

2016 No. 217

SOCIAL SECURITY

**The Personal Independence Payment Regulations
(Northern Ireland) 2016**

<i>Made</i> - - - -	<i>3rd May 2016</i>
<i>Laid before Parliament</i>	<i>10th May 2016</i>
<i>Coming into operation</i> -	<i>20th June 2016</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by Articles 82(3), 83(3) and (4), 84(3) and (4), 85(1) to (4) and (5)(a) and (c), 86(1), (3)(b) and (4), 88(3), 90(1), (5) and (6), 91(1) and (3), 92, 97(1) and 99(1)(a) of the Welfare Reform (Northern Ireland) Order 2015(a).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) of the Welfare Reform (Northern Ireland) Order 2015.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Personal Independence Payment Regulations (Northern Ireland) 2016 and come into operation on 20th June 2016.

Interpretation

2.—(1) In these Regulations—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998(b);

“aid or appliance”—

(a) means any device which improves, provides or replaces C’s impaired physical or mental function; and

(b) includes a prosthesis;

“assessment” means the assessment referred to in regulation 4;

“C” means a person who has made a claim for or, as the case may be, is entitled to personal independence payment;

(a) S.I. 2015/2006 (N.I. 1)

(b) S.I. 1998/1506 (N.I. 10)

“component” means the daily living component or, as the case may be, the mobility component of personal independence payment;

“descriptor” means a descriptor in column 2 of the tables in Parts 2 and 3 of Schedule 1;

“disability living allowance” means disability living allowance under section 71 of the Contributions and Benefits Act^(a);

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“prescribed date” means the date prescribed by regulation 14 or 15;

“previous award” means an award of either or both components to which C has ceased to be entitled;

“revised” means revised under Article 10 of the 1998 Order and “revision” is to be construed accordingly; and

“superseded” means superseded under Article 11 of the 1998 Order^(b) and “supersession” is to be construed accordingly.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered Article is to the Article of the Welfare Reform (Northern Ireland) Order 2015 bearing that number.

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954^(c), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

PART 2

Personal independence payment assessment

Daily living activities and mobility activities

3.—(1) For the purposes of Article 83(4) and these Regulations, daily living activities are the activities set out in column 1 of the table in Part 2 of Schedule 1.

(2) For the purposes of Article 84(4) and these Regulations, mobility activities are the activities set out in column 1 of the table in Part 3 of Schedule 1.

Assessment of ability to carry out activities

4.—(1) For the purposes of Article 82(2) and Article 83 or, as the case may be, 84 whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment taking account of relevant medical evidence.

(2) C’s ability to carry out an activity is to be assessed—

- (a) on the basis of C’s ability whilst wearing or using any aid or appliance which C normally wears or uses; or
- (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(3) Where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—

(a) 1992 c. 7; Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(b) Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(c) 1954 c. 33 (N.I.)

- (a) safely;
- (b) to an acceptable standard;
- (c) repeatedly; and
- (d) within a reasonable time period.

(4) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

(5) In this regulation—

“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity;

“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.

Scoring for daily living activities

5.—(1) The score C obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 (“the daily living activities table”).

(2) For the purpose of paragraph (1), the number of points awarded to C for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to C under regulation 7.

(3) Where C has undergone an assessment, C has—

- (a) limited ability to carry out daily living activities where C obtains a score of at least 8 points in relation to daily living activities; and
- (b) severely limited ability to carry out daily living activities where C obtains a score of at least 12 points in relation to daily living activities.

Scoring for mobility activities

6.—(1) The score C obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 (“the mobility activities table”).

(2) For the purpose of paragraph (1), the number of points awarded to C for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to C under regulation 7.

(3) Where C has undergone an assessment, C has—

- (a) limited ability to carry out mobility activities where C obtains a score of at least 8 points in relation to mobility activities; and
- (b) severely limited ability to carry out mobility activities where C obtains a score of at least 12 points in relation to mobility activities.

Scoring: further provision

7.—(1) The descriptor which applies to C in relation to each activity in the tables referred to in regulations 5 and 6 is—

- (a) where one descriptor is satisfied on over 50 per cent. of the days of the required period, that descriptor;

- (b) where two or more descriptors are each satisfied on over 50 per cent. of the days of the required period, the descriptor which scores the higher or highest number of points; and
 - (c) where no descriptor is satisfied on over 50 per cent. of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50 per cent. of the days of the required period—
 - (i) the descriptor which is satisfied for the greater or greatest proportion of days of the required period, or
 - (ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.
- (2) For the purposes of paragraph (1) a descriptor is satisfied on a day in the required period if it is likely that, if C had been assessed on that day, C would have satisfied that descriptor.
- (3) In paragraphs (1) and (2), “required period” means—
- (a) in the case where entitlement to personal independence payment falls to be determined, the period of 3 months ending with the prescribed date together with—
 - (i) in relation to a claim after an interval for the purpose of regulation 15, the period of 9 months beginning with the date on which that claim is made,
 - (ii) in relation to any other claim, the period of 9 months beginning with the day after the prescribed date;
 - (b) in the case where personal independence payment has been awarded to C—
 - (i) during the period of 3 months following a determination of entitlement under a claim for the purpose of regulation 15, the period of 3 months ending with the prescribed date together with, for each day of the award, the period of 9 months beginning with the day after that date,
 - (ii) in any other case, for each day of the award, the period of 3 months ending with the prescribed date together with the period of 9 months beginning with the day after that date.

Information or evidence required for determining limited or severely limited ability to carry out activities

8.—(1) The Department may require C to provide any information or evidence required to determine whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities.

(2) Where information or evidence is requested under paragraph (1), C must provide the information or evidence to the Department within one month from the date of the request being made or within such longer period as the Department may consider reasonable in the circumstances of the particular case.

(3) Where C fails without good reason to comply with the request referred to in paragraph (1), a negative determination in relation to the component to which the failure related must be made.

Claimant may be called for a consultation to determine whether the claimant has limited or severely limited ability to carry out activities

9.—(1) Where it falls to be determined whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities, C may be required to do either or both of the following—

- (a) attend for and participate in a consultation in person;
- (b) participate in a consultation by telephone.

(2) Subject to paragraph (3), where C fails without good reason to attend for or participate in a consultation referred to in paragraph (1), a negative determination must be made.

(3) Paragraph (2) does not apply unless—

- (a) written notice of the date, time and, where applicable, place for the consultation is sent to C at least 7 days in advance; or
- (b) C agrees, whether in writing or otherwise, to accept a shorter period of notice of those matters.

(4) In paragraph (3), reference to written notice includes notice sent by electronic communication where C has agreed to accept correspondence in that way and “electronic communication” has the meaning given in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(a).

(5) In this regulation, a reference to consultation is to a consultation with a person approved by the Department.

Matters to be taken into account in determining good reason in relation to regulations 8 and 9

10. The matters to be taken into account in determining whether C has good reason under regulation 8(3) or 9(2) include—

- (a) C’s state of health at the relevant time; and
- (b) the nature of any disability that C has.

Re-determination of ability to carry out activities

11. Where it has been determined that C has limited ability or severely limited ability to carry out either or both daily living activities or mobility activities, the Department may, for any reason and at any time, determine afresh in accordance with regulation 4 whether C continues to have such limited ability or severely limited ability.

PART 3

Required period condition

Required period condition: daily living component

12.—(1) C meets the required period condition for the purposes of Article 83(1) where—

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Department would have determined at that time that C had limited ability to carry out daily living activities; and
- (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Department would determine at that time that C had limited ability to carry out daily living activities.

(2) C meets the required period condition for the purposes of Article 83(2) where—

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Department would have determined at that time that C had severely limited ability to carry out daily living activities; and
- (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Department would determine at that time that C had severely limited ability to carry out daily living activities.

Required period condition: mobility component

13.—(1) C meets the required period condition for the purposes of Article 84(1) where—

(a) 2001 c. 9 (N.I.); section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Department would have determined at that time that C had limited ability to carry out mobility activities; and
 - (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Department would determine at that time that C had limited ability to carry out mobility activities.
- (2) C meets the required period condition for the purposes of Article 84(2) where—
- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Department would have determined at that time that C had severely limited ability to carry out mobility activities; and
 - (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Department would determine at that time that C had severely limited ability to carry out mobility activities.

The prescribed date

14. Except where regulation 15(2) or (3) applies, the prescribed date is—
- (a) where C has made a claim for personal independence payment which has not been determined, the date of that claim or, if later, the earliest date in relation to which, if C had been assessed in relation to C’s ability to carry out daily living activities or, as the case may be, mobility activities, at every time in the previous 3 months, it is likely that the Department would have determined at that time that C had limited ability or, as the case may be, severely limited ability to carry out those activities; and
 - (b) where C has an award of either or both components, each day of that award.

The prescribed date: claims for personal independence payment after an interval

- 15.—(1) Paragraphs (2) and (3) apply where—
- (a) C makes a claim for personal independence payment (“the new claim”);
 - (b) C had a previous award which ended not more than 2 years before the date on which the new claim is made;
 - (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which C is entitled (or would be entitled if C met the required period condition) under the new claim; and
 - (d) the Department determines that the entitlement under the new claim results from—
 - (i) substantially the same physical or mental condition or conditions for which the previous award was made, or
 - (ii) a new physical or mental condition which developed as a result of a condition for which the previous award was made.
- (2) In relation to the determination of entitlement under the new claim—
- (a) the prescribed date for the purposes of regulations 12(1)(a) and (2)(a) and 13(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 12(1)(b) and (2)(b) and 13(1)(b) and (2)(b) have effect in relation to the new claim as if, for “the prescribed date” there were substituted “the date on which the new claim for personal independence payment is made”.
- (3) Where C is awarded either or both components under the new claim, in relation to continued entitlement to that component or, as the case may be, those components, for the period of 3 months following the date of the new claim—
- (a) the prescribed date for the purposes of regulations 12(1)(a) and (2)(a) and 13(1)(a) and (2)(a) is the date on which the previous award ended; and

- (b) regulations 12(1)(b) and (2)(b) and 13(1)(b) and (2)(b) have effect in relation to that award as if, for “the prescribed date” there were substituted “each day of the award”.
- (4) This regulation is subject to regulation 26.

PART 4

Residence and presence conditions

Conditions relating to residence and presence in Northern Ireland

16. Subject to the following provisions of this Part, the prescribed conditions for the purposes of Article 82(3) as to residence and presence in Northern Ireland are that on any day for which C claims personal independence payment C—

- (a) is present in Northern Ireland;
- (b) has been present in Northern Ireland for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day;
- (c) is habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands; and
- (d) is a person—
 - (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a), or
 - (ii) to whom, by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000(b), section 115 of that Act does not apply for the purpose of personal independence payment.

Absence from Northern Ireland

17.—(1) Where C is temporarily absent from Northern Ireland, C is treated as present in Northern Ireland for the purposes of regulation 16(a) and (b) for the first 13 weeks of absence.

(2) C is temporarily absent if, at the beginning of the period of absence, C’s absence is unlikely to exceed 52 weeks.

Absence from Northern Ireland to receive medical treatment

18.—(1) Where C is temporarily absent from Northern Ireland, C is treated as present in Northern Ireland for the purposes of regulation 16(a) and (b) for the first 26 weeks of that absence, where—

- (a) C’s absence is solely in connection with arrangements made for the medical treatment of C for a disease or bodily or mental disablement which commenced before C left Northern Ireland; and
- (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
 - (i) outside Northern Ireland,
 - (ii) during the period whilst C is temporarily absent from Northern Ireland, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation, “temporarily absent” has the same meaning as in regulation 17(2).

(a) 1999 c. 33; section 115 was amended by paragraph 42 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015. There are other amendments not relevant to these Regulations

(b) S.R. 2000 No. 71; regulation 2 was amended by paragraph 1(s) of the Schedule to S.R. 2002 No. 323, regulation 6 of S.R. 2003 No. 421, regulation 23(3) of S.R. 2008 No. 286, regulation 9(2) of S.I. 2008/3108 and regulation 3(5) of S.R. 2010 No. 6 and is amended by regulation 22(3) of S.R. 2016 No. 228

Absence from Northern Ireland in special cases

19.—(1) Where C is absent from Northern Ireland, C is treated as present in Northern Ireland for the purposes of regulation 16(a) and (b), where—

- (a) C is abroad in the capacity of—
 - (i) a member of Her Majesty’s forces,
 - (ii) an aircraft worker, or
 - (iii) a mariner;
- (b) C is in employment prescribed for the purposes of section 120 of the Social Security Contributions and Benefits Act 1992^(a) (employment at sea (continental shelf operations)) in connection with continental shelf operations; or
- (c) C is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

(2) In this regulation and regulation 20 “a member of Her Majesty’s forces” means a member of “the regular forces” or “the reserve forces” as defined in section 374 of the Armed Forces Act 2006^(b), other than a person who is specified in Schedule 2, who is—

- (a) over the age of 16; and
- (b) not absent on desertion.

(3) In this regulation—

“aircraft worker” means a person who is employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or the crew or any passengers or cargo or mail carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,

but does not include a person who is in employment as a member of Her Majesty’s forces.

Serving members of Her Majesty’s forces and their family members – further provision

20. C is treated as habitually resident in Northern Ireland for the purposes of regulation 16(c) where—

- (a) C is resident outside Northern Ireland in the capacity as a member of Her Majesty’s forces; or
- (b) C is living with a person mentioned in paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

(a) 1992 c.4; section 120 was amended by paragraph 70 of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 26 of Schedule 3 and paragraph 8 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and section 12 of the National Insurance Contributions Act 2014 (c. 7)

(b) 2006 c. 52

Terminal illness

21. Where C is terminally ill and makes a claim for personal independence payment expressly on that ground, regulation 16 applies as if paragraph (b) were omitted.

Persons residing in Northern Ireland to whom a relevant EU Regulation applies

22. Regulation 16(b) does not apply in relation to a claim for personal independence payment where on any day—

- (a) C is habitually resident in Northern Ireland;
- (b) a relevant EU Regulation(a) applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies

23. Regulation 16(a) to (c) does not apply in relation to entitlement to the daily living component of personal independence payment where on any day—

- (a) C is habitually resident in—
 - (i) an EEA state other than the United Kingdom, or
 - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

PART 5

Rate of personal independence payment

Rate of personal independence payment

24.—(1) The prescribed weekly rates of the daily living component for the purposes of Article 83(3) are—

- (a) the standard rate, £55·10; and
- (b) the enhanced rate, £82·30.

(2) The prescribed weekly rates of the mobility component for the purposes of Article 84(3) are—

- (a) the standard rate, £21·80; and
- (b) the enhanced rate, £57·45.

PART 6

Provisions relating to age

Exceptions to Article 88 where entitlement exists or claim made before relevant age

25. Article 88(1) does not apply where C has reached the relevant age if C—

(a) See Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015 for the meaning of “relevant EU Regulation”

- (a) was entitled to an award of either or both components on the day preceding the day on which C reached the relevant age; or
- (b) made a claim for personal independence payment before reaching the relevant age and that claim was not determined before C reached that age but an award of either or both components would be made in respect of C but for Article 88(1).

Claim for personal independence payment after an interval and after reaching the relevant age

26.—(1) Where C has reached the relevant age and makes a new claim in the circumstances set out in regulation 15 the following exceptions apply.

(2) The exceptions referred to in paragraph (1) are—

- (a) Article 88(1) does not apply;
- (b) the reference to “2 years” in regulation 15(1)(b) is to be read as “one year”;
- (c) where C is assessed as having severely limited ability to carry out mobility activities for the purposes of the new claim—
 - (i) C is entitled to the enhanced rate of the mobility component only if C was entitled to that rate of that component under the previous award, and
 - (ii) where C is not entitled to the enhanced rate of that component because of head (i), C is entitled to the standard rate of that component provided that C was entitled to that rate of that component under the previous award; and
- (d) where C is assessed as having limited ability to carry out mobility activities for the purposes of the new claim, C is entitled to the standard rate of the mobility component only if C was entitled to that component, at either rate, under the previous award.

Revision and supersession of an award after the person has reached the relevant age

27.—(1) Subject to paragraph (2), Article 88(1) does not apply where—

- (a) C has reached the relevant age and is entitled to an award (“the original award”) of either or both components pursuant to an exception in regulation 25 or 26; and
- (b) that award falls to be revised or superseded.

(2) Where the original award includes an award of the mobility component and is superseded for a relevant change of circumstance which occurred after C reached the relevant age, the restrictions in paragraph (3) apply in relation to the supersession.

(3) The restrictions referred to in paragraph (2) are—

- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Department—
 - (i) may only make an award for the standard rate of that component, and
 - (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made;
- (b) where the original mobility component award is for the enhanced rate, the Department may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.

(4) Where the original award does not include an award of the mobility component but C had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than one year prior to the date on which the supersession takes or would take effect.

PART 7

Payability when person is residing in certain accommodation or is detained in custody

Care home residents

28.—(1) Subject to paragraph (3) and regulation 30, no amount of personal independence payment which is attributable to the daily living component is payable in respect of C for any period during which C meets the condition in Article 90(2).

(2) For the purpose of Article 90(2) the specified statutory provisions are—

- (a) Article 5, 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972(a);
- (b) the Mental Health (Northern Ireland) Order 1986(b);
- (c) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(c); or
- (d) any other statutory provision relating to persons under a disability or to young persons or to education or training except—
 - (i) Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986(d),
 - (ii) Article 30 of the Education and Libraries (Northern Ireland) Order 1993(e), or
 - (iii) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(f).

(3) Subject to paragraph (4), paragraph (1) does not apply in the case of C, where C is a person—

- (a) who has not attained the age of 18 and to whom—
 - (i) Article 17(b) of the Children (Northern Ireland) Order 1995(g) applies because C's health is likely to be significantly impaired, or further impaired, without the provision of services for C, or
 - (ii) Article 17(c) of that Order applies; or
- (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by an education authority pursuant to its powers under Article 11 of the Education (Northern Ireland) Order 1996(h).

(4) Paragraph (3)(a) only applies during any period in which the Regional Health and Social Care Board or the Health and Social Care trust looking after C places C in a private dwelling with a family, or with a relative of C, or with some other suitable person.

(5) In this regulation—

“Health and Social Care trust” means a body as established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(i);

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- (a) S.I. 1972/1265 (N.I. 14); Article 15 was amended by paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)) and Article 36 was amended by section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9 (N. I.)) and Article 45 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9))
 - (b) S.I. 1986/595 (N.I. 4)
 - (c) 2002 c. 6 (N.I.)
 - (d) S.I. 1986/594 (N.I. 3); Article 51 was substituted by Part 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1)) and certain functions transferred from the Department of Education by Parts I and II of Schedule 3 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481) and for certain purposes functions transferred by Article 7(a) of the Departments (Transfer of Functions) Order (Northern Ireland) 2001 (S.R. 2001 No. 229)
 - (e) S.I. 1993/2810 (N.I. 12)
 - (f) S.I. 1998/1760 (N.I. 14); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 (c. 21), paragraph 238 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(4) of the Finance Act 2003 (c. 14) and Article 11(1) of the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5))
 - (g) S.I. 1995/755 (N.I. 2)
 - (h) S.I. 1996/274 (N.I. 1)
 - (i) S.I. 1991/194 (N.I. 1); Article 10 was amended by section 1 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1) (N.I.)

“the Regional Health and Social Care Board” means the body established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009(a).

Hospital in-patients

29.—(1) Subject to regulation 30, no amount of personal independence payment which is attributable to either component is payable in respect of C for any period during which C meets the condition in Article 91(2).

(2) For the purposes of Article 91(3), the costs of treatment, accommodation or any related services are borne out of public funds if C is undergoing medical or other treatment as an in-patient in—

- (a) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991(b); or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

Payability exceptions: care homes and hospitals

30.—(1) Subject to paragraphs (2) to (5), regulation 28(1) or, as the case may be, regulation 29(1) does not apply to C in respect of the first 28 days of any period during which C is someone to whom that regulation applies.

(2) Where, on the day on which C’s entitlement to personal independence payment commences, C meets the condition in Article 90(2) or 91(2), paragraph (1) does not apply to C in respect of any period of consecutive days, beginning with that day, on which C continues to satisfy that condition.

(3) Regulation 28 or, as the case may be, regulation 29 does not apply where C is residing in a hospice and is terminally ill, and the Department has been informed that C is terminally ill—

- (a) on a claim for personal independence payment;
- (b) on an application for a revision or a supersession of an award of personal independence payment; or
- (c) in writing in connection with an award of, a claim for, or an application for a revision or a supersession of an award of, personal independence payment.

(4) In paragraph (3) “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages, other than—

- (a) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991; or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

(5) Regulation 28(1) does not apply to a case where, during any period the total cost of qualifying services(c) are met—

- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of that person’s own resources and partly with assistance from another person or a charity; or
- (b) on that person’s behalf by another person or a charity.

(a) 2009 (c. 1 (N.I.))

(b) S.I. 1991/194 (N.I. 1)

(c) See Article 90(4) of the Welfare Reform (Northern Ireland) Order 2015 for the meaning of qualifying services

Prisoners and detainees

31.—(1) Subject to paragraph (2), Article 92 does not apply in respect of the first 28 days of any period during which C is a person to whom that Article would otherwise apply.

(2) Where, on the day on which C's entitlement to personal independence payment commences, C is a person to whom that Article applies, paragraph (1) does not apply to C in respect of any period of consecutive days, beginning with that day, on which C continues to be a person to whom that Article applies.

(3) Article 92 does not apply to C in respect of any period after the conclusion of criminal proceedings as a result of which C is detained in a hospital or similar institution in Northern Ireland as a person suffering from mental disorder unless C satisfies the conditions set out in paragraph (4).

(4) The conditions referred to in paragraph (3) are that C is—

- (a) detained under Article 53 of the Mental Health (Northern Ireland) Order 1986(a) (removal to hospital of persons serving sentences of imprisonment, etc.); and
- (b) being detained on or before the day on which C would be entitled to be released within the meaning of Article 56(3) of that Order(b) (further provisions as to prisoners under sentence).

(5) For the purposes of this regulation—

- (a) “hospital or similar institution” means any place (not being a prison, a juvenile justice centre or a young offenders centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (b) criminal proceedings against any person are deemed to be concluded upon that person being found insane in those proceedings with the effect that that person cannot be tried or the trial of that person cannot proceed.

(6) Article 92 does not apply to C where—

- (a) C is undergoing imprisonment or detention in legal custody outside Northern Ireland; and
- (b) in similar circumstances in Northern Ireland, C would have been excepted from the application of that Article by virtue of the operation of any provision of this regulation.

Periods of residence

32.—(1) In these Regulations, a “period of residence” is a period during which C—

- (a) meets the condition in Article 90(2);
- (b) meets the condition in Article 91(2); or
- (c) is a person who is undergoing imprisonment or detention in legal custody.

(2) Subject to paragraph (3), for the purposes of Article 92 and regulations 28 and 29, a period of residence—

- (a) begins on the day after the day on which C enters a care home, hospital or similar institution or commences a period of imprisonment or detention in legal custody; and
- (b) ends on the day before the day on which C leaves a care home, hospital or similar institution or on which a period of imprisonment or detention in legal custody ends.

(3) Where, immediately following a period of residence for the purpose of sub-paragraphs (a), (b) or (c) of paragraph (1), C commences another period of residence for the purpose of any of those sub-paragraphs, the earlier period of residence is deemed to end on the day on which C

(a) S.I. 1986/595 (N.I. 4); Article 53 was amended by paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26)

(b) Article 56(3) was substituted by section 296(3) of the Criminal Justice Act 2003 (c. 44) and amended by paragraph 5(2) of Schedule 5 to the Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1))

leaves the care home, hospital or similar institution or, as the case may be, on which the period of imprisonment or detention ends.

(4) Subject to paragraph (5), for the purposes of regulation 30(1) and 31(1)—

- (a) two or more distinct periods of residence separated by an interval not exceeding 28 days, or by two or more such intervals, are to be treated as a continuous period equal in duration to the total duration of such distinct periods and ending on the last day of the later or last such period; and
- (b) any period or periods to which those regulations refer are to be taken into account and aggregated with any other period referred to in those regulations.

(5) Where the periods referred to in paragraph (4)(a) are both or all periods to which Article 92 (prisoners) applies, paragraph (4) is to have effect with the following modifications—

- (a) omit “subject to paragraph (5),” and “30(1) and”;
- (b) in sub-paragraph (a) for “28 days” substitute “one year”; and
- (c) in sub-paragraph (b)—
 - (i) for “those regulations refer” substitute “that regulation refers”, and
 - (ii) for “in those regulations” substitute “in that regulation”.

Signed by authority of the Secretary of State for Work and Pensions.

Justin Tomlinson
Parliamentary Under Secretary of State,
Department for Work and Pensions

3rd May 2016

SCHEDULE 1

Regulation 3

Personal independence payment assessment

PART 1

Interpretation

In this Schedule—

“aided” means with—

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance;

“assistance” means physical intervention by another person and does not include speech;

“assistance dog” means a dog trained to guide or assist a person with a sensory impairment;

“basic verbal information” means information in C’s native language conveyed verbally in a simple sentence;

“basic written information” means signs, symbols and dates written or printed standard size text in C’s native language;

“bathe” includes get into or out of an unadapted bath or shower;

“communication support” means support from a person trained or experienced in communicating with people with specific communication needs, including interpreting verbal information into non-verbal form and vice versa;

“complex budgeting decisions” means decisions involving—

- (a) calculating household and personal budgets;
- (b) managing and paying bills; and
- (c) planning future purchases;

“complex verbal information” means information in C’s native language conveyed verbally in either more than one sentence or one complicated sentence;

“complex written information” means more than one sentence of written or printed standard size text in C’s native language;

“cook” means heat food at or above waist height;

“dress and undress” includes put on and take off socks and shoes;

“engage socially” means—

- (a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships;

“manage incontinence” means manage involuntary evacuation of the bowel or bladder, including use a collecting device or self-catheterisation, and clean oneself afterwards;

“manage medication or therapy” means take medication or undertake therapy, where a failure to do so is likely to result in a deterioration in C’s health;

“medication” means medication to be taken at home which is prescribed or recommended by a registered—

- (a) doctor;
- (b) nurse; or
- (c) pharmacist;

“monitor health” means—

- (a) detect significant changes in C’s health condition which are likely to lead to a deterioration in C’s health; and
- (b) take action advised by a—
 - (i) registered doctor,
 - (ii) registered nurse,
 - (iii) social worker regulated by the Northern Ireland Social Care Council, or
 - (iv) health professional who is regulated by the Health and Care Professions Council, without which C’s health is likely to deteriorate;

“orientation aid” means a specialist aid designed to assist disabled people to follow a route safely;

“prepare”, in the context of food, means make food ready for cooking or eating;

“prompting” means reminding, encouraging or explaining by another person;

“psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment;

“read” includes read signs, symbols and words but does not include read Braille;

“simple budgeting decisions” means decisions involving—

- (a) calculating the cost of goods; and
- (b) calculating change required after a purchase;

“simple meal” means a cooked one-course meal for one using fresh ingredients;

“social support” means support from a person trained or experienced in assisting people to engage in social situations;

“stand” means stand upright with at least one biological foot on the ground;

“supervision” means the continuous presence of another person for the purpose of ensuring C’s safety;

“take nutrition” means—

- (a) cut food into pieces, convey food and drink to one’s mouth and chew and swallow food and drink; or
- (b) take nutrition by using a therapeutic source;

“therapeutic source” means parenteral or enteral tube feeding, using a rate-limiting device such as a delivery system or feed pump;

“therapy” means therapy to be undertaken at home which is prescribed or recommended by a—

- (a) registered doctor;
- (b) registered nurse;
- (c) registered pharmacist;
- (d) social worker regulated by the Northern Ireland Social Care Council; or
- (e) health professional regulated by the Health and Care Professions Council;

“toilet needs” means—

- (a) getting on and off an unadapted toilet;
- (b) evacuating the bladder and bowel; and
- (c) cleaning oneself afterwards;

“unaided” means without—

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance.

PART 2

Daily living activities

<i>Column 1</i> Activity	<i>Column 2</i> Descriptors	<i>Column 3</i> Points
1. Preparing food.	a. Can prepare and cook a simple meal unaided.	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	2
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8
2. Taking nutrition.	a. Can take nutrition unaided.	0
	b. Needs – (i) to use an aid or appliance to be able to take nutrition, or (ii) supervision to be able to take nutrition, or (iii) assistance to be able to cut up food.	2
	c. Needs a therapeutic source to be able to take nutrition.	2
	d. Needs prompting to be able to take nutrition.	4
	e. Needs assistance to be able to manage a therapeutic source to take nutrition.	6
	f. Cannot convey food and drink to their mouth and needs another person to do so.	10
3. Managing therapy or monitoring a health condition.	a. Either – (i) does not receive medication or therapy or need to monitor a health condition, or (ii) can manage medication or therapy or monitor a health condition unaided.	0
	b. Needs either – (i) to use an aid or appliance to be able to manage medication, or (ii) supervision, prompting or assistance to be able to manage medication or monitor	1

	a health condition.	
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.	4
	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8
4. Washing and bathing.	a. Can wash and bathe unaided.	0
	b. Needs to use an aid or appliance to be able to wash or bathe.	2
	c. Needs supervision or prompting to be able to wash or bathe.	2
	d. Needs assistance to be able to wash either their hair or body below the waist.	2
	e. Needs assistance to be able to get in or out of a bath or shower.	3
	f. Needs assistance to be able to wash their body between the shoulders and waist.	4
	g. Cannot wash and bathe at all and needs another person to wash their entire body.	8
5. Managing toilet needs or incontinence.	a. Can manage toilet needs or incontinence unaided.	0
	b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
	c. Needs supervision or prompting to be able to manage toilet needs.	2
	d. Needs assistance to be able to manage toilet needs.	4
	e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
	f. Needs assistance to be able to manage incontinence of	8

	both bladder and bowel.	
6. Dressing and undressing.	a. Can dress and undress unaided.	0
	b. Needs to use an aid or appliance to be able to dress or undress.	2
	c. Needs either –	2
	(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed, or	
	(ii) prompting or assistance to be able to select appropriate clothing.	
	d. Needs assistance to be able to dress or undress their lower body.	2
	e. Needs assistance to be able to dress or undress their upper body.	4
	f. Cannot dress or undress at all.	8
7. Communicating verbally.	a. Can express and understand verbal information unaided.	0
	b. Needs to use an aid or appliance to be able to speak or hear.	2
	c. Needs communication support to be able to express or understand complex verbal information.	4
	d. Needs communication support to be able to express or understand basic verbal information.	8
	e. Cannot express or understand verbal information at all even with communication support.	12
8. Reading and understanding signs, symbols and words.	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2
	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4

	e. Cannot read or understand signs, symbols or words at all.	8
9. Engaging with other people face to face.	a. Can engage with other people unaided.	0
	b. Needs prompting to be able to engage with other people.	2
	c. Needs social support to be able to engage with other people.	4
	d. Cannot engage with other people due to such engagement causing either – (i) overwhelming psychological distress to the claimant, or (ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.	8
10. Making budgeting decisions.	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions.	2
	c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
	d. Cannot make any budgeting decisions at all.	6

PART 3

Mobility activities

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Planning and following journeys.	a. Can plan and follow the route of a journey unaided.	0
	b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.	4
	c. Cannot plan the route of a journey.	8
	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.	10
	f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around.	a. Can stand and then move more than 200 metres, either aided or unaided.	0
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
	e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, either aided or unaided, – (i) stand, or (ii) move more than 1 metre.	12

SCHEDULE 2

Regulation 19(2)

Members of Her Majesty's forces: excluded persons

1. The following persons are not members of Her Majesty's forces for the purposes of these Regulations—

- (a) subject to paragraph 2, any person who is serving as a member of any naval force of Her Majesty's forces and who locally entered that force at a naval base outside the United Kingdom;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

2. Paragraph 1(a) does not include any person who—

- (a) has previously been an insured person under Part 1 of the National Insurance Act (Northern Ireland) 1966(a); or
- (b) is paying or has previously paid one or more of the following classes of contributions under the Social Security (Northern Ireland) Act 1975(b) or the Contributions and Benefits Act(c)—
 - (i) primary Class 1,
 - (ii) Class 2, or
 - (iii) Class 3.

(a) 1966 c. 6 (N.I.); Part 1 was repealed with savings by Part I of Schedule 1 and paragraph 7 of Schedule 3 to the Social Security (Consequential Provisions) Act 1975 (c. 18)

(b) 1975 c. 15; section 1(2) lists the Classes of contributions. Most of this Act was repealed by Schedule 1 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9)

(c) Section 1(2) lists the Classes of contributions and was amended by paragraph 38(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) paragraph 191 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 16(2)(b) of Schedule 15 to the Pensions Act 2014 (c. 19) and section 136(3) of the Pensions Act 2008 (c. 30)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to personal independence payment, a benefit established under Part 5 of the Welfare Reform (Northern Ireland) Order 2015 (“the Order”).

Part 2 provides for the assessment of personal independence payment which will determine whether and to what extent a person who applies for such a payment has limited or severely limited ability to carry out daily living activities and mobility activities.

Regulation 3 provides that the daily living activities and mobility activities are those set out in Schedule 1.

Regulation 4 provides that a person’s ability to carry out those activities is to be determined by an assessment and regulations 5 to 7 set out how those activities are to be scored in the assessment.

Regulation 8 allows the Department for Social Development (“the Department”) to request information or evidence to enable the determination of the claim to be made and requires that such information or evidence is provided within one month or such other period as the Department considers reasonable. If such information is not provided without good reason a negative determination (a determination that the claimant does not meet the requirements to be entitled to personal independence payment) shall be made in relation to the relevant component.

Regulation 9 provides that a claimant may be called to attend and participate in a consultation in person or to participate in a consultation by telephone or both and failure to attend or participate without good reason shall result in a negative determination being made in relation to the relevant component.

Regulation 10 sets out matters which are to be taken into account in determining a good reason referred to in regulations 8 and 9.

Regulation 11 provides that the Department may determine afresh the ability of a claimant to carry out activities.

Part 3 sets out provisions relating to the required period condition which the claimant needs to satisfy to be entitled to personal independence payment.

Part 4 sets out the residence and presence conditions for entitlement to personal independence payment.

Regulation 16 provides that a person must be present in Northern Ireland; have been present in Northern Ireland for 104 weeks out of the previous 156 weeks; be habitually resident in Northern Ireland and not subject to immigration control on every day of the claim.

Regulations 17 to 23 provide exceptions to regulation 16.

Part 5 sets out the rates of personal independence payment.

Part 6 contains provisions relating to age. Regulations 25 to 27 make exceptions to the provision in Article 88(1) of the Order that people over the relevant age cannot claim personal independence payment.

Part 7 makes provision about when payment of personal independence payment will cease because the claimant is resident in a particular place.

Regulation 28 applies to claimants residing in care homes and regulation 29 to claimants residing in hospitals or similar institutions where certain conditions are satisfied.

Regulation 30 provides exceptions to regulations 28 and 29. Regulation 31 makes an exception to Article 92 of the Order which provides that prisoners cannot receive personal independence payment. Regulation 32 provides further information about periods of time spent in a care home, a hospital or similar institution or in legal custody.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on www.legislation.gov.uk.

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