

# WELFARE REFORM ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Personal independence payment**

358. The Act replaces disability living allowance with a new cash benefit called personal independence payment. The purpose of the benefit is to contribute to the extra costs of overcoming the barriers faced by long-term disabled people to leading full and active lives.
359. Personal independence payment will consist of two components – the daily living component and the mobility component. For each component there will be two rates – standard and enhanced. Entitlement to either of the components (and the applicable rate) will be determined with reference to a new objective assessment, the details of which will be set out in secondary legislation.
360. The new assessment will assess the ability of an individual to perform specified activities and will take into account the impact of physical, sensory, mental, intellectual and cognitive impairments on the individual in undertaking the specified activities.
361. Personal independence payment is to be a non-contributory benefit, and is neither taxable nor means-tested.

#### ***Section 77: Personal independence payment***

362. *Section 77* sets out the basic structure and certain conditions of entitlement to personal independence payment. Entitlement to personal independence payment may be an entitlement to either, or both, of the daily living and mobility components of the benefit. *Subsection (3)* provides that a person is not entitled to personal independence payment unless they satisfy prescribed conditions of residence and presence in Great Britain.

#### ***Section 78: Daily living component***

363. *Section 78* sets out the entitlement conditions to the different rates of the daily living component of personal independence payment.
364. *Subsection (1)* provides that a person is entitled to the standard rate of the daily living component if their ability to carry out daily living activities is limited by their physical or mental condition. If a person's ability is severely limited by their physical or mental condition *subsection (2)* provides for that person to be entitled to the enhanced rate. Whether an individual has limited ability or severely limited ability will be determined by an assessment set out in regulations made under *section 80*. Sensory, intellectual and cognitive impairments may be relevant to a person's physical or mental condition and therefore to the question of whether the person's ability to carry out daily living activities is limited or severely limited.
365. *Subsections (1)(b)* and *(2)(b)* provide that to be entitled to either the standard or enhanced rate of the daily living component, the person must also meet the required period condition. This is outlined in the notes relating to *section 81*. The required period

condition also applies where personal independence payment is subject to review, subject to certain exceptions which will be set out in regulations under powers in [section 81](#).

- 366. *Subsection (3)* provides that the standard and enhanced rates are weekly rates which are to be specified in regulations.
- 367. *Subsection (4)* provides for the activities relating to the daily living component – “daily living activities” – to be prescribed in regulations. It is envisaged that these may include, but not be limited to, activities relating to accessing food and drink; managing personal health needs; managing personal care needs; and communication. The first regulations under this subsection will be subject to the affirmative resolution procedure.
- 368. *Subsection (5)* refers to [sections 80](#) and [81](#) which set out how a person’s ability to carry out daily living activities is to be assessed and how the required period condition operates.
- 369. *Subsection (6)* makes clear that this section is subject to other provisions of Part 4, or to regulations under it, for example in circumstances when the person is terminally ill (see [section 82](#)).

### ***Section 79: Mobility component***

- 370. *Section 79* sets out basic entitlement conditions to the different rates of the mobility component of personal independence payment.
- 371. *Subsection (1)* provides that a person is entitled to the standard rate of the mobility component if they are of or over an age prescribed in regulations and if their ability to carry out mobility activities is limited by their physical or mental condition. If a person’s ability is severely limited by their physical or mental condition and they are over an age prescribed in regulations *subsection (2)* provides for that person to be entitled to the enhanced rate. Whether an individual has limited ability or severely limited ability will be determined by an assessment set out under [section 80](#). Sensory, intellectual and cognitive impairments may be relevant to a person’s physical or mental condition and therefore to the question of whether the person’s ability to carry out mobility activities is limited or severely limited.
- 372. *Subsections (1)(c)* and *(2)(c)* provide that to be entitled to either the standard or enhanced rate of the mobility component, the person must also meet the required period condition. This is outlined in the notes relating to [section 81](#). The required period condition also applies where personal independence payment is subject to review, subject to certain exceptions which will be set out in regulations made under powers in [section 81](#).
- 373. *Subsection (3)* provides that the standard and enhanced rates are weekly rates which are to be specified in regulations.
- 374. *Subsection (4)* provides for the activities relating to the mobility component – “mobility activities” – to be prescribed in regulations. It is envisaged that these may include, but not be limited to, activities relating to the ability of the individual to get around both inside and outside their home. The ‘mobility activities’ could include, for example, planning a journey or using transport. The first regulations under this subsection will be subject to the affirmative resolution procedure.
- 375. *Subsection (5)* refers to [sections 80](#) and [81](#) which set out how a person’s ability to carry out mobility activities is to be assessed and how the required period conditions operate.
- 376. *Subsection (6)* makes clear that this section is subject to other provisions of Part 4, or to regulations under it. For example if a person is over pensionable age, it is not normally the case that they would be entitled to the mobility component.

377. *Subsection (7)* provides that regulations may specify when a person is not entitled to the mobility component for a period, despite fulfilling the eligibility requirements. For example, while a person in a coma or vegetative state clearly has severely limited mobility they would not be in a position to benefit from mobility assistance.

***Section 80: Ability to carry out daily living activities or mobility activities***

378. The section provides for the making of regulations to determine the main conditions of entitlement to the two components of personal independence payment. For the purposes of personal independence payment a new assessment and process will be developed. *Subsection (1)* provides for the questions whether an individual's ability to carry out daily living activities or mobility activities is limited or severely limited by their physical or mental condition to be determined in accordance with regulations. This then determines which of the components a person is entitled to, and whether that person is entitled to the standard or enhanced rate for each component. Under *subsection (2)* regulations must also make provision for determining whether a person meets the required period condition. Further details on the required period condition can be found in section 81.
379. *Subsection (3)* provides for regulations to be made about what is considered during the assessment process to determine entitlement to each component and rate, and how the assessment is to be carried out. This will involve considering and weighting a person's ability to perform prescribed activities. Prescribed thresholds will determine entitlement to each component and rate. The activities, how they will be measured, their weightings and the component thresholds will all be prescribed in regulations. Regulations may also provide for the assessment process not to be applied in prescribed circumstances.
380. As information and evidence will be required and sought at various stages in a claim, *subsection (4)* allows regulations to specify which sources of information are appropriate (for example, evidence or information from the individual themselves; the individual's General Practitioner, supporting healthcare professionals, social workers etc.), along with details as to how and when information or evidence is to be provided. Most individuals will be asked to attend a face-to-face consultation with a trained independent assessor, such as a healthcare professional.
381. Under *subsection (5)* regulations can provide for the consequences of failure without good reason to comply with a requirement imposed under subsection (4) e.g. a failure to provide information or evidence or to participate in a face-to-face consultation. In the event of such a failure, a negative determination can be applied to an individual's claim if there is no good reason for the failure. Regulations will provide for what is considered to be good reason.
382. *Subsection (6)* defines the term "negative determination" used in subsection (5)(a).

***Section 81: Required period condition: further provision***

383. *Section 81* makes further provision about the making of regulations to determine whether a person meets the required period condition. The required period condition will generally be that it is likely that the individual would have met the condition of limited or severely limited ability to carry out daily living activities or (as the case may be) mobility activities during the three months before the date they would become entitled (the qualifying period) and that there is an expectation that they will meet that condition for a further nine months following that date (the prospective test). The qualifying period can include a period before the claim is made.
384. It is intended that the required period condition must be met both when a claim is made and at any review; this will be set out in regulations.

385. *Subsection (4)* allows for the required period condition to be altered in certain cases, for instance to allow the qualifying period to be disapplied where there has been a short break in entitlement.

### ***Section 82: Terminal illness***

386. *Section 82* makes provision about entitlement for people who are terminally ill (as defined in *subsection (4)*) who make a claim to personal independence payment expressly on the grounds that they are terminally ill.
387. *Subsection (2)* automatically entitles a terminally ill person to the enhanced rate of the daily living component, as defined in section 78, and accordingly removes the requirement for them to undergo an assessment or to meet the required period condition. *Subsection (3)* disapplies the required period condition for the mobility component. However a terminally ill person is not automatically entitled to the mobility component and will have to satisfy the other conditions of entitlement for that component.
388. *Subsection (4)* defines a person as being terminally ill for the purposes of this section if the person can reasonably be expected to die from a progressive disease within the next 6 months.
389. *Subsection (5)* provides that where a claim is made on behalf of a terminally ill person, the terminally ill person is regarded as making the claim, notwithstanding that the claim is made without their knowledge or authority. The intention is to allow terminally ill people to be able to benefit from personal independence payment whether or not they know their prognosis.

### ***Section 83: Persons of pensionable age***

390. *Section 83* concerns entitlement to the daily living or mobility components for persons of pensionable age. *Subsection (1)* provides that a person is not entitled to either the daily living component or the mobility component after they reach the relevant age. *Subsection (2)* defines the relevant age as the age of 65 or pensionable age (as defined in paragraph 1 of Schedule 4 to the Pensions Act 1995), whichever is higher.
391. *Subsection (3)* provides that regulations may specify exceptions to this. For example, regulations may provide that if a person is in receipt of personal independence payment before reaching the relevant age, they may continue to receive this benefit.

### ***Section 84: No entitlement to daily living component where UK is not competent state***

392. *Section 84* provides that entitlement to the daily living component is limited to people for whom the United Kingdom is the competent state for payment of cash sickness benefits under either of the European Union Regulations mentioned in *subsection (2)*.
393. This provision is intended to prevent a person who comes to the United Kingdom from another Member State of the European Economic Area or Switzerland, and for whom another Member State is the competent State for payment of sickness benefits (because the person is insured for sickness benefits there), being entitled to the daily living component of personal independence payment (irrespective of whether they meet the domestic entitlement conditions under the Act). This is primarily to prevent a person receiving double provision of benefits.

### ***Section 85: Care home residents***

394. *Section 85* relates to the payability of personal independence payment when a person is a resident of a care home (which includes certain residential schools and colleges).
395. *Subsections (1)* and *(2)* provide that if a person is a resident in a care home, and receives “qualifying services” (as defined in *subsection (4)*), which are paid for to any extent

out of public or local funds, regulations may provide that no amount of the daily living component of personal independence payment is payable to the person for the period in question. However, persons will retain an underlying entitlement to the benefit and payment can be reinstated when they leave the care home, providing they continue to satisfy the entitlement conditions.

396. Payment of the care component only ceases where the funding (in part or in full) comes from public funds or local funds. For example, it does not apply to people who pay all of the cost of their care and accommodation themselves or to those whose care costs are met by relatives or charities.
397. It is intended that the regulations will provide that generally for the first 28 days after a claimant becomes a resident in a care home, they will continue to receive the existing daily living component to cover continuing costs. This approach also avoids interference with a claimant's award during short periods of respite care in a care home. Payment of any mobility component will continue as normal.

### ***Section 86: Hospital in-patients***

398. *Section 86* relates to the payability of personal independence payment when a person is an in-patient of a hospital or similar institution.
399. *Subsections (1) and (2)* provide that if a person is receiving treatment as an in-patient in a hospital or similar institution and any costs of treatment or accommodation or related costs are borne from public funds, regulations may provide that no amount of the daily living or mobility components of personal independence payment is payable to the person for the period in question. However, persons will retain an underlying entitlement to the benefit and payment can be reinstated when they leave the hospital or similar institution, providing they continue to satisfy the entitlement conditions.
400. Payment of the respective components only ceases where the funding (in part or in full) comes from public funds. For example it does not apply to people who are private patients, or to those whose costs are met by relatives or charities.
401. It is intended that the regulations will provide that generally for the first 28 days after a claimant becomes an in-patient of a hospital or similar institution, they will continue to receive the existing benefit to cover continuing costs. This approach also avoids interference with a claimant's award during short periods of hospitalisation.

### ***Section 87: Prisoners and detainees***

402. With a view to avoiding duplication of funding, *section 87* provides that personal independence payment ceases to be payable to those imprisoned or detained in legal custody. Regulations may make exceptions to this general rule in certain circumstances.

### ***Section 88: Claims, awards and information***

403. *Subsection (1)* of *section 88* sets out that a person cannot establish entitlement to personal independence payment for a period before they make or are treated as making a claim.
404. *Subsections (2) and (3)* set out that an award of personal independence payment will normally be for a fixed period except where the person making the award considers that a fixed term award would be inappropriate (in which case an award would be made for an indefinite period). The person making the award is required to have regard to guidance issued by the Secretary of State in deciding on the appropriateness or otherwise of a fixed term award. A fixed or indefinite period award applies to the benefit as a whole rather than to either component of it.

405. *Subsection (4)* ensures that all information supplied for the purposes of personal independence payment is social security information for the purposes of data-sharing. This subsection covers, for example, medical information relating to a claimant.

### ***Section 89: Report to Parliament***

406. *Section 89* provides that the operation of assessments for personal independence payment (see section 80) will be the subject of two biennial independent reports prepared by a person appointed by the Secretary of State. The Secretary of State is required to lay the first report within two years of the regulations under section 80 coming into force, and the second within four years.

### ***Section 90: Abolition of disability living allowance***

407. *Section 90* provides for the repeal of sections 71 to 76 of SSCBA 1992, which are the key provisions relating to disability living allowance. It does not provide for the immediate abolition of disability living allowance and will be brought into force on such day as the Secretary of State may appoint in accordance with *section 140(3)*. There is no time period in which the disability living allowance provisions must be repealed, it will be done as and when the entire caseload moves over to personal independence payment.

### ***Section 91: Amendments***

408. *Section 91* gives effect to Schedule 9 which contains amendments relating to Part 4.

### ***Schedule 9: Amendments relating to Part 4***

#### **Transport Act 1982**

409. Section 70 of the Transport Act 1982 allows the Secretary of State to make money available to people who apply for medical certificates in relation to exemptions from the obligation to wear seat belts. One such category of persons is those in receipt of disability living allowance. *Paragraph 1* adds persons in receipt of personal independence payment.

#### **Child Support Act 1991**

410. Section 8 of the Child Support Act 1991 makes an exception to the limitations on courts making maintenance orders in relation to a child who receives disability living allowance. *Paragraph 2* adds someone in receipt of personal independence payment to that exception.

#### **Social Security Contributions and Benefits Act 1992**

411. *Paragraph 4* amends section 30B in relation to the benefit rate for incapacity benefit. This currently provides that those who terminally ill or in receipt of the highest rate of the care component of disability living allowance are entitled to a particular rate of incapacity benefit. The amendment extends this provision to include personal independence payment at a rate to be designated by regulations.
412. *Paragraph 5* amends section 64 to provide that entitlement to attendance allowance is not permitted where a person is entitled to personal independence payment so that a person does not become entitled to both benefits.
413. Disability living allowance is a qualifying benefit for the purpose of eligibility for a Christmas bonus. *Paragraph 6* amends section 150 so as to make personal independence payment a qualifying benefit for that purpose.

## **Social Security Administration Act 1992**

414. Section 1 of SSAA 1992 provides that entitlement to benefits is dependent upon a person making a claim in such manner and at such time as the Secretary of State may prescribe. *Paragraph 8* extends the scope of the benefits that are subject to this provision to include personal independence payment.
415. Section 5 of SSAA 1992 provides that specified benefits are subject to regulations in relation to claims, payments and the provision of information. *Paragraph 9* extends the scope of the benefits that are subject to this provision to include personal independence payment.
416. Section 71 of SSAA 1992 provides that where a specified benefit has been subject to an overpayment through a misrepresentation or a failure to disclose information that overpayment may be recoverable by the Secretary of State. *Paragraph 10* extends the scope of the benefits that are subject to this provision to include personal independence payment.
417. Section 73 of SSAA 1992 provides that benefit payment can be adjusted where another benefit is payable to a person or where a person is in hospital. Disability living allowance is such a benefit; *paragraph 11* adds personal independence payment but excludes it from the provisions applying to hospitals as powers have already been taken at section 86 to adjust benefit in these circumstances.
418. Section 121DA of SSAA 1992 sets out the provisions that fall within the definition of “the relevant social security legislation” in Part 6 of the Act, which relates to enforcement. The provisions relating to disability living allowance fall within that definition; *paragraph 12* extends the definition to include Part 4 of the Act.
419. Sections 122B and 122C of SSAA 1992 apply to the supply of Government information for various purposes including the prevention of fraud, the purpose of verification and the administration of benefits. Information supplied under those sections is, by virtue of the amendments made by *paragraphs 13 and 14*, to be capable of being further disclosed for the purposes of any civil or criminal proceedings relating to Part 4 of the Act.
420. *Sections 124 and 125* relate to registrations of birth, marriage and death where evidence of such an event is necessary for the purpose of benefit administration. The provisions relating to disability living allowance are within the ambit of sections 124 and 125. *Paragraphs 15 and 16* extend the ambit of those sections to Part 4 of the Act.
421. Under SSAA 1992, the Secretary of State has an obligation to review the amount paid in benefits, which allows for benefit uprating. Section 150 makes provision for which amounts are to be reviewed. For disability living allowance this is currently provided under section 150(1)(b); *paragraph 17* extends this to provide the same for personal independence payment.
422. Section 159 of SSAA 1992 provides that if there is an alteration in the figures which affect a person’s income for the purposes of income support, then any consequent change in the amount of income support which is payable takes effect automatically without the need for a decision by an adjudication officer. Disability living allowance is relevant by virtue of the definition of “benefit income”; *paragraph 18* adds personal independence payment to that definition.
423. Section 160 of SSAA 1992 extends the process begun by section 159 of taking routine adjustments in the amount of income support out of the ordinary mechanism for review. *Paragraph 22* extends the scope to personal independence payment.
424. Sections 159A and 160A of SSAA 1992 have the same effect as sections 159 and 160 but relate to jobseeker’s allowance. *Paragraphs 19 and 23* extend the scope of these provisions to personal independence payment.

*These notes refer to the Welfare Reform Act 2012  
(c.5) which received Royal Assent on 8 March 2012*

425. Section 159B of SSAA 1992 has the same effect as section 159 but relates to state pension credit. *Paragraph 20* extends the definition of “benefit income” to include personal independence payment.
426. Sections 159C and of 160B of SSAA 1992 have the same effect as section 159 and 160 but relate to employment and support allowance. *Paragraphs 21 and 24* extend the scope of these provisions to include personal independence payment.
427. Section 165 of SSAA 1992 makes provision for adjustments between the National Insurance Fund and the Consolidated Fund. *Paragraph 25* amends section 165(1)(a) (iii) so that it applies to personal independence payment.
428. Section 170 of SSAA 1992 makes provision for referring matters to the Social Security Advisory Committee, including consideration and advice on questions relating to the operation of any of the relevant enactments. *Paragraph 26* makes an insertion to include personal independence payment under the definition of “the relevant enactments” and “the relevant Northern Ireland enactments”.
429. Section 179 of SSAA 1992 provides a power to make orders to modify or adapt legislation in its application to cases affected by agreements with the government of a country outside the United Kingdom in matters set out under this section. The modifications that may be made include in relation to the subject matter of disability living allowance; *paragraph 27* makes an amendment to include the subject matter of personal independence payment.
430. Section 180 of SSAA 1992 enables the Secretary of State to pay travelling expenses in connection with requirements for claimants to attend interviews in connection with benefits. *Paragraph 28* provides that personal independence payment will be relevant for this purpose.
431. Section 182B of SSAA 1992 provides that the Secretary of State or the Northern Ireland Department may require the Post Office to provide details relating to the redirection of post to either the Secretary of State or the Department for use in the prevention, detection, investigation or prosecution of offences relating to social security, or for use in checking the accuracy of information relating to benefits, contributions or any other matter relating to social security and amending or supplementing such information. Subsection (5) prohibits that information from being supplied to anyone else unless it could either be supplied under subsection (1) or (2) of that section, or where it is supplied for the purpose of civil or criminal proceedings relating to a range of legislation including SSCBA 1992 which includes provisions relating to disability living allowance. *Paragraph 29* adds Part 4 of this Act to the list of legislation.
432. Section 184 of SSAA 1992 enables regulations to be made requiring persons to be examined periodically and to furnish information required for the purposes of such examination, in connection with suspension from or suitability for employment in an occupation where a person has been found to suffer from or to be at risk of pneumoconiosis. It also enables regulations to be made disqualifying a person from benefit if they fail without good cause to comply with such requirements. *Paragraph 30* amends section 184(c) to include personal independence payment as a benefit that can be subject to disqualification under this section.
433. A person is prevented from assigning or charging benefit to a trustee or other person acting on behalf of the beneficiary’s creditors under section 187 of SSAA 1992. *Paragraph 31* makes provision for personal independence payment to be included.
434. *Paragraph 32* extends the definition of “benefit” in SSAA 1992 to include personal independence payment.
435. Part 1 of Schedule 7 to SSAA 1992 lists regulations which do not require prior submission to Social Security Advisory Committee. The weekly rates of disability living allowance are set out in regulations which do not need to be referred to the



Committee; [paragraph 33](#) adds a similar provision for the regulations which will set out the weekly rates of the components of personal independence payment.

### **Social Security (Recovery of Benefits) Act 1997**

436. The Social Security (Recovery of Benefits) Act 1997 provides for the recovery of benefits paid to those who are injured or made ill from those who cause personal injury or disease. [Paragraph 35](#) applies these provisions to personal independence payment.
437. [Schedule 2](#) to the Act makes provision for how benefits should be taken into account for different heads of compensation. [Paragraph 36](#) amends that Schedule to include references to personal independence payment.

### **Social Security Act 1998**

438. Section 2 of SSA 1998 provides that decisions, determinations and assessments in relation to specified benefits may be issued by someone acting on behalf of the Secretary of State or by a computer that they are responsible for. [Paragraph 38](#) extends the scope of the benefits that are subject to this provision to include personal independence payment.
439. Section 8 of SSA 1998 provides that decisions on any claim to a specified benefit or under a specified enactment are to be made by the Secretary of State. [Paragraph 39](#) extends the scope of the benefits that are subject to these provisions to include personal independence payment. As a result of this amendment, provisions in relation to changing a decision (by way of revision or supersession) and rights of appeal are also extended to include personal independence payment.
440. Section 11 of SSA 1998 allows for provision to be made in regulations with respect to decisions made by the Secretary of State in relation to specified legislation. [Paragraph 40](#) extends the scope of the legislation to include Part 4 of the Act.
441. Sections 27 and 28 of SSA 1998 allow for restrictions on entitlement to benefit made under specified enactments in circumstances relating to cases of error following an appeal to the Upper Tribunal or to the courts and correcting accidental errors or setting aside decisions where it appears justifiable to do so. [Paragraphs 41 and 42](#) extend the scope of the legislation to include personal independence payment and the legislation under which it is created.
442. [Schedule 3](#) to SSA 1998 makes clear that decisions on payability of the care component of disability living allowance when someone is in a care home are subject to rights of appeal. [Paragraph 43](#) ensures that similar decisions for the purposes of personal independence payment under section 85 are also subject to rights of appeal.

### **Immigration and Asylum Act 1999**

443. Section 115 of the Immigration and Asylum Act 1999 excludes certain people subject to immigration control from receiving certain benefits. One of these is disability living allowance, and the amendment in [paragraph 44](#) extends the exclusion to personal independence payment.

### **Social Security Fraud Act 2001**

444. SSFA 2001 makes provision in relation to obtaining and disclosing information, restricting payment of social security benefits in the case of persons convicted of offences relating to such benefits and for related purposes. These provisions currently apply to disability living allowance; [paragraphs 46 and 47](#) provide that the same provisions will apply to personal independence payment so that it is included in the definitions of “disqualifying benefit”, “sanctionable benefit” and “social security benefit” for the purposes of particular provisions of that Act.

### **Income Tax (Earnings and Pensions) Act 2003**

445. *Section 677* and Part 1 of Schedule 1 of the Income Tax (Earnings and Pensions) Act 2003 provide that disability living allowance is wholly exempt from income tax. *Paragraphs 49 and 50* similarly sets out that the personal independence payment is exempt from income tax.

#### ***Section 92: Power to make supplementary and consequential provisions***

446. *Section 92* enables regulations to make consequential, supplementary or incidental provision relating to Part 4 of the Act.
447. Regulations under this section may amend, repeal or revoke any relevant primary or secondary legislation already existing or amend or repeal any provision of an Act passed in the same Parliamentary session, and will be subject to the negative resolution procedure in Parliament.

#### ***Section 93: Transitional***

448. *Section 93* provides for transitional arrangements for the coming into force of Part 4 of the Act.
449. *Subsection (1)* provides a general power allowing the Secretary of State to make transitional arrangements through regulations such as he considers necessary or expedient. *Subsection (2)* gives effect to *Schedule 10*.

#### ***Schedule 10: Personal independence payment: transitional***

450. *Schedule 10* makes more detailed provision as to how the general regulation-making power in section 90 may be exercised.
451. *Paragraph 1* allows regulations to make provision relating to the replacement of disability living allowance with personal independence payment. The “appointed day” means the date that section 75 comes into force.
452. *Paragraph 2* contains provisions relating to claims made before the personal independence payment provisions come into effect. *Sub-paragraph (1)(a)* enables a claim for personal independence payment to be made before the appointed day. *Sub-paragraph (1)(b)* allows a claim for personal independence payment made before the appointed day to be treated as a claim for disability living allowance. This might be used if the person making the claim fell into a group which had yet to begin the transition process. *Sub-paragraph (1)(c)* allows for a claim for disability living allowance made before the appointed day to be treated as a claim for personal independence payment, which could be used if an individual submits a claim for disability living allowance shortly before the introduction of personal independence payment.
453. *Sub-paragraph (2)* allows for an award of personal independence payment to be made in respect of a period before the appointed day. This might be used if a person made a claim to disability living allowance shortly before the appointed day, and their claim was treated as a claim to personal independence payment and an award was made in respect of that period.
454. *Paragraph 3* contains provisions relating to claims made after the appointed day. It allows for a phased transition from disability living allowance to personal independence payment.
455. Claimants may not be able to move voluntarily from disability living allowance to personal independence payment. *Sub-paragraph (1)(a)* provides that regulations may exclude temporarily or permanently anyone receiving disability living allowance from making a claim for personal independence payment. The power to exclude a person permanently could be used, for example, where a claimant is approaching state pension

age and so will soon not meet the conditions of entitlement for personal independence payment.

456. *Sub-paragraph (1)(b)* allows for a temporary delay before a person can make a claim for personal independence payment. *Sub-paragraph (1)(c)* allows for a person to be excluded from entitlement temporarily or for a particular period.
457. *Sub-paragraphs (1)(d)* and *(1)(e)* allow for a claim for personal independence payment to be treated as a claim for disability living allowance and for a claim for disability living allowance to be treated as a claim for personal independence payment during the transitional period. This may apply particularly in cases where the claimant is excluded from claiming personal independence payment under sub-paragraph (1)(a).
458. *Sub-paragraph (2)* allows for an award of personal independence payment to be made in respect of a period before the appointed day. This follows the provision in paragraph 2(2) with the same effect for claims during the transitional period. It enables provision to be made on the conditions of entitlement to, and the amount of, an award, in such a situation.
459. *Paragraph 4* enables regulations to make provision relating to ongoing awards of disability allowance and the making of awards for personal independence payment.
460. *Sub-paragraph (1)* allows for the termination of an award of disability living allowance and the making of an award of personal independence payment in its place. An award of personal independence payment may be made with or without the claimant having to apply.
461. Under *sub-paragraphs (2)(a)* and *(b)* regulations may require claimants to follow a certain procedure, provide information or undergo an assessment before a new award of personal independence payment begins, and may set out the consequences if a person fails to do so.
462. *Sub-paragraph (2)(c)* allows for regulations temporarily or permanently to alter the conditions of entitlement for people moving onto personal independence payment. This means that some people who are entitled to disability living allowance but would not otherwise meet the conditions of entitlement for personal independence payment could be treated as entitled to personal independence payment.
463. The sub-paragraph also allows for regulations temporarily or permanently to alter the conditions of entitlement for the assessment set out in subsections (1) and (2) of section 78.
464. *Sub-paragraph (2)(d)* enables regulations to make provision for the amount of an award of personal independence payment made by virtue of paragraph 4.
465. *Paragraph 5* enables regulations to disregard any gap in entitlement to disability living allowance in cases where the exercise of the power to make transitional regulations would otherwise be prevented. Paragraph 5 also enables provision to be made modifying the operation of the “required period condition” in transitional cases.

### ***Section 94: Regulations***

466. *Section 94* makes additional provision relating to the regulation-making powers in Part 4 of the Act. In particular, *subsection (2)* enables regulations to make different provision for different cases or purposes. It also enables provision to be made in relation to some or all of the cases or purposes within its scope.
467. The regulations may also make different provision for different ages, together with incidental or consequential provisions. This could include saving some provisions (for example, in relation to disability living allowance) where they continue to be required.

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(c.5) which received Royal Assent on 8 March 2012*

468. *Subsection (7)* provides that regulations under Part 4 are to be subject to the negative resolution procedure in the Houses of Parliament. Exceptions to this are set out in *subsection (6)*.

***Section 95: Interpretation of Part 4***

469. *Section 95* defines certain expressions for the purposes of Part 4.