



Welfare Reform Act 2012

2012 CHAPTER 5

PART 4

PERSONAL INDEPENDENCE PAYMENT

Personal independence payment

77 Personal independence payment

- (1) An allowance known as personal independence payment is payable in accordance with this Part.
- (2) A person's entitlement to personal independence payment may be an entitlement to—
 - (a) the daily living component (see section 78);
 - (b) the mobility component (see section 79); or
 - (c) both those components.
- (3) A person is not entitled to personal independence payment unless the person meets prescribed conditions relating to residence and presence in Great Britain.

78 Daily living component

- (1) A person is entitled to the daily living component at the standard rate if—
 - (a) the person's ability to carry out daily living activities is limited by the person's physical or mental condition; and
 - (b) the person meets the required period condition.
- (2) A person is entitled to the daily living component at the enhanced rate if—
 - (a) the person's ability to carry out daily living activities is severely limited by the person's physical or mental condition; and
 - (b) the person meets the required period condition.
- (3) In this section, in relation to the daily living component—

Status: This is the original version (as it was originally enacted).

- (a) “the standard rate” means such weekly rate as may be prescribed;
 - (b) “the enhanced rate” means such weekly rate as may be prescribed.
- (4) In this Part “daily living activities” means such activities as may be prescribed for the purposes of this section.
- (5) See sections 80 and 81 for provision about determining—
 - (a) whether the requirements of subsection (1)(a) or (2)(a) above are met;
 - (b) whether a person meets “the required period condition” for the purposes of subsection (1)(b) or (2)(b) above.
- (6) This section is subject to the provisions of this Part, or regulations under it, relating to entitlement to the daily living component (see in particular sections 82 (persons who are terminally ill) and 83 (persons of pensionable age)).

79 Mobility component

- (1) A person is entitled to the mobility component at the standard rate if—
 - (a) the person is of or over the age prescribed for the purposes of this subsection;
 - (b) the person’s ability to carry out mobility activities is limited by the person’s physical or mental condition; and
 - (c) the person meets the required period condition.
- (2) A person is entitled to the mobility component at the enhanced rate if—
 - (a) the person is of or over the age prescribed for the purposes of this subsection;
 - (b) the person’s ability to carry out mobility activities is severely limited by the person’s physical or mental condition; and
 - (c) the person meets the required period condition.
- (3) In this section, in relation to the mobility component—
 - (a) “the standard rate” means such weekly rate as may be prescribed;
 - (b) “the enhanced rate” means such weekly rate as may be prescribed.
- (4) In this Part “mobility activities” means such activities as may be prescribed for the purposes of this section.
- (5) See sections 80 and 81 for provision about determining—
 - (a) whether the requirements of subsection (1)(b) or (2)(b) above are met;
 - (b) whether a person meets “the required period condition” for the purposes of subsection (1)(c) or (2)(c) above.
- (6) This section is subject to the provisions of this Part, or regulations under it, relating to entitlement to the mobility component (see in particular sections 82 and 83).
- (7) Regulations may provide that a person is not entitled to the mobility component for a period (even though the requirements in subsection (1) or (2) are met) in prescribed circumstances where the person’s condition is such that during all or most of the period the person is unlikely to benefit from enhanced mobility.

80 Ability to carry out daily living activities or mobility activities

- (1) For the purposes of this Part, the following questions are to be determined in accordance with regulations—

- (a) whether a person’s ability to carry out daily living activities is limited by the person’s physical or mental condition;
 - (b) whether a person’s ability to carry out daily living activities is severely limited by the person’s physical or mental condition;
 - (c) whether a person’s ability to carry out mobility activities is limited by the person’s physical or mental condition;
 - (d) whether a person’s ability to carry out mobility activities is severely limited by the person’s physical or mental condition.
- (2) Regulations must make provision for determining, for the purposes of each of sections 78(1) and (2) and 79(1) and (2), whether a person meets “the required period condition” (see further section 81).
- (3) Regulations under this section—
 - (a) must provide for the questions mentioned in subsections (1) and (2) to be determined, except in prescribed circumstances, on the basis of an assessment (or repeated assessments) of the person;
 - (b) must provide for the way in which an assessment is to be carried out;
 - (c) may make provision about matters which are, or are not, to be taken into account in assessing a person.
- (4) The regulations may, in particular, make provision—
 - (a) about the information or evidence required for the purpose of determining the questions mentioned in subsections (1) and (2);
 - (b) about the way in which that information or evidence is to be provided;
 - (c) requiring a person to participate in such a consultation, with a person approved by the Secretary of State, as may be determined under the regulations (and to attend for the consultation at a place, date and time determined under the regulations).
- (5) The regulations may include provision—
 - (a) for a negative determination to be treated as made if a person fails without a good reason to comply with a requirement imposed under subsection (4);
 - (b) about what does or does not constitute a good reason for such a failure;
 - (c) about matters which are, or are not, to be taken into account in determining whether a person has a good reason for such a failure.
- (6) In subsection (5)(a) a “negative determination” means a determination that a person does not meet the requirements of—
 - (a) section 78(1)(a) and (b) or (2)(a) and (b) (daily living component);
 - (b) section 79(1)(a) to (c) or (2)(a) to (c) (mobility component).

81 Required period condition: further provision

- (1) Regulations under section 80(2) must provide for the question of whether a person meets “the required period condition” for the purposes of section 78(1) or (2) or 79(1) or (2) to be determined by reference to—
 - (a) whether, as respects every time in the previous 3 months, it is likely that if the relevant ability had been assessed at that time that ability would have been determined to be limited or (as the case may be) severely limited by the person’s physical or mental condition; and

Status: This is the original version (as it was originally enacted).

- (b) whether, as respects every time in the next 9 months, it is likely that if the relevant ability were to be assessed at that time that ability would be determined to be limited or (as the case may be) severely limited by the person's physical or mental condition.
- (2) In subsection (1) "the relevant ability" means—
 - (a) in relation to section 78(1) or (2), the person's ability to carry out daily living activities;
 - (b) in relation to section 79(1) or (2), the person's ability to carry out mobility activities.
- (3) In subsection (1)—
 - (a) "assessed" means assessed in accordance with regulations under section 80;
 - (b) "the previous 3 months" means the 3 months ending with the prescribed date;
 - (c) "the next 9 months" means the 9 months beginning with the day after that date.
- (4) Regulations under section 80(2) may provide that in prescribed cases the question of whether a person meets "the required period condition" for the purposes of section 78(1) or (2) or 79(1) or (2)—
 - (a) is not to be determined in accordance with the provision made by virtue of subsections (1) to (3) above;
 - (b) is to be determined in accordance with provision made in relation to those cases by the regulations.

Entitlement and payability: further provision

82 Terminal illness

- (1) This section applies to a person who—
 - (a) is terminally ill; and
 - (b) has made a claim for personal independence payment expressly on the ground of terminal illness.
- (2) A person to whom this section applies is entitled to the daily living component at the enhanced rate (and accordingly section 78(1) and (2) do not apply to such a person).
- (3) Section 79(1)(c) and (2)(c) (required period condition for mobility component) do not apply to a person to whom this section applies.
- (4) For the purposes of this section a person is "terminally ill" at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within 6 months.
- (5) For the purposes of this section, where—
 - (a) a person purports to make a claim for personal independence payment on behalf of another, and
 - (b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,
 that person is to be regarded as making the claim despite its being made without that person's knowledge or authority.
- (6) In subsection (2) "the enhanced rate" has the meaning given by section 78(3).

83 Persons of pensionable age

- (1) A person is not entitled to the daily living component or the mobility component for any period after the person reaches the relevant age.
- (2) In subsection (1) “the relevant age” means—
 - (a) pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995); or
 - (b) if higher, 65.
- (3) Subsection (1) is subject to such exceptions as may be provided by regulations.

84 No entitlement to daily living component where UK is not competent state

- (1) A person to whom a relevant EU Regulation applies is not entitled to the daily living component for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.
- (2) Each of the following is a “relevant EU Regulation” for the purposes of this section—
 - (a) Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;
 - (b) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

85 Care home residents

- (1) Regulations may provide that no amount in respect of personal independence payment which is attributable to entitlement to the daily living component is payable in respect of a person for a period when the person meets the condition in subsection (2).
- (2) The condition is that the person is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for the person are borne out of public or local funds by virtue of a specified enactment.
- (3) In this section “care home” means an establishment that provides accommodation together with nursing or personal care.
- (4) The following are “qualifying services” for the purposes of subsection (2)—
 - (a) accommodation;
 - (b) board;
 - (c) personal care;
 - (d) such other services as may be prescribed.
- (5) The reference in subsection (2) to a “specified enactment” is to an enactment which is specified for the purposes of that subsection by regulations or is of a description so specified.
- (6) The power to specify an enactment for the purposes of subsection (2) includes power to specify it only in relation to its application for a particular purpose.
- (7) In this section “enactment” includes an enactment comprised in an Act of the Scottish Parliament or in an instrument made under such an Act.

86 Hospital in-patients

- (1) Regulations may provide as mentioned in either or both of the following paragraphs—
 - (a) that no amount in respect of personal independence payment which is attributable to entitlement to the daily living component is payable in respect of a person for a period when the person meets the condition in subsection (2);
 - (b) that no amount in respect of personal independence payment which is attributable to entitlement to the mobility component is payable in respect of a person for a period when the person meets the condition in subsection (2).
- (2) The condition is that the person is undergoing medical or other treatment as an in-patient at a hospital or similar institution in circumstances in which any of the costs of the treatment, accommodation and any related services provided for the person are borne out of public funds.
- (3) For the purposes of subsection (2) the question of whether any of the costs of medical or other treatment, accommodation and related services provided for a person are borne out of public funds is to be determined in accordance with the regulations.

87 Prisoners and detainees

Except to the extent that regulations provide otherwise, no amount in respect of personal independence payment is payable in respect of a person for a period during which the person is undergoing imprisonment or detention in legal custody.

Supplementary

88 Claims, awards and information

- (1) A person is not entitled to personal independence payment for any period before the date on which a claim for it is made or treated as made by that person or on that person's behalf.
- (2) An award of personal independence payment is to be for a fixed term except where the person making the award considers that a fixed term award would be inappropriate.
- (3) In deciding whether a fixed term award would be inappropriate, that person must have regard to guidance issued by the Secretary of State.
- (4) Information supplied under this Part is to be taken for all purposes to be information relating to social security.

89 Report to Parliament

The Secretary of State must lay before Parliament an independent report on the operation of assessments under section 80—

- (a) within 2 years beginning with the date on which the first regulations under that section come into force; and
- (b) within 4 years beginning with that date.

General

90 Abolition of disability living allowance

Sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 (disability living allowance) are repealed.

91 Amendments

Schedule 9 contains amendments relating to this Part.

92 Power to make supplementary and consequential provision

- (1) Regulations may make such consequential, supplementary or incidental provision in relation to any provision of this Part as the Secretary of State considers appropriate.
- (2) Regulations under this section may—
 - (a) amend, repeal or revoke any primary or secondary legislation passed or made before the day on which this Act is passed, or
 - (b) amend or repeal any provision of an Act passed on or after that day but in the same session of Parliament.
- (3) In this section—
 - (a) “primary legislation” means an Act or Act of the Scottish Parliament;
 - (b) “secondary legislation” means any instrument made under primary legislation.

93 Transitional

- (1) Regulations may make such provision as the Secretary of State considers necessary or expedient in connection with the coming into force of any provision of this Part.
- (2) Schedule 10 (transitional provision for introduction of personal independence payment) has effect.

94 Regulations

- (1) Regulations under this Part are to be made by the Secretary of State.
- (2) A power to make regulations under this Part may be exercised—
 - (a) so as to make different provision for different cases or purposes;
 - (b) in relation to all or only some of the cases or purposes for which it may be exercised.
- (3) Such a power includes—
 - (a) power to make incidental, supplementary, consequential or transitional provision or savings;
 - (b) power to provide for a person to exercise a discretion in dealing with any matter.
- (4) The power under subsection (2)(a) includes, in particular, power to make different provision for persons of different ages.

- (5) Regulations under this Part are to be made by statutory instrument.
- (6) A statutory instrument containing (whether alone or with other provision) any of the following—
- (a) the first regulations under section 78(4) or 79(4);
 - (b) the first regulations under section 80;
 - (c) the first regulations under that section containing provision about assessment of persons under the age of 16,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

95 Interpretation of Part 4

In this Part—

- “daily living activities” has the meaning given by section 78(4);
- “daily living component” means the daily living component of personal independence payment;
- “mobility activities” has the meaning given by section 79(4);
- “mobility component” means the mobility component of personal independence payment;
- “prescribed” means prescribed by regulations.