

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

**S.R. 2016 No. 227**

**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 These Regulations provide the legislative detail for transitional arrangements to support the phasing out of Disability Living Allowance and the introduction of Personal Independence Payment (PIP). In particular, the Regulations set out the process for assessing Disability Living Allowance (DLA) claimants aged between 16 and 64 on 20 June 2016, or who reach age 16 after that date, for entitlement to PIP.

**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 disability or health condition. Schedule 10 of the Order sets out that regulations may make provision for replacing DLA with PIP.
- 4.6 These Regulations are directly related to two further Statutory Rules. The Personal Independence Payment Regulations (Northern Ireland) 2016 (“The PIP Regulations”) provide the detailed legislative rules for entitlement to PIP. The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations (Northern Ireland) 2016 provide for supplementary arrangements and consequential amendments resulting from the introduction of PIP.
- 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 regulatory framework for the manner of claiming and administering PIP (other than provisions used within this Rule) 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 Personal Independence Payment \(Transitional Provisions\) Regulations 2013](#) (S.I. 2013/387) (including amendments made to that S.I. by S.I. 2013/2231, 2689 and 2016/189, where appropriate).

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 PIP will be available for new claimants from 20 June 2016. DLA claimants aged 16 to 64 on 20 June 2016, and those turning 16 after that date will be invited to claim PIP and, whether they do or not, their entitlement to DLA will end. The process of inviting

people to claim PIP from the existing stock of working age DLA claimants is expected to be completed by December 2018.

- 7.2 The intention is that existing DLA recipients will be invited to apply for PIP on receipt of a written notification from the Department. The notification will not be issued to anyone aged 65 or over on 20 June 2016 nor to anyone terminally ill on reaching the age of 16. On receipt of such a notification, the default period for claiming PIP is 28 days, although that period can be extended by the Department.
- 7.3 There will be a gradual approach to implementation because of the scale of the programme to assess individuals. Selection of existing DLA claimants will therefore be phased in as follows:-
- those with a fixed term award of DLA due to expire from 8 November 2016 onwards - we will start to invite PIP claims from these claimants from 20 June 2016 i.e. 20 weeks prior to their existing award ending;
  - those who report a change in their care or mobility needs from 20 June 2016 onwards;
  - children reaching the age of 16 after 20 June 2016. Children who are terminally ill<sup>1</sup> will only be invited to claim PIP towards the end of their existing award or by 31 December 2018 at the latest if they have an indefinite award;
  - those with a longer fixed term award or an indefinite award of DLA will be randomly selected from 12 December 2016 onwards.
- 7.4 If a claim is made, the normal PIP assessment process will apply. Whether or not the claim to PIP is successful, entitlement to DLA will cease 28 days after the first pay day following the PIP determination. An exception is made to the 28 day period for a person who is terminally ill, if that person is awarded personal independence payment at a total weekly rate which is greater than that person's total weekly rate of DLA, ensuring that the person's entitlement to DLA will terminate on the last day of the payment period during which the PIP decision is made, or the first Tuesday following the making of that decision (whichever is earlier). Payment of PIP, where awarded, will start the following day. DLA entitlement will also cease in the event of a failure by the claimant to provide information or to attend a consultation.
- 7.5 A failure to claim PIP within the requisite period will result in suspension of DLA and a further failure after suspension will result in termination of DLA. In those circumstances, should the individual wish to claim in the future, a new claim for PIP would be required.
- 7.6 A DLA entitled person aged under 65 on 20 June 2016 who has not had an invitation from the Department can apply for PIP voluntarily. Nobody under the age of 16 is entitled to claim PIP and anyone with an outstanding DLA claim is also barred from claiming PIP until a decision on their DLA claim has been made. Claimants appealing their existing DLA decision will not be prevented from claiming PIP but any subsequent award of DLA, if made, would end on the day before the effective date of the PIP decision.

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<sup>1</sup> For a PIP claimant the definition of terminally ill is in Article 87(4) of the Welfare Reform (NI) Order 2015: "*For the purposes of this Article 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.*".

- 7.7 Fixed term DLA awards can be extended to allow the PIP assessments to take place. This is to prevent fixed term DLA awards going out of payment whilst the assessment for PIP is taking place.
- 7.8 Once a claim to PIP has been made, any change of circumstance, other than a decision on whether DLA is payable e.g. because of admission to hospital or absence abroad or a change relating to the claimant's presence in Northern Ireland, will be applied to the PIP decision. Once a PIP decision has been made any remaining appeal rights in respect of DLA will run up to the point entitlement to DLA ended. Decisions on entitlement to PIP can be appealed, subject to a mandatory reconsideration of the decision.
- 7.9 There are additional provisions to ensure the process for claiming PIP works smoothly and efficiently for everyone invited to claim by allowing:
- existing Departmental appointments to act on behalf of a claimant to be brought over to a claim to PIP;
  - anyone who was under the age of 65 on 20 June 2016 but is over that age when assessed for PIP to be assessed as if they were under the age of 65. This provision will allow all claimants, regardless of their age at the time they are assessed, to access both rates of the mobility component of PIP even though they might otherwise have been prevented from receiving it by reference to their age;
  - taking forward the payability position on a DLA award to a successful PIP award. For hospital in-patients or care home residents, this means that if either or both components of DLA were in payment at the point PIP entitlement starts they will be paid PIP for a further 28 days before payment of their PIP ceases;
  - any period of temporary absence abroad before PIP entitlement commences would be taken forward in to PIP;
  - enabling outstanding appeals on an existing DLA award to be dealt with whilst ensuring that benefit entitlement between DLA and PIP do not overlap.

### ***Consolidation***

- 7.10 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. 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. That consultation did not address the method or timescale over which existing DLA recipients would be assessed for entitlement to PIP but did state that any such assessment would not involve children under the age of 16 or adults aged 65 and over when the changes are introduced.

- 8.2 In the consultation on the [detailed design](#) of PIP, published in March 2012, details were given including proposals for how people would be informed of the changes, what they would need to do in order to claim PIP and what would happen to their existing award of DLA. The consultation also included specific proposals for children reaching the age of 16.
- 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 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, there have been a number of changes from the original proposals which are reflected within these Regulations and guidance drafted to support decision makers:
- discretionary provision to allow for additional time in which the initial claim to PIP can be made, where the Department deems it appropriate, e.g. if the claimant goes into hospital shortly after receiving their invitation to claim;
  - the effective date of a PIP decision will be at least four weeks after the date the decision is made, providing some limited protection to those who see a reduction in benefit income;
  - in the case of a terminally ill claimant whose total weekly rate of PIP will be greater than that for DLA, entitlement to DLA will terminate on the last day of the payment period during which the PIP decision is made, or the first Tuesday following the making of that decision (whichever is earlier), ensuring the higher payment is made as soon as possible;
  - the claim process will include reasonable attempts to identify individuals who may need additional support with their claim;
  - rather than use an "intent to claim" PIP declaration prior to a young adult's 16th birthday as a mechanism to extend fixed term awards, all fixed term awards for under 16s will be automatically extended where necessary and the young adult asked to claim in their own name, or through an appointee, following their 16th birthday.

## **9. Guidance**

- 9.1 Detailed guidance on both regulatory and operational changes has been developed for staff and decision makers within NISSA to support the PIP delivery arrangements.
- 9.2 NISSA has engaged with stakeholders to provide briefing and guidance on the delivery arrangements for the reassessment of DLA claimants for PIP. Information is already available on [NI Direct website](#) for the general public.
- 9.3 Changes will be made to the Decision Makers Guide (DMG) which is also available free on the DSD internet at: <https://www.dsdni.gov.uk/articles/decision-makers-guide>.

## **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 There has been close government liaison with Motability, a charity, and Motability Operations, a not-for-profit organisation which runs the Motability scheme, to ensure that the introduction of PIP can continue to provide vehicles and powered wheelchairs or scooters to people who meet the qualifying criteria.
- 10.3 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 Northern Ireland Executive. Administrative arrangements to provide passports to other schemes and benefits are being maintained wherever possible and in line with policy decisions made by the relevant Departments administering those benefits and schemes.
- 10.4 An Impact Assessment has been prepared for this instrument and 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. These regulations ensure that transition from the DLA to PIP regime does not reduce the support provided for those who require this support.

## **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](mailto:anne.mccleary@dsdni.gsi.gov.uk) can answer any queries regarding the instrument.