

**EXPLANATORY MEMORANDUM TO**  
**THE PERSONAL INDEPENDENCE PAYMENT (AMENDMENT) REGULATIONS**  
**(NORTHERN IRELAND) 2018**

**2018 No. 121**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) 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 amend the Personal Independence Payment Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 217](#)) in order to reverse the effect of an earlier amendment which inserted wording into certain assessment descriptors to exclude the consideration of overwhelming psychological distress. The corresponding amendment in Great Britain was found to be ultra vires by a decision of the High Court handed down on 21 December 2017([2017] EWHC 3375 (Admin)).

**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 negative resolution procedure 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 Communities 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.
- 4.4 On 17 November 2015 "[A Fresh Start: The Stormont 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](#) provided 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](#) 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 continue to be brought forward for Northern Ireland.

- 4.5 As explained above, the purpose of this instrument is to amend Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016 ([S.R. 2016 No. 217](#)) (“the PIP Regulations”), in order to reverse the effect of regulation 2(4) of the Personal Independence Payment (Amendment) Regulations (Northern Ireland) 2017 ([S.R. 2017 No. 69](#)) (“the 2017 Regulations”), which came into force on 20 April 2017. The corresponding provision in regulation 2(4) of the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 ([S.I. 2017/194](#)) which amended the Social Security (Personal Independence Payment) Regulations 2013 ([S.I. 2013/377](#)) was found to be ultra vires by a decision of the High Court in Great Britain, handed down on 21 December 2017 (RF v SSWP & Ors [2017] EWHC 3375 (Admin)).
- 4.6 The changes will maintain parity between social security systems in Northern Ireland and Great Britain.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Northern Ireland only.
- 5.2 The territorial application of this instrument is Northern Ireland.

## **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* Personal Independence Payment

- 7.1 Personal Independence Payment (PIP) was introduced in Northern Ireland under [Part 5 of the Welfare Reform \(Northern Ireland\) Order 2015](#), and since 20 June 2016 has replaced Disability Living Allowance (DLA) for new claimants aged 16 to 64. Existing DLA claimants who were aged 16 to 64 on 20 June 2016, or who reach age 16 after that date, are gradually being invited to claim PIP.

### Assessment of daily living and mobility activities

- 7.2 Schedule 1 to the PIP Regulations sets out the activities which are to be assessed in order to determine a claimant’s eligibility for the daily living and mobility components of PIP. It prescribes 10 daily living activities relevant to entitlement to the daily living component, and 2 mobility activities relevant to entitlement to the mobility component. Each component may be awarded at standard or enhanced rate.
- 7.3 All activities have a series of descriptors, each with a score attached. A claimant’s entitlement is determined by identifying the descriptor which best describes their level

of need relating to the activity in question, and then aggregating their scores for all daily living activities or all mobility activities.

### ***Mobility activity 1***

- 7.4 Mobility activity 1 (“planning and following journeys”) assesses a claimant’s ability to plan and follow the route of a journey. In the case of [MH v Secretary of State for Work and Pensions \(PIP\) \[2016\] UKUT 0531 \(AAC\)](#) (judgment dated 28 November 2016 and published 20 December 2016) the Upper Tribunal held that overwhelming psychological distress can be taken into account in descriptors c, d and f, even though it is only mentioned in descriptors b and e.
- 7.5 In early 2017 the Department for Work and Pensions (DWP) brought forward amendments to clarify the drafting of the descriptors for mobility activity 1 so as to reverse the effect of this ruling and more clearly reinstate the original intended policy intention that overwhelming psychological distress should only apply to descriptors b and e. Words were inserted into descriptors c, d and f to exclude the effects of psychological distress. DWP argued that those people who cannot plan or follow a journey because of a sensory or cognitive impairment, have a higher level of need and therefore face higher costs than those who experience psychological distress when they plan or follow a journey.

### ***Judicial Review***

- 7.6 A judicial review challenged the amendments on the grounds that -
- they unlawfully discriminated against sufferers of psychological distress;
  - they were beyond the powers conferred by the Welfare Reform Act 2012 (ultra vires); and
  - DWP did not consult before laying them.
- 7.7 The judgment was handed down on 21 December 2017. The claimant was successful on all three grounds of challenge and the court quashed the amendments made by regulation 2(4) of the Social Security (Personal Independence Payment) (Amendment) Regulations 2017.

### ***GB position following the High Court judgment***

- 7.8 On 19 January 2018 the Secretary of State for Work and Pensions announced through a written [Ministerial Statement](#) that DWP would not be seeking to appeal the judgment.

### ***NI position***

- 7.9 Corresponding amendments were also introduced in Northern Ireland earlier in 2017 (to the [Personal Independence Payment Regulations \(Northern Ireland\) 2016 \(S.R. 2016 No. 217\)](#) by the Personal Independence Payment (Amendment) Regulations (Northern Ireland) 2017 ([S.R. 2017 No. 69](#))) – these were made by the Secretary of State for Work and Pensions on behalf of Northern Ireland under the special process currently in place for making welfare reform changes. High Court judgments in Great Britain are not binding in Northern Ireland and the quashing order does not apply to the provision in the Northern Ireland 2017 Regulations. Therefore in order to restore parity with Great Britain amendments are being brought forward in these Regulations.

### *Consolidation*

- 7.10 This instrument will be informally consolidated in the Northern Ireland Law Relating to Social Security (or “Blue Volumes”). It will be available to the public at no cost via the internet at: <https://www.communities-ni.gov.uk/services/law-relating-social-security>.

### **8. Consultation outcome**

- 8.1 This measure has not been subject to public consultation.

### **9. Guidance**

- 9.1 Current guidance can be found in the [PIP Assessment Guide](#) (guidance for providers carrying out PIP assessments) and the Decision Makers Guide (DMG) which is also available free on the internet at <https://www.communities-ni.gov.uk/articles/decision-makers-guide>. These will be updated with new guidance in due course.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no immediate impact on the public sector as a direct result of these regulations. There will be some impact as a result of any subsequent review of cases which may be undertaken in order to maintain parity with Great Britain.
- 10.3 An Impact Assessment has not been prepared for this instrument.

### **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 for Communities’ offices and correspondence from members of the public.
- 12.2 Northern Ireland social security legislation normally maintains parity with changes made by DWP.
- 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 came 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 for Communities 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 for Communities is required to lay the report before the Northern Ireland Assembly.

### **13. Contact**

- 13.1 Anne McCleary at the Department for Communities can answer any queries regarding the instrument. (Telephone: 028 9082 3332 or email: [Anne.McCleary@communities-ni.gov.uk](mailto:Anne.McCleary@communities-ni.gov.uk))