

EXPLANATORY MEMORANDUM TO
THE PERSONAL INDEPENDENCE PAYMENT REGULATIONS
(NORTHERN IRELAND) 2016

S.R. 2016 No. 217

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Social Development (Northern Ireland) (“The Department”) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to provide the legislative detail on the main rules, entitlement conditions and assessment criteria to support the introduction of Personal Independence Payment (PIP). PIP will replace Disability Living Allowance (DLA) for people aged 16 to 64 from 20 June 2016 onwards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 [Section 87 of the Northern Ireland Act 1998](#) places a statutory duty on the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. [Section 88 of the 1998 Act](#) makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain; they are entitled to the same rights and benefits paid at the same rates.
- 4.3 The [Welfare Reform Act 2012](#) introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker’s Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive. It also reassessed incapacity benefits claimants for Employment and Support Allowance, improved the Work Capability Assessment and made sure housing support is fair.
- 4.4 On 17 November 2015 “[A Fresh Start: The Stormont House Agreement and Implementation Plan](#)” was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. [The Northern Ireland \(Welfare Reform\) Act 2015](#) provides a power for Her Majesty to legislate on

social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The [Welfare Reform \(Northern Ireland\) Order 2015](#) (The Order) was made on 9 December 2015 and regulations stemming from the Order to implement the various welfare reforms set out in the [Welfare Reform Act 2012](#) in Northern Ireland are now being brought forward.

- 4.5 Part 5 of the Order provides the framework for a new benefit, PIP, designed to help disabled people meet the additional costs arising from a long-term health condition or disability. This instrument is the first set of Regulations to establish the detailed rules and entitlement conditions for PIP.
- 4.6 This instrument is directly related to two further instruments. The Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 provide for transitional arrangements in respect of assessing existing recipients of DLA for entitlement to PIP and for claimant responsibilities in that regard. The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations (Northern Ireland) 2016 provide for consequential and supplementary arrangements and amendments resulting from the introduction of PIP. Both of these instruments are subject to the negative resolution procedure and will be made and laid concurrently with this instrument.
- 4.7 The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 provide the legal framework for the manner of claiming and administering PIP and changing decisions and managing appeals.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is solely to Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 These changes restore parity between social security systems in Northern Ireland and Great Britain as the instrument makes the equivalent changes for the social security system in Northern Ireland that were made in Great Britain by [the Social Security Personal Independence Payment Regulations 2013](#) (S.I. 2013/377) (including amendments made to that S.I. by S.I. 2013/455, 2270, 2015/457 and 643, where appropriate).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 In December 2010 a consultation document, [Disability Living Allowance Reform](#) (CM 7984), was published which set out the intention to replace disability living allowance with a new benefit for disabled people. The consultation made clear that

introducing a new benefit, rather than modifying DLA, would enable some key principles of DLA, such as its tax-free, non means-tested nature, to be maintained while delivering cash support in a fair, consistent and sustainable manner. Views have been sought from interested stakeholders in Northern Ireland and have been included in considerations which helped shape and finalise provisions within the Order and within this instrument.

- 7.2 DLA was introduced in 1992 and built on the rules developed for disability benefits introduced in the 1970s. It was designed to help disabled people meet the extra costs associated with their condition. DLA is no longer in step with the needs of disabled people, has proved to be complex and confusing and lacks objective assessment criteria and systematic checking processes. In November 2015 around 152,000 of the current caseload had indefinite awards with no mandatory checks in place or other arrangements which ensure regular contact with the Department. The current system is not sustainable in the long term. There are now over 208,000 people in Northern Ireland receiving DLA. In November 2009, DLA spend in Northern Ireland was £13,800,000 per week rising to £19,006,000 per week by November 2015. Approximately 125,000 of the current recipients are aged 16-64. Expenditure on DLA is over £11,141,000 per week in Northern Ireland for this working-age group.
- 7.3 At the centre of the proposals for PIP is the development of a transparent and objective assessment which considers people as individuals and assesses their entitlement to the benefit fairly and consistently. PIP is made up of two components, daily living and mobility, both paid at one of two rates, standard or enhanced. Individuals can receive either or both of these components. The assessment for entitlement to the two components looks at an individual's ability to carry out a range of key everyday activities that are fundamental to daily life. Ten of these activities relate to entitlement to the daily living component and two to the mobility component. When considering someone's ability to undertake an activity, the assessment will take account of any aids and appliances that an individual may need to use in order to complete the activity and also where people need support from another person, such as supervision, prompting or assistance. Priority in the new benefit will go to those individuals who are least able to complete the activities and/or who need the most support to do so.
- 7.4 In addition to the features of DLA which have been taken forward into PIP under provisions in the Order, this rule brings forward provisions which:
- allow claimants to retain entitlement beyond their 65th birthday or retirement age, whichever is the higher;
 - withdraw payment of both components after 28 days where claimants enter a publicly funded hospital;
 - withdraw the daily living component where claimants enter publically funded residential care; and
 - provide for rules around residence and presence and periods abroad.
- 7.5 In addition to the assessment criteria and award duration there is one other provision which is new to PIP: benefit provision for prisoners. In order to avoid duplication of payment when prisoners have their disability-related costs met by the appropriate custodial body and/or health authority, provisions will see payment of benefit ceasing once someone has been detained in legal custody for 28 days irrespective of the outcome of the proceedings against them. Maintaining payment of the benefit for 28

days in these circumstances allows for a continued but limited contribution towards any outstanding disability-related expenditure, for example home heating bills.

- 7.6 Additional provision is made in these Regulations in relation to medical evidence (not included in the corresponding GB Regulations). A number of amendments were accepted during the passage of the Northern Ireland Welfare Reform Bill before it fell at Final Stage in May 2015. At [Consideration Stage](#) of the Bill a tabled amendment which provides for relevant medical evidence to be taken into account in the assessment for PIP was accepted by the Northern Ireland Minister for Social Development and is now replicated at Article 85(3)(c) in the Welfare Reform (Northern Ireland) Order 2015.

Consolidation

- 7.7 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or “Blue Volumes”), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: <https://www.dsdni.gov.uk/services/law-relating-social-security>

8. Consultation outcome

- 8.1 In 2011/12 the Department consulted on the implications of the wider reforms (including PIP) as part of the Welfare Reform Bill consultation process, including a public consultation on the [equality impact assessment](#). There have been five formal consultations and one informal consultation on the introduction of PIP in Great Britain and Northern Ireland. Initial proposals for the [reform of DLA](#), including the high-level principles of the PIP assessment criteria, were first consulted on between December 2010 and February 2011. A [first draft of the detailed proposals for the assessment criteria and regulations](#) was published in May 2011 and was subject to informal consultation until August 2011. A second draft of the assessment criteria was published in November 2011 and a [formal consultation](#) on the criteria followed from January to April 2012. A formal consultation on the [detailed rules](#) underpinning PIP ran from April to June 2012. [Consultation on the moving around activity](#) took place between June and August 2013 and between December 2015 and January 2016 views were sought on the use of [aids and appliances](#) in the PIP assessment.
- 8.2 In total over 80 responses to the formal consultations were received in Northern Ireland, including almost 20 from individuals. These responses were shared with the Department for Work and Pensions and considered alongside those they received in Great Britain. The official [Westminster government response](#) to the first consultation was published on 4 April 2011 and the responses to the [assessment criteria](#) and [detailed design](#) consultations were published on 13 December 2012. The formal government response to the consultation on the *moving around activity* was published on 21 October 2013 with the [response to the consultation on the use of aids and appliances](#) being published on 11 March 2016.
- 8.3 In addition to these formal and informal consultations, a series of briefing notes and additional material to support understanding of the proposals and how they would be delivered was published. Throughout the development of the policy proposals and implementation plans, the Department has worked extensively with disabled people, disability organisations and wider stakeholders. The Northern Ireland Social Security Agency (NISSA) within the Department has held a number of events with the Customer Representative Group Forum (consisting of over 60 groups) regarding PIP.

This forum first met in November 2011 as part of the Department's commitment to engage with relevant stakeholder groups around welfare reform issues.

8.4 As a result of these UK-wide consultations and ongoing engagement with disabled people and the organisations that represent them, a number of changes were made to the provisions:

- the required period condition was modified so that the proposed qualifying period was reduced from six to three months and the prospective test extended to nine months, maintaining an overall 12 month required period condition in line with the definition of long-term disability used in disability legislation;
- the measure to withdraw the mobility component for care home residents was removed;
- substantive changes were made to the assessment activities:
 - taking account of specialist orientation aids such as long canes in the mobility component;
 - broadening the approach to aids and appliances by, in certain cases, including generic aids that are not specially designed for use by disabled people;
 - dividing the “communicating activity” into two separate activities – “communicating verbally” and “reading and understanding signs, symbols and words” – ensuring individuals who have difficulty with both verbal communication and reading are given appropriate priority in the benefit;
 - the “moving around” activity has been rewritten to make it easier to understand and apply and also to make the policy intent clearer (this element was also subject to a further consultation exercise between June and August 2013 with the formal government response being published on 21 October 2013);
- allowing for a temporary absence abroad of up to 13 weeks (or up to 26 weeks if the absence is specifically for medical treatment). A 4 week period had originally been proposed for PIP, DLA and Attendance Allowance. This change is intended to address concerns about term-time absences for students studying abroad, disabled people needing more time to travel and recuperate and younger people spending holidays abroad with relatives; and
- adopting the existing DLA rules which allow for a two year linking period for people under the age of 65 and a one year linking period for those over 65 following concerns that a universal one year linking period would impact on those with fluctuating conditions. Linked claims will not have to re-satisfy the qualifying period for any component previously awarded where the condition giving rise to entitlement is substantially the same as for the earlier award.

9. Guidance

9.1 Detailed guidance on both regulatory and operational changes will be provided to staff and decision makers within NISSA. Procedures will be updated, staff trained and support material will be provided concerning the introduction of PIP.

9.2 NISSA has engaged with stakeholders to provide briefing and guidance on the delivery arrangements for the introduction of PIP. Information is already available on [NI Direct website](#) for the general public.

10. Impact

- 10.1 The introduction of PIP does not introduce a statutory burden on business, charities or voluntary bodies. NISSA will continue to work with charities and voluntary bodies supporting disabled people to help them prepare for the introduction of PIP.
- 10.2 The impact on the public sector is negligible. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the Executive. .
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. There are currently around 125,170 working age DLA claimants in Northern Ireland. It is not possible for us to determine the future eligibility of these individuals for Personal Independence Payment. The changes provide a transparent and consistent assessment to ensure support is based on need rather than condition, and reassessment over time will ensure that as people's conditions or health needs change they are more accurately reflected in the support provided.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department's offices and correspondence from members of the public.
- 12.2 Northern Ireland social security legislation normally maintains parity with changes made by the Department for Work and Pensions.
- 12.3 [Article 94 of the Welfare Reform \(Northern Ireland\) Order 2015](#) also provides for two biennial, independent reviews within the first four years of the implementation of PIP on the operation of assessments: the first to report within two years beginning with the date on which the first assessment regulations come into force, and the second within four years of that date.
- 12.4 In addition, [Article 139](#) of the Order places a duty on the Department to conduct and publish a report on the operation of the Order. This must be produced within 3 years of the making of the Order. The Department is required to lay the report before the Northern Ireland Assembly.

13. Contact

- 13.1 Anne McCleary at the Department for Social Development Telephone: 02890 819984 or email: anne.mccleary@dsdni.gsi.gov.uk can answer any queries regarding the instrument.