence abroad of up to 13 weeks (or up to 26 weeks if the absence is specifically for medical treatment) rather than the four weeks originally proposed for DLA, Attendance Allowance, Carer’s Allowance and PIP. This change is intended to address concerns about term-time absences for students studying abroad, disabled people needing more time to travel and recuperate and younger people spending holidays abroad with relatives.
- In response to concerns that a universal one year linking period would impact on those with fluctuating conditions, such as Multiple Sclerosis, PIP will adopt the existing DLA rules which allow for a two year linking period for people under the age of 65 and a one year linking period for those over 65. Linked claims will not have to re-satisfy the qualifying period for any component previously awarded where the condition giving rise to entitlement is substantially the same as for the earlier award.

9. Guidance

9.1 The PIP Implementation Stakeholder Forum^{xvi}, and its sub-groups, comprising representatives from over 60 support organisations of and for disabled people, has engaged with the Department for Work and Pensions to help inform thinking and further development of PIP delivery arrangements. This has included detailed implementation products including PIP information for claimants, such as a leaflet specifically for younger people, decision notifications and a toolkit of materials for independent advisers. The Forum has also been involved in work to design the forms used by the claimant to articulate how their disability affects them. The Department is continuing to engage with the Forum on other areas of future design, continuous improvement and guidance for assessors. There has also been considerable work with claimants to gain their insight first-

hand. These approaches are helping ensure the implementation products meet the needs of disabled people as far as possible.

9.2 Guidance is being developed for Department staff to support the PIP delivery arrangements. Publicly available information is already being made available on the DWP website^{xvii}, including materials directly aimed at advisers^{xviii}, and the new Government services and information website^{xix}.

10. Impact

10.1 There is no impact on business or civil society organisations. The Government has worked closely with Motability, a charity, and Motability Operations, a not-for-profit organisation which runs the Motability scheme^{xx}, to ensure that the introduction of PIP can continue to provide vehicles and powered wheelchairs or scooters to people who meet the qualifying criteria^{xxi}.

10.2 The impact on the public sector is negligible. Administrative arrangements to provide passports to other schemes and benefits, such as the Blue Badge scheme and concessionary travel, are being maintained wherever possible and in line with policy decisions made by the Government Departments or Devolved Administrations administering those benefits and schemes.

10.3 An updated Impact Assessment was published in May 2012^{xxii}. Additional caseload impacts will be made available shortly.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions will carry out a comprehensive programme of monitoring and evaluation using a range of methods and sources and making links, where possible, with the evaluation of Universal Credit. The Department has published an outline of its evaluation proposals^{xxiii} including detailing that the evaluation themes will cover:-

- Claimant experiences of PIP;
- Implementation and delivery;
- Claimant outcomes (e.g. the relationship between employment and PIP); and
- The effectiveness of the decision-making, reconsiderations and appeals processes.

12.2 Section 89 of the Act also provides for two biennial, independent reviews within the first four years of the implementation of PIP assessment: the first to report within two years beginning with the date on which the first assessment regulations come into force, and the second within four years of that date. The Government has also committed to undertake a third independent review if the second demonstrates ongoing issues with the operation of the assessment^{xxiv}.

13. Contact

13.1 Lorna Fraser, lorna.fraser@dwp.gsi.gov.uk, 020 7449 5597, or Phil Joseph,

phil.joseph@dp.gov.uk, 020 7449 5289, at the Department for Work and Pensions can answer any queries regarding the instrument.

ⁱ www.legislation.gov.uk/ukpga/2012/5/part/4

ⁱⁱ These Regulations are available in draft from: www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-act-2012/welfare-reform-regulations/

ⁱⁱⁱ The Regulations, as laid in draft in Parliament, are available on www.legislation.gov.uk or from www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-act-2012/welfare-reform-regulations/

^{iv} www.dwp.gov.uk/consultations/2010/dla-reform.shtml. The consultation closed on 18 February 2011.

^v Benefit Expenditure and Caseload tables, as updated on 30 July 2012: research.dwp.gov.uk/asd/asd4/index.php?page=expenditure

^{vi} *Disability Living Allowance reform* (Cm 7984): <http://www.dwp.gov.uk/consultations/2010/dla-reform.shtml>. This consultation was shorter than the recommended duration of 12 weeks as the Government were consulting on general principles only and made clear their intention to further consult on specific details as they were developed.

^{vii} *Personal Independence Payment: assessment thresholds and consultation:*

www.dwp.gov.uk/consultations/2012/pip.shtml

^{viii} *DLA reform and Personal Independence Payment – completing the detailed design:*

www.dwp.gov.uk/consultations/2012/pip-detailed-design.shtml

^{ix} A standard response was defined as two or more emails or letters that contained the same text, but were signed by different individuals.

^x www.dwp.gov.uk/docs/dla-reform-response.pdf

^{xi} The responses are available from the PIP page on the DWP website: www.dwp.gov.uk/pip

^{xii} www.dwp.gov.uk/policy/disability/personal-independence-payment/briefing-notes/

^{xiii} Hansard, 17 January 2012, Col 549-550: www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0003.htm#12011769000223

^{xiv} www.legislation.gov.uk/ukpga/2010/15/contents

^{xv} Hansard, 17 January 2012, Col 559 to 562: www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0003.htm#12011769000240

^{xvi} The Forum also comprised sub-groups, such as the Young Persons Panel, to examine specific issues.

^{xvii} www.dwp.gov.uk/pip

^{xviii} www.dwp.gov.uk/policy/disability/personal-independence-payment/information-for-advisers/

^{xix} www.gov.uk

^{xx} The Motability scheme (www.motability.co.uk) provides vehicles and powered wheelchairs and scooters to qualifying disabled people in receipt of the higher rate mobility component of DLA or a War Pensions Mobility Supplement.

^{xxi} The enhanced rate of the PIP mobility component will provide access to a Motability vehicle.

^{xxii} www.dwp.gov.uk/docs/dla-reform-wr2011-ia.pdf

^{xxiii} Available from: www.dwp.gov.uk/policy/disability/personal-independence-payment/

^{xxiv} Hansard, 17 January 2012, Columns 568 to 569:

www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0003.htm#12011769000243

Annex A

This Annex contains a working draft of regulations on the transitional arrangements for assessing existing recipients of Disability Living Allowance for entitlement to Personal Independence Payment. These relate to Part 4 and Schedule 10 of the Welfare Reform Act 2012.

These regulations remain a working draft and amendments may be made at a later stage. These regulations, when finalised, will be subject to Parliamentary control in the normal way.

[Draft]

2013 No.

SOCIAL SECURITY

**The Personal Independence Payment (Transitional Provisions)
Regulations 2012**

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - [8th April] 2013

The Secretary of State, in exercise of the powers conferred by section 93 and 94 of and Schedule 10 to the Welfare Reform Act 2012, hereby makes the following regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Personal Independence Payment (Transitional Provisions) Regulations 2012 and come into force on [8th April] 2013.

2.—(1) In these regulations:

“the Act” means the Welfare Reform Act 2012;

“the 1987 Regulations” means the Social Security (Claims and Payments) Regulations 1987;

“the 1991 Regulations” means the Social Security (Disability Living Allowance) Regulations 1991;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992;

“the 1998 Act” means the Social Security Act 1998;

“the 1999 Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

“the Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 201X;

“the PIP Regulations” means the Social Security (Personal Independence Payment) Regulations 201X;

“the Decisions and Appeals Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 201X;

“appropriate office” has the meaning given by regulation 3 (interpretation) of the Claims and Payments Regulations;

“assessment determination” means the determination, under regulation 4 (assessment of ability to carry out activities) of the PIP Regulations, of a claim for personal independence payment made by a transfer claimant;

“change of circumstances” means a change of circumstances which the person might reasonably be expected to know might affect the continuance of entitlement to disability living allowance (by ending entitlement to one component or both components or resulting in entitlement to one or both components being at a different rate);

“component”, in relation to disability living allowance, means one of the components of disability living allowance referred to in section 71 (disability living allowance) of the 1992 Act;

“disability living allowance” means the benefit known by that name that is provided for in sections 71 to 76 of the 1992 Act;

“DLA entitled person” means a person aged 16 or over who is entitled to either component or both components of disability living allowance;

“electronic communication” has the meaning given by paragraph (1) of section 15 (general interpretation) of the Electronic Communications Act 2000;

“notified person” means a DLA entitled person who has been sent a notification by the Secretary of State under regulation 3(1);

“pay day”, in relation to disability living allowance, means—

- (a) in the case of a payment of disability living allowance in respect of a period to which paragraph (2) of regulation 25 of the 1987 Regulations applies, the day on which the payment is made in accordance with paragraph (1) of that regulation;
- (b) in the case of any other payment of disability living allowance, the day on which the allowance is payable in accordance with paragraph 1 of Schedule 6 (days for payment of long term benefits) to the 1987 Regulations.

“transfer claimant” means a person who is either—

- (a) a notified person who has claimed personal independence payment in response to a notification sent by the Secretary of State under regulation 3(1), or
- (b) a voluntary transfer claimant;

“voluntary transfer claimant” means a DLA entitled person who has claimed personal independence payment under regulation 4.

(2) For the purpose of these regulations, except regulations 8, 12 and 16—

- (a) a claim for personal independence payment is made—
 - (i) in the case of a claim made in writing other than by means of an electronic communication, on the day on which a form, authorised by the Secretary of State for the purpose, containing all the information requested in the form is delivered to or received at the appropriate office,
 - (ii) in the case of a claim made in writing by means of an electronic communication made in accordance with the provisions set out in Part 2 of Schedule 2 (use of electronic communications) to the Claims and Payments Regulations, on the day on which an electronic communication containing all the information requested by the Secretary of State in the form referred to in paragraph (i), or completing that information, is received at the appropriate office, and
 - (iii) in the case of a claim made by telephone, on the day on which a telephone call takes place during which all the information requested

by the Secretary of State in the form referred to in paragraph (i) is supplied or which results in all that information having been supplied; and

(b) references to the making of a claim do not include the making of a defective claim.

(3) The Claims and Payments Regulations, the PIP Regulations and the Decisions and Appeals Regulations apply to the claims for personal independence payment referred to in these Regulations except where—

(a) these Regulations provide otherwise, or

(b) the application of those Regulations would be inconsistent with the application of these Regulations.

Invitations to persons entitled to disability living allowance to claim personal independence payment

3.—(1) At any time after 6th October 2013, the Secretary of State may by written notification invite a DLA entitled person to make a claim for personal independence payment.

(2) The Secretary of State must not send a notification under paragraph (1) to any person who, on 8th April 2013, was 65 or over.

(3) The Secretary of State must send a notification under paragraph (1) to a DLA entitled person who reaches 16 after 6th October 2013 as soon as reasonably practicable after the person reaches that age.

(4) Paragraph (3) does not apply to a DLA entitled person whose entitlement, on the day that the person reaches 16, is on the basis that the person is terminally ill within the meaning given by subsection (2) of section 66 (attendance allowance for the terminally ill) of the 1992 Act.

(5) Where, after 6th October 2013, a DLA entitled person who has neither—

(a) been sent a notification under paragraph (1), nor

(b) made a claim for personal independence payment under regulation 4

notifies the Secretary of State of a change of circumstances, the Secretary of State must, as soon as reasonably practicable, send the person a notification under paragraph (1).

Claims by persons entitled to disability living allowance for personal independence payment other than by invitation

4.—(1) A DLA entitled person who has not been sent a notification under regulation 3(1) may make a claim for personal independence payment unless—

(a) the person was 65 or over on 8th April 2013, or

(b) paragraph (2) prevents the claim from being made.

(2) No claim for personal independence may be made by a DLA entitled person before 7th October 2013.

Persons under 16 not entitled to claim personal independence payment

5.—(1) No claim for personal independence payment may be made by a person who has not reached 16.

(2) Paragraph (1) applies whether or not a person is entitled to disability living allowance.

Persons in the course of claiming disability living allowance barred from claiming personal independence payment

6.—(1) This regulation applies to a person who is not entitled to disability living allowance if—

- (a) the person claimed disability living allowance before 7th October 2013, and
- (b) that claim remains under consideration on that date.

(2) A person to whom this regulation applies may not claim personal independence payment while the person's claim for disability living allowance remains under consideration.

(3) For the purpose of this regulation a person's claim for disability living allowance remains under consideration only if it has not—

- (a) been decided by the Secretary of State under section 8 (decisions by the Secretary of State) of the Social Security Act 1998,
- (b) been withdrawn in accordance with regulation paragraph (2) of regulation 5 (amendment and withdrawal of claim) of the 1987 Regulations, or
- (c) otherwise ceased to be under consideration before being decided by the Secretary of State as mentioned in subparagraph (a).

Form of notification inviting a person to claim

7.—(1) A notification to a DLA entitled person under regulation 3(1) inviting the person to claim personal independence payment must—

- (a) explain that the person's entitlement to disability living allowance will end if the person does not claim personal independence payment,
- (b) state the date of the last day of the period within which the person should claim personal independence payment, that period being one of 28 days starting with the day that is the date of notification given in it,
- (c) tell the person how to claim personal independence payment,

and may contain such additional guidance and information as the Secretary of State considers appropriate.

Making a claim following notification

8.—(1) In this regulation and regulation 9 “the claim period” means the period of 28 days referred to in regulation 7(1)(b).

(2) For the purposes of this regulation a claim, whether or not it is defective as mentioned in paragraph (3) or (4) of regulation 11[CP11] (making a claim for personal independence payment) of the Claims and Payments Regulations, must be made in accordance with and by a means set out in paragraph (a), (b) or (c) of that regulation and is made—

- (a) in the case of a claim made in writing, other than by means of an electronic communication, on a form authorised by the Secretary of State, when it is delivered to or received at the appropriate office,
- (b) in the case of a claim in writing made by means of an electronic communication in accordance with the provisions set out in Part 2 of Schedule 2 to the Claims and Payments Regulations, the date on which the claim is received at the appropriate office, and
- (c) in the case of a claim made by telephone, when the telephone call takes place.

(3) Neither paragraph (6) of regulation 11 of the Claims and Payments Regulations nor paragraph (2) of regulation 12(CP31) (date of claim for personal independence payment) of those Regulations shall apply in relation to a claim made by a notified person but—

- (a) in a case where the claim is defective as mentioned in paragraph (3) or (4) of the said regulation 11, the Secretary of State must extend the claim period by a period of 28 days, or such longer period as the Secretary of State thinks fit, starting with the day following the last day of the claim period, and
- (b) in any other case the Secretary of State may extend the claim period by such further period as the Secretary of State thinks fit.

(4) The duty in paragraph (3)(a) and power in paragraph (3)(b) to extend the claim period may be exercised before the claim period would otherwise have expired or after it has expired.

(5) The Secretary of State may further extend a claim period extended under paragraph (3) either before the extended period would have expired or after it has expired.

(6) Where the claim period has been extended under paragraph (3), the Secretary of State must treat the claim as properly made if a claim is made—

- (a) before the end of the period by which the claim period was extended or further extended, and
- (b) in accordance with any instructions of the Secretary of State as to the way in which the claim is to be completed.

Suspension of disability living allowance where no claim made

9.—(1) Where a notified person makes no claim for personal independence payment before the end of the claim period or, where applicable, that period as extended under regulation 8(3) or (5), the person’s entitlement to disability living allowance shall be suspended.

(2) The suspension shall take effect on the first pay day after the last day of the claim period or, where applicable, of that period as extended or further extended.

Further opportunity to claim

10.—(1) The Secretary of State must send any notified person in relation to whom regulation 9 takes effect a notice in writing informing the person—

- (a) that the person's entitlement to disability living allowance will be or has been suspended,
- (b) of the day on which the suspension takes or took effect, and
- (c) that the person's entitlement to disability living allowance will be terminated unless the person makes a claim for personal independence payment before the end of the period of 28 days beginning with the day on which the suspension takes or took effect.

(2) The Secretary of State must send a notice under paragraph (1) before, on or as soon as practicable after the day on which the suspension takes effect in accordance with regulation 9(2).

(3) Where a notice is sent to a notified person under paragraph (1), and the person makes a claim for personal independence payment before the end of the period specified in paragraph (1)(c), the person's entitlement to disability living allowance shall be reinstated as if the suspension of the entitlement had never taken effect.

Termination of entitlement to disability living allowance following failure to claim personal independence payment

11.—(1) Where a notice is sent to a notified person under paragraph 10(1) and the person makes no claim for personal independence payment before the end of the period specified in regulation 10(1)(c), the person's entitlement to disability living allowance shall terminate with effect from the day on which the suspension of the person's entitlement took effect in accordance with regulation 9(2).

(2) The Secretary of State must send any person in relation to whom paragraph (1) takes effect a notice in writing—

- (a) informing the person that the person's entitlement to disability living allowance has terminated and of the date on which the termination took effect, and
- (b) explaining that it is no longer possible for the person's entitlement to disability living allowance to be reinstated but that it remains open to the person to claim personal independence payment.

Defective claims by voluntary transfer claimants

12.—(1) This regulation applies in relation to a claim for personal independence payment by a voluntary transfer claimant if—

- (a) the claim was defective as mentioned in paragraphs (3) or (4) of regulation 11 of the Claims and Payments Regulations, and
- (b) no claim completed in accordance with the instructions of the Secretary of State is received within the period of one month or longer which applies under paragraph (6) of that regulation.

(2) Where this regulation applies—

- (a) regulation 9(1) shall apply to the voluntary transfer claimant as if the claimant were a notified person who has failed to claim before the end of the claim period, and
- (b) for the purpose of that regulation the claim period for the voluntary transfer claimant shall be treated as ending on the last day of the period of one month or longer referred to in paragraph (6) of regulation 11 of the Claims and Payments Regulations,

and regulations 9(2), 10 and 11 shall apply as if the voluntary transfer claimant were a notified person.

Failure to provide information etc.

13.—(1) Where, in relation to a claim for personal independence payment made by a transfer claimant—

- (a) a negative determination is made under regulation 8 (information or evidence required for determining limited or severely limited ability to carry out activities) of the PIP Regulations or paragraph (2) of regulation 9 (claimant may be called for consultation to determine whether the claimant has limited or severely limited ability to carry out activities) of those Regulations, or
- (b) there is a determination by the Secretary of State that the transfer claimant has—
 - (i) unreasonably failed to comply with a requirement imposed on the claimant by the Secretary of State under regulation 35[CP40] (attendance in person) of the Claims and Payments Regulations, or
 - (ii) failed to comply with a requirement imposed on the claimant by the Secretary of State under regulation 37(1)[CP36] (evidence and information in connection with a claim) of the Claims and Payments Regulations,

the transfer claimant's entitlement to disability living allowance shall terminate with effect from the day falling 14 days after the day on which the determination is made.

(2) Where—

- (a) for any reason an assessment determination is made on a claim by a transfer claimant in respect of which there has been a determination referred to in paragraph (1)(a) or (b) (for example, because the determination is revised by the Secretary of State under section 9 of the 1998 Act or there is a successful appeal in respect of the determination under section 12 of that Act), and

- (b) personal independence payment is awarded to the transfer claimant

the transfer claimant shall be entitled to personal independence payment in accordance with regulation 17(2)(b).

Express intention not to claim personal independence payment

14.—(1) This regulation applies where a DLA entitled person who has not made a claim for personal independence payment informs the Secretary of State, whether in writing or by telephone, that the person does not intend to claim personal independence payment.

(2) Where this regulation applies the person's entitlement to disability living allowance shall terminate with effect from the day falling 14 days after the day on which the person so informs the Secretary of State provided that the Secretary of State is satisfied that the person was told, before the person informed the Secretary of State of the person's intention not to claim personal independence payment, that the person's entitlement to disability living allowance would terminate if the person expressed that intention.

Withdrawal of claims

15. Where a claim for personal independence payment is withdrawn by a transfer claimant under regulation 31 (withdrawal of claim) of the Claims and Payments Regulations before an assessment determination is made in relation to it, the claimant's entitlement to disability living allowance shall terminate with effect from the day falling 14 days after the day on which the claim is withdrawn.

Death before or after making claim

16.—(1) Where a notified person dies before making a claim for personal independence payment the law relating to the person's entitlement to disability living allowance shall apply as if the notification had never been sent.

(2) Where a transfer claimant dies—

- (a) before any assessment determination is made in relation to the claimant's claim, or
- (b) where an assessment determination is made in relation to the claim, before the day on which the claimant becomes entitled to personal independence payment in accordance with regulation 17(2),

the claim shall be treated as if it had never been made and, if the transfer claimant is a notified person, as if no notification under regulation 3(1) had been sent.

Procedure following and consequences of determination of claim for personal independence payment

17.—(1) Upon an assessment determination being made on a claim by a transfer claimant—

- (a) the Secretary of State must, as soon as practicable, send the claimant written notification of the outcome of the determination, and

- (b) the claimant's entitlement to disability living allowance shall terminate, except where paragraph (2) of regulation 13 applies to the claimant, on the last day of the period of 28 days starting with the first pay day after the making of the determination.

(2) Where the outcome of an assessment determination is an award in respect of either or both components of personal independence payment, the claimant's entitlement to personal independence payment starts with effect from the day immediately following—

- (a) the day referred to in paragraph (1)(b), or
- (b) where paragraph (2) of regulation 13 applies to the claimant, the day immediately after that on which the claimant's entitlement to disability living allowance terminated under regulation 13(1).

(3) The notification referred to in paragraph (1) must state—

- (a) except where paragraph (2) of regulation 13 applies to the claimant, the day on which the claimant's entitlement to disability living allowance will terminate in accordance with paragraph (1)(b), and
- (b) if personal independence payment is awarded, the day on which the claimant's entitlement to personal independence payment starts in accordance with paragraph (2).

Extension of fixed term period awards of disability living allowance for under 16s

18.—(1) Where there is an award of disability living allowance to a DLA entitled person and —

- (a) the award is in respect of both components for a fixed term period or in respect of one component only and for a fixed term period,
- (b) the person reaches 16 after 6th October 2013, and
- (c) the fixed term period expires in the period starting with the day before the person reaches 16 and ending with the day before the person reaches 16 years and 6 months,

the fixed term period shall be extended.

(2) Subject to these Regulations, a fixed term period extended under paragraph (1) shall expire, and the person's entitlement to disability living allowance shall terminate, on the day before the person reaches 17.

Extension of fixed term period awards of disability living allowance for others

19.—(1) Where there is an award of disability living allowance to a DLA entitled person and—

- (a) the award is in respect of both components for a fixed term period or in respect of one component only and for a fixed term period,

- (b) regulation 18(1) does not apply, and
- (c) the Secretary of State considers that the fixed term period may expire before an assessment determination can be made,

the Secretary of State may extend the period by such further period as the Secretary of State considers appropriate.

(2) The Secretary of State may extend a fixed term period under paragraph (1)—

- (a) regardless of whether the person has yet made a claim for personal independence payment, and
- (b) on more than one occasion.

(3) Subject to these Regulations, a fixed term period so extended shall expire, and the person's entitlement to disability living allowance shall terminate, on the last day of the period by which the Secretary of State extended or last extended it.

Notifications of change of circumstances

20.—(1) This regulation applies where—

- (a) a person notifies the Secretary of State of a change of circumstances, and
- (b) paragraph (3), (4) or (5) applies.

(2) If this regulation applies—

- (a) the notification shall not be regarded as relating to disability living allowance and neither section 10 (decisions superseding earlier decisions) nor any other provision of the 1998 Act shall apply, and
- (b) the notification to the Secretary of State must be treated in all respects as if it were a notification under paragraph (4) of regulation 38[CP37] (evidence and information in connection with an award) of the Claims and Payments regulations of a change of circumstances which the person might reasonably be expected to know might affect the continuance of entitlement to personal independence payment.

(3) This paragraph applies where a notified person notifies the Secretary of State of a change of circumstances before the person makes a claim for personal independence payment.

(4) This paragraph applies where a transfer claimant notifies the Secretary of State of a change of circumstances.

(5) This paragraph applies where a DLA entitled person notifies the Secretary of State of a change of circumstances and, as a result, the Secretary of State is required by regulation 3(5) to send a notification under regulation 3(1) inviting the person to claim personal independence payment.

Extinguishment of rights of appeal etc. under disability living allowance regime

21.—(1) No suspension, termination or reinstatement of a person's entitlement to disability living allowance that takes place by virtue of the application of these Regulations is to be regarded as a decision of the Secretary of State to which section 8 (decisions by the Secretary of State) or 10 (decisions superseding earlier decisions) of the 1998 Act applies, and accordingly—

- (a) no revision by the Secretary of State may take place in relation to the suspension, termination or reinstatement under section 9 (revision of decisions) of that Act, and
- (b) no right of appeal in respect of the suspension, termination or reinstatement is to be available to the person under section 12 (appeal to appeal tribunal) of that Act.

Extinguishment of right to claim disability living allowance

22.—(1) No person may claim disability living allowance who is—

- (a) entitled to personal independence payment, or
- (b) entitled to claim personal independence payment.

(2) Paragraph (1) does not apply to a person whose award of disability living allowance is of—

- (a) both components, where the award in respect of either or both is for a fixed term period, or
- (b) one component only, where the award is for a fixed term period,

if, before 7th October 2013, the person has been notified by the Secretary of State that, because the fixed term period is due to come to an end, the person needs to claim disability living allowance again if the person wishes to continue to be entitled to disability living allowance in respect of the component or components subject to the fixed term period.

Assessment of claim: transfer claimants to be taken to meet part of required period condition

23.—(1) In applying the required period condition under Part 3 (required period condition) of the PIP Regulations to a claim by a transfer claimant or by a person to whom paragraph (2) or (3) applies, the claimant shall be regarded as meeting such of the conditions contained in the following provisions of Part 3 (which relate to a claimant's abilities in the past) as are relevant to the claim regardless of whether those conditions have been met—

- (a) in regulation 12 (required period condition: daily living component), paragraph (1)(a) or (2)(a),
- (b) in regulation 13 (required period condition: mobility component), paragraph (1)(a) or (2)(a).

(2) This paragraph applies to a person claiming personal independence payment who—

- (a) was aged under 65 on 8th April 2013,

- (b) was not entitled to disability living allowance on the day the claim was made but was so entitled on the day falling twenty four months before that day or at any time between those days, and
- (c) is not a person to whom paragraph (3) applies.

(3) This paragraph applies to a person claiming personal independence payment who—

- (a) was aged 65 or over on the day the claim was made, and
- (b) was not entitled to disability living allowance on that day but was so entitled on the day falling twelve months before that day or at any time between those days.

Assessment of claim: date by reference to which assessment is to be made

24. In applying the required period condition under Part 3 of the PIP Regulations to a claim by a transfer claimant the “prescribed date” referred to in—

- (a) paragraphs (1) and (2) of regulation 12 of those Regulations, and
- (b) paragraphs (1) and (2) of regulation 13 of those Regulations,

is the date on which the claim is made.

Treatment of persons in hospital or care home during transfer to personal independence payment

25.—(1) This regulation applies to a transfer claimant awarded personal independence payment who—

- (a) on the day on which the claimant’s entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b)—
 - (i) meets the condition in paragraph (1) of regulation 8 (hospitalisation) of the 1991 Regulations, or
 - (ii) is a person to whom the care component of disability living allowance is not payable under paragraph (1) of regulation 9 (persons in care homes) of the 1991 Regulations

but to whom the care component is nevertheless payable in respect of that day by reason of the application of paragraph (1) of regulation 10 (exemption from regulation 8 and 9) of the 1991 Regulations,
and

- (b) on the day on which the claimant’s entitlement to personal independence payment starts in accordance with regulation 17(2), meets the condition in paragraph (2) of section 85 (care home residents) of the Act or paragraph (2) of section 86 (hospital in-patients) of the Act.

Temporary absence from Great Britain when transfer claimant becomes entitled to personal independence payment

26.—(1) This paragraph applies to a transfer claimant awarded personal independence payment if, on the day that the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), the claimant would otherwise be temporarily absent from Great Britain but is treated as present in Great Britain by virtue of—

- (a) paragraph (2A) of regulation 2 (conditions as to residence and presence in Great Britain) of the 1991 Regulations, because the first 13 weeks of absence referred to in that regulation have not expired, or
- (b) paragraph (2B) of regulation 2 of the 1991 Regulations, because the first 26 weeks of absence referred to in that regulation have not expired.

(2) In applying regulation 17[RP3] (absence from Great Britain) of the PIP Regulations to a transfer claimant to whom paragraph (1)(a) applies, the period—

- (a) starting with the first day on which the claimant was treated as present in Great Britain by virtue of regulation 2(2A) of the 1991 Regulations, and
- (b) ending with the day on which the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b)

shall be counted towards the 13 weeks of absence referred to in regulation 17 of the PIP Regulations.

(3) In applying regulation 18[RP4] (absence from Great Britain to receive medical treatment) of the PIP Regulations to a transfer claimant to whom paragraph (1)(b) applies the period—

- (a) starting with the first day of absence for the purpose of regulation 2(2B) of the 1991 Regulations, and
- (b) ending with the day on which the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b)

shall be counted towards the 26 weeks of absence referred to in regulation 18 of the PIP Regulations.

Persons over 65 to be entitled to personal independence payment in certain circumstances

27.—(1) Section 83(1) (persons of pensionable age) of the Act does not apply to a person to whom this regulation applies.

(2) This regulation applies to a person who—

- (a) had not reached 65 on 8th April 2013,
- (a) is a DLA entitled person, and
- (b) claims personal independence payment—

- (i) in response to a notification sent to the person by the Secretary of State under regulation 3(1), or
- (ii) under regulation 4.

(3) This regulation also applies to a person who—

- (a) had not reached 65 on 8th April 2013,
- (b) claims personal independence payment, and
- (c) is not entitled to disability living allowance on the day the claim is made but was so entitled on the day falling twelve months before that day or at any time between those days.

Persons unable to act: claims

28.—(1) This regulation applies where, immediately before any claim for personal independence payment is made by or on behalf of a person entitled to disability living allowance, there is a person (“the appointed person”)—

- (a) appointed by the Secretary of State in accordance with paragraph (1) of regulation 33 (persons unable to act) of the 1987 Regulations,
- (b) treated, by virtue of paragraph (1A) of the said regulation 33, as being a person appointed by the Secretary of State in accordance with paragraph (1) of that regulation, or
- (c) appointed by the Secretary of State in accordance with paragraph (1), (5) or (6) of regulation 43 (children) of the 1987 Regulations,

to exercise rights on behalf of the person entitled to disability living allowance and receive and deal with any sums payable to that person.

(2) Where this regulation applies the appointed person shall be regarded as acting on behalf of the person entitled to disability living allowance for the purposes of the making and pursuit of a claim for personal independence payment under these Regulations and, where applicable, the Claims and Payments Regulations.

Persons unable to act: transfer to personal independence payment

29.—(1) This regulation applies if a transfer claimant is awarded personal independence payment and, on the day that the person’s entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), there is a person (“the appointed person”) who, under paragraph (2) of regulation 28, is to be regarded as acting on behalf of the claimant for the purposes set out in that paragraph.

(2) Where this regulation applies then, with effect from the first day on which the transfer claimant is entitled to personal independence payment in accordance with regulation 17(2), the appointed person shall be treated as being a person appointed by the Secretary of State in accordance with regulation 57(1)[CP54] (persons unable to act) of the Claims and Payments

Regulations to exercise rights on behalf of the transfer claimant and receive and deal with any sums payable to the transfer claimant.

Draft

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain transitional provisions for the phasing out of the benefit known as disability living allowance (“DLA”) and its replacement by the new benefit provided for in the Welfare Reform Act 2012 known as personal independence payment (“PIP”). In particular they provide for the Secretary of State to invite people entitled to DLA (“a DLA entitled person”) to transfer to PIP and for them to lose their entitlement to DLA if they do not do so. The Regulations also enable people entitled to DLA to transfer to PIP voluntarily.

Regulation 3 has the effect that, as from 7th October 2013, the Secretary of State may send a notification inviting any DLA entitled person aged 16 or more to claim PIP unless they were 65 or more on 8th April 2013. As from the same date, Regulation 4 enables any DLA entitled person within that age range who has not had an invitation from the Secretary of State to apply for PIP voluntarily.

Regulation 5 ensures that DLA entitled persons are not entitled to claim PIP when they are under 16, while regulation 6 prevents people from claiming PIP while they are in the process of claiming DLA.

Regulation 7 sets out what a notification given under regulation 3 needs to contain.

Regulation 8 provides that a DLA entitled person notified under regulation 3 should claim PIP within 28 days but makes provision for the Secretary of State to extend that period if no claim is made or a claim is defective. Regulation 9 provides that if no claim is made within the 28 days or the extended period that has been allowed, the person’s entitlement to DLA is suspended as from the first “pay day” for DLA purposes that falls after the end of the 28 day period or of that period as extended.

Regulation 10 provides that the Secretary of State must send a notice to a person whose entitlement to DLA has been suspended telling the person that the person’s entitlement to DLA will terminate unless the person claims PIP within 28 days of the day when the suspension took effect. If the person claims PIP within that period, the person’s entitlement to DLA is reinstated as if it had not been suspended. Regulation 11 provides that if no claim is made the person’s entitlement to DLA terminates with effect from the day on which the suspension of that entitlement took effect under regulation 9.

Regulation 12 applies the provisions of regulations 9, 10 and 11 to persons who voluntarily make a claim for PIP but whose claim is defective and who do not make a proper claim within the period allowed under regulation 9.

Regulation 13 has the effect that where a DLA entitled person claiming PIP is required to provide information or attend a meeting about the person’s claim and the Secretary of State determines that the person has failed to do so, the person’s entitlement to DLA ends 14 days after the date of the determination.

Regulation 14 has the effect that if a DLA entitled person who has not claimed PIP informs the Secretary of State that the person does not intend to claim it, the person’s entitlement to DLA ends 14 days later provided that the person had been told, before the intention was expressed, that the person’s entitlement to DLA would end if it was expressed.

Regulation 15 has the effect that where a DLA entitled person withdraws a claim for PIP the person's entitlement to DLA ends 14 days after the withdrawal.

Regulation 16 deals with cases where a DLA entitled person dies after receiving a notification under regulation 3 but before claiming PIP or after claiming PIP but before becoming entitled to PIP.

Regulation 17 provides that when an assessment determination is made on a claim by a DLA entitled person, the person must be informed of the outcome. Whether the person is awarded PIP or not, the person's entitlement to DLA ends on the last day of the 28 day period starting with the person's first "pay day" for DLA purposes that falls after the assessment determination. If the person is awarded PIP the person's entitlement to PIP starts on the day immediately after that on which entitlement to DLA ends.

Regulation 18 has the effect that where a person entitled to DLA for a fixed term period reaches 16 and the fixed term expires before the person reaches 16 years and 6 months the fixed term is automatically extended until the day before the person reaches 17 unless the person's entitlement to DLA terminates because of the operation of other provisions in the Regulations; for example, where an assessment determination is made on the person's claim.

Regulation 19 gives the Secretary of State power to extend the fixed term periods that apply to other DLA entitled persons where they may expire before an assessment determination is made.

Regulation 20 provides that where a DLA entitled person who has received a invitation to claim PIP under regulation 3, or is in the course of claiming PIP, notifies the Secretary of State of a change in circumstances that may affect the person's entitlement to DLA the notification is to be treated as if was a notification in relation to PIP and not DLA.

Regulation 21 prevents any legal proceedings being brought under the Social Security Act 1998 to challenge a termination of entitlement to DLA that takes place because of the operation of the Regulations.

Regulation 22 has the effect that, except in narrowly defined circumstances, a person is barred from claiming DLA if the person is entitled to claim PIP or is entitled to PIP.

Regulation 23 provides that DLA entitled persons claiming PIP do not have to meet that part of the required period condition that normally requires claimants to meet the assessment criteria for the three month period before the date by reference to which the assessment is carried out.

Regulation 24 provides that for DLA entitled persons claiming PIP the date by reference to which the assessment on the claim is to be carried out is the date on which the person claimed PIP.

Regulation 25 makes provision for the case where a DLA entitled person is in a care home or in hospital, but to whom DLA is nevertheless payable, becomes entitled to PIP.

Regulation 26 makes provision for the case where a DLA entitled person is absent from Great Britain, but is nevertheless entitled to DLA, becomes entitled to PIP.

Regulation 27 allows persons aged to become entitled to PIP when they are over 65 if they are under that age on 8th April 2013.

Regulations 28 and 29 apply where there is a person appointed to exercise rights on behalf of a DLA entitled person and receive and deal with DLA payments. The regulations ensure that the appointed person is entitled to claim PIP on behalf of the DLA entitled person and, if PIP is awarded, that the appointed person is treated as an appointed person for PIP purposes.

Draft