

EXPLANATORY MEMORANDUM TO
THE PERSONAL INDEPENDENCE PAYMENT (SUPPLEMENTARY
PROVISIONS AND CONSEQUENTIAL AMENDMENTS) REGULATIONS
2013

2013 No. 388

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

2. **Purpose of the instrument**

Personal Independence Payment (PIP) will replace Disability Living Allowance (DLA) for people who are aged 16 to 64 on or after 8 April 2013. Entitlement to a particular rate or component of DLA acts as one of the qualifying criteria for various other schemes and benefits. These are commonly referred to as passporting arrangements. These Regulations amend primary and secondary legislation to cover PIP recipients, and ensure that PIP claimants will be able to benefit from the same passporting arrangements wherever possible. This is explained further in 7.4.

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

None.

4. **Legislative Context**

4.1 Part 4 of the Welfare Reform Act 2012 (c.5)¹ (“the Act”) provides the framework for PIP, under which the Regulations referred to in paragraph 4.2 and these Regulations are made.

4.2 This instrument is related to the Social Security (Personal Independence Payment) Regulations 2013, which provide the detailed legislative rules for entitlement to PIP. The PIP Regulations are subject to the affirmative procedure and were made on 25 February 2013 following approval by resolution of each House of Parliament.

5. **Territorial Extent and Application**

This instrument applies to all of the United Kingdom. Amendments made by paragraphs 4 to 11, 13, 15 to 17, 19 and 21 to 51 of the Schedule to this instrument have the same extent and application as the provision amended. Paragraphs 3, 12, 14 and 18 extend to England and Wales, but apply in

¹ www.legislation.gov.uk/ukpga/2012/5/part/4

relation to England only. Paragraph 20 extends and applies to England and Wales only.

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 Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 are compatible with the Convention Rights.”

7. Policy background

7.1 Personal Independence Payment (PIP) is designed 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. The first PIP claimants will be able to apply from 8 April 2013. Therefore most consequential amendments must come into force from the same date. The exceptions are references to electoral voting legislation (paras 25, 26, 34, 39 and 49 of the schedule to this instrument), which come into force on 6 May 2013, following local elections. This is in line with the convention that amendments to electoral legislation should not come into force within the ‘electoral timetable’ (the gap between the election notice and the election itself).

Part 1 of the Schedule

7.2 **Paras 1 and 2** – these make provision for adjusting the daily living component of PIP where medical expenses are paid by the Secretary of State under certain war pensions instruments and accommodation necessarily ancillary to that treatment is provided. There is an exemption to this adjustment for the first 28 days when it would otherwise apply. This adjustment replicates the position in relation to DLA.

7.3 **Para 3** – this amends the Council Tax (Additional Provisions for Discount Disregards) Regulations² 1992 to address an anomaly in the way disabled people and their live-in carers are disregarded for the purposes of calculating council tax discounts. (In households where only one person is considered as an adult, a 25% discount is applied; whilst in people's main home where no-one is considered as an adult, the discount is 50%). The amendment extends the disregard to cover live in carers of people on the standard as well as the enhanced rate of the daily living component of PIP, subject to other qualifying conditions. The Department for Communities and Local Government will make equivalent provision for live-in carers of people on DLA and Attendance Allowance (AA), as DWP's consequential powers under the Welfare Reform Act 2012 do not permit this. The Scottish and Welsh government are legislating separately for council tax discount disregards.

² SI 1992/552

7.4 **Para 4 – this amends the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000³.** These regulations cover the Blue Badge scheme, which helps disabled recipients park closer to their destination. The Department for Transport consulted⁴ on Blue Badge eligibility between 9 July and 2 October 2012, and published a response⁵ on 25 January 2013. They decided to link automatic eligibility for a Blue Badge to those who score 8 points or more in the ‘moving around’ activity of the mobility component of the PIP assessment. 8 points corresponds to being unable to stand and walk unaided more than 50 metres. This maintains the closest fit with the current eligibility for a Blue Badge under DLA. The agreed link will maintain a similar number of Blue Badges in circulation, and therefore be broadly cost-neutral. The Scottish Government and Welsh Government are legislating separately for Blue Badge.

Part 2 of the Schedule

7.5 Part 2 of the Schedule covers consequential amendments to legislation where entitlement to DLA acts as a qualifying criterion for other benefits or schemes, to make similar provision for PIP. The current passporting arrangements under DLA have an important role for disabled people, their carers and administratively, so that individuals do not have to face unnecessary multiple assessments. The Government made a commitment to maintain these arrangements under PIP wherever possible.

7.6 In the passporting arrangements provided for by Part 2 of the Schedule, the following approach has been taken.

- where receipt of any rate or component of DLA acts as the passport to a particular benefit or scheme, any rate or component of PIP is the corresponding passport;
- where receipt of highest rate care component DLA is the passport, enhanced rate daily living component is the passport under PIP
- where middle or highest rate care component DLA is the passport, standard or enhanced rate daily living component is the PIP passport;
- where the passport is higher rate mobility component DLA, the PIP passport is enhanced rate mobility component.

7.7 **Representation of the People (Scotland) Regulations 2001⁶** - These regulations (paragraph 26 of the schedule) cover UK Parliamentary elections in Scotland, which are reserved, and Scottish local elections, which are devolved. The UK and Scottish Governments have agreed this instrument is the appropriate vehicle for delivering these amendments. As a legislative consent motion was granted by the Scottish Government for the Representation of the People Act 2000, no new consent motion is required.

³ SI 2000/682

⁴ www.gov.uk/government/uploads/system/uploads/attachment_data/file/2727/blue-badge-consultation.pdf

⁵

www.gov.uk/government/uploads/system/uploads/attachment_data/file/68967/consultation-response.pdf

⁶ SI 2001/497

7.8 **Education (Student Loans) (Repayment) Regulations 2009⁷** - These regulations (paragraph 44 of the schedule) were made by the DWP Secretary of State on a composite basis with Welsh Ministers. The Welsh Government are making their own consequential amendments on all other devolved legislation. However, amending the regulations on a composite basis is a complex process, so DWP have used their consequential amendments power, with the agreement of the Welsh government, to amend these regulations.

7.9 **Other amendments not included in this instrument** – Department of Health, Ministry of Justice, Department for Transport HM Treasury and HM Revenue and Customs are making other separate amendments to cover the introduction of Personal Independence Payment (PIP).

8. Consultation outcome

8.1 The Government's first consultation on DLA and PIP, 'Disability Living Allowance reform',⁸ published on 6 December 2010, made clear that the Government would take into account DLA's role as a passport as the new benefit was designed. The responses received were unanimously in favour of maintaining passporting arrangements where possible. The Department's consultation on the detailed design of PIP,⁹ published on 26 March 2012, outlined the rates and components of PIP which would act as the gateways to most DWP benefits and schemes.

8.2 The Department for Transport also carried out a consultation on Blue Badge (paragraph 4 of the schedule). For more information, see paragraph 7.4.

9. Guidance

9.1 The Personal Independence Payment (PIP) Implementation Stakeholder Forum, and its sub-groups which involve representatives from over 60 disability organisations, has engaged with DWP to provide guidance on products, including signposting people to other benefits and schemes.

9.2 The Department has worked with disabled people and their representatives to produce materials on passporting which will be cascaded to staff. Information for support organisations which has already been made available on the DWP website include a passporting factsheet¹⁰ and PIP editorial content on passporting¹¹ has been published on the DWP website.

⁷ SI 2009/470

⁸ www.dwp.gov.uk/consultations/2010/dla-reform.shtml.

⁹ DLA reform and Personal Independence Payment – completing the detailed design: www.dwp.gov.uk/consultations/2012/pip-detailed-design.shtml

¹⁰ www.dwp.gov.uk/docs/pip-toolkit-factsheet-004-passporting-other-benefits.pdf

¹¹ www.dwp.gov.uk/policy/disability/personal-independence-payment/pip-toolkit/text-for-communications/ - pages 30-39

9.3 Other Government Departments will be publishing information and guidance on their benefits and schemes separately.

10. Impact

10.1 The introduction of PIP does not introduce a statutory burden on charities, business or civil society organisations. We will continue to work with charities supporting disabled people to help them prepare for the introduction of PIP.

10.2 The impact on the public sector is negligible. Administrative arrangements to provide passports are being maintained wherever possible and in line with policy decisions made by the owning Government Department or Devolved Administration.

10.3 An updated Impact Assessment was published in May 2012¹². This included an assessment of the impact on Carer's Allowance and the disability premia within the main income-related benefits. A reassessments and impacts note¹³ published on 13 December 2012 provided the latest estimates of the projected caseloads, whilst a briefing note on PIP and Carer's Allowance published on 8 February 2013 provided the latest available information on projected Carer's Allowance impacts.¹⁴

11. Regulating small business

Although some of the legislation does apply to small businesses, for example, parental leave and flexible working, there is no net impact as Personal Independence Payment (PIP) will simply be replacing Disability Living Allowance (DLA) for people aged 16 to 64 on or after 8 April 2013.

12. Monitoring & review

On 13 December 2012, the Department published outline proposals for evaluating the effects of the implementation of PIP¹⁵. This will include an assessment of claimant experience, including outcomes, longer-term issues and experiences of establishing entitlement to other benefits and schemes covered in these consequential regulations. Section 89 of the Act also provides for two biennial, independent reviews within the first four years of the implementation of PIP assessment. The Government has also committed to undertake a third independent review if the second demonstrates ongoing issues with the operation of the assessment.¹⁶

¹² www.dwp.gov.uk/docs/dla-reform-wr2011-ia.pdf

¹³ www.dwp.gov.uk/docs/pip-reassessments-and-impacts.pdf

¹⁴ www.dwp.gov.uk/docs/pip-briefing-carers-allowance.pdf

¹⁵ www.dwp.gov.uk/docs/pip-evaluation-proposals.pdf

¹⁶ Hansard, 17 January 2012, Columns 568 to 569:

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

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