EXPLANATORY MEMORANDUM TO

THE PERSONAL INDEPENDENCE PAYMENT (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2019

2019 No.118

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 This instrument corrects an unintentional gap in the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 (S.R. 2016 No. 227)[1] ("the Transitional Regulations") to ensure that all claimants in receipt of Personal Independence Payment ("PIP") after "the relevant age" (age 65 or state pension age, whichever is the higher), may continue to receive PIP where their award has been subject to revision or supersession.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument makes provision for Northern Ireland corresponding to the Personal Independence Payment (Transitional Provisions) (Amendment) Regulations 2019 brought forward in Great Britain to correct a similar gap in the Personal Independence Payment (Transitional Provisions) Regulations 2013 (S.I. 2013 No. 387)[2]. As such it is being issued free of charge to all known recipients of the Transitional Regulations.

Other matters of interest to the House of Commons

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

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

[1] http://www.legislation.gov.uk/nisr/2016/227/contents/made
[2] http://www.legislation.gov.uk/uksi/2013/387/contents

6. Legislative Context

6.1 Section 87 of the Northern Ireland Act 1998 ("the 1998 Act")[3] 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.

6.2 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 rate.

6.3 The Welfare Reform Act 2012 ("the 2012 Act")[4] introduced a number of reforms which included the introduction of a new disability benefit, PIP.

6.4 On 17 November 2015 'A Fresh Start: The Stormont Agreement and Implementation Plan'[5] 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 implement welfare reform in Northern Ireland. The Northern Ireland (Welfare Reform) Act 2015 provided a time-limited 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 could 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 2015 Order")[6] was made on 9 December 2015 making provision corresponding to the 2012 Act and regulations stemming from the 2015 Order to implement the various welfare reforms set out in the 2012 Act continue to be brought forward for Northern Ireland by the Secretary of State for Work and Pensions.

6.5 The Transitional Regulations contain provisions for the phasing out of Disability Living Allowance ("DLA") for existing recipients who were aged 16 to 64 on 20 June 2016 along with those now reaching age 16, and its replacement by a new benefit provided for in Part 5 of the 2015 Order[7] known as PIP. In particular, they provide for DLA claimants to be invited to claim PIP if they have reached the relevant age or over, notwithstanding Article 88 of the 2015 Order, which would otherwise prevent such claimants from claiming PIP.

6.6 The Transitional Regulations came into operation on 20 June 2016.

6.7 As a consequence of the phased implementation to reassessment, some DLA claimants who were under the age of 65 when PIP was first introduced have been, and will continue to be, invited to claim PIP when they have reached the relevant age or over. Under normal circumstances such claims would not be allowed under the terms of Article 88(1) of the 2015 Order, which provides the general prohibition for those of the relevant age or over from claiming PIP. However, under the regulation making power at Article 88(3) of the 2015 Order, regulation 27 of the Transitional Regulations provides exceptions to Article 88(1) to allow for a DLA to PIP reassessment claim for those who had not reached the age of 65 on 20 June 2016 but

[3] http://www.legislation.gov.uk/ukpga/1998/47/contents
[4] http://www.legislation.gov.uk/ukpga/2012/5/contents
[5] https://www.northernireland.gov.uk/publications/fresh-start-stormont-agreement-and-implementation-plan
[6] http://www.legislation.gov.uk/nisi/2015/2006/contents
[7] http://www.legislation.gov.uk/nisi/2015/2006/part/5

are now over the relevant age. A DLA to PIP reassessment claim by someone who has reached the relevant age or over allows a claimant to access both components of PIP, at either the standard or enhanced rate depending on their needs, following their first assessment.

6.8 In line with previous provisions in DLA, the provision above supports a wider policy that those who were in receipt of PIP when reaching the relevant age can continue to receive benefit for as long as they satisfy the entitlement conditions after that age. Additionally, an existing PIP claimant who is over the relevant age can have their awards revised and superseded for a change of circumstances under the terms of regulation 27 of the Personal Independence Payment Regulations (Northern Ireland) 2016 ("the PIP Regulations") (S.R. 2016 No. 217)[8]. However, regulation 27(1)(a) of the PIP Regulations is itself subject to either regulation 25 or 26 of those Regulations.

6.9 Regulation 25 of the PIP Regulations applies only to those who were under the relevant age when they first claimed PIP, whilst regulation 26 applies to those who have reached the relevant age, had a previous award of PIP and re-claim PIP within a year of their previous entitlement ending. Neither of these circumstances apply to those who have claimed PIP, or have been invited to claim PIP, for the first time on reaching the relevant age or over under the terms of regulation 27 of the Transitional Regulations. Therefore, on a strict reading of the legislation, claimants who have transferred to PIP from DLA when they have reached the relevant age or over, and who have an award which is subject to revision or supersession, cannot benefit from the provisions in the PIP Regulations that would otherwise apply to those of the relevant age and accordingly, due to the lack of an exemption to Article 88(1) of the 2015 Order would no longer be entitled to receive PIP. This situation is not in accordance with the pre-existing policy position and, if applied, would disadvantage claimants who have reached the relevant age or over, who had previously been in receipt of DLA, whereas others of a similar age, who had claimed PIP prior to the relevant age, would not be similarly disadvantaged.

6.10 This instrument therefore closes the legislative gap by adding in a new provision, Regulation 27A, into the Transitional Regulations. This Regulation provides DLA claimants who claim and become entitled to PIP when they have reached the relevant age or over ("transfer claimants") with an exemption to Article 88(1) where their PIP award is revised or superseded, equivalent to that provided for claimants who fall under regulation 27 of the PIP Regulations. Regulation 27A also applies the same restrictions on moving between rates of the mobility component after the relevant age as those provided under regulation 27 of the PIP Regulations. The effect of this is that where these transfer claimants have a PIP award that includes the mobility component and that award is subject to supersession, the mobility component cannot be increased to a higher rate of award than that originally awarded at the date of transfer. Furthermore, that rate of the mobility component can only continue to be awarded where entitlement results from substantially the same condition or conditions for which it was originally made. This is in accordance with pre-existing policy and mirrors the position provided for claimants who fall under regulation 27 of the PIP Regulations.

[8] http://www.legislation.gov.uk/nisr/2016/217/contents/made

7. Policy background

What is being done and why?

Personal Independence Payment

7.1 PIP replaced DLA for new claims in Northern Ireland from 20 June 2016. PIP involves a more objective assessment of an individual's need, enabling support to be targeted at those disabled people least able to participate in society and who experience the greatest barriers to living independently.

7.2 The PIP assessment measures the impact of a person's health condition or impairment on their ability to carry out a series of key everyday activities which are fundamental to living an independent life. These activities have been chosen to consider the impact of a more comprehensive range of impairment types than the DLA criteria. They are designed to ensure that the greatest level of support goes to those least able to carry out the activities, in order to contribute towards extra disability-related costs they are likely to incur.

7.3 One of the policy intentions within PIP, and DLA before, has been to focus financial support on those who become disabled earlier in life, i.e. before age 65, and have had less opportunity to work, earn and save for their retirement. The age 65 threshold applied equally to men and women since DLA was introduced in 1992 and upon the introduction of PIP. With state pension age now aligned between men and women at age 65, and with it gradually rising towards age 66 (by October 2020), the upper age threshold, known as the relevant age, for claiming PIP is also rising in line with the increases in state pension age.

7.4 Because of the scale of the programme to assess DLA entitled individuals for entitlement to PIP (approximately 127,000 claimants[9]) in Northern Ireland, there has been a gradual approach to implementation. This means that some DLA claimants are over the relevant age by the time they first claim and qualify for PIP.

7.5 The gap identified in the legislation governing this group of claimants means that where their PIP award is subject to a revision or supersession for a change of circumstances there is no exemption to the upper age restriction. A strict application of the legislation would mean PIP would no longer be payable to this group in this situation. This goes against the policy intent and if applied would disadvantage these claimants.

7.6 The amending regulations put the policy intent on a statutory footing by providing DLA claimants who claim and transfer to PIP when they have reached the relevant age or over, with an exemption to the upper age restriction, where their awards are revised or superseded. This mirrors provision in place for claimants who qualify for PIP before the relevant age and their awards are subject to revision or supersession after that age. Until such time as the gap in the legislation is closed, the Department for Communities, in agreement with the Department of Finance, is continuing to deal with revisions and supersessions in accordance with the policy intent to ensure that claimants continue to be entitled to PIP and receive their awards following any revision or supersession by way of concessionary payments.

[9] Figure relates to those DLA claimants who were aged 16-64 when PIP was introduced in Northern Ireland: Page 2, https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dla-to-pip-reassessment-sumary-may18.pdf

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument will be informally consolidated in the Law relating to Social Security (Northern Ireland) or ("Blue Volumes"). It will be available to the public at no cost via the internet at: SSPLD Blue Volumes.

10. Consultation outcome

10.1 In Northern Ireland and Great Britain 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 6 December 2010 and 18 February 2011[10]. The detailed design of PIP, including the principles and policy applying to DLA claimants being invited to claim PIP and those reaching the relevant age were consulted on between 26 March 2012 and 30 June 2012, with the Government response published on 13 December 2012[11].

10.2 Bearing in mind the history of extensive consultation and the fact that the present instrument is intended to close a legislative gap to support the original policy intention, no further public consultation has been undertaken before making this instrument.

11. Guidance

11.1 Since this instrument simply provides for a sound legislative footing to a policy that continues to be delivered in practice, no changes in guidance are required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Equality Analysis has been prepared for this instrument and we have assessed the equality impacts of this change based on the information available. We have no evidence that any protected groups would be disproportionately affected by the change in a manner that would result in unlawful discrimination, harassment or victimisation. This is a technical change and is a positive one for those affected.

13. Regulating small business

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

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[10] *Disability Living Allowance reform* (Cm 7984): https://www.gov.uk/government/consultations/disability-living-allowance-reform

[11] *DLA reform and PIP: completing the detailed design*: https://www.gov.uk/government/consultations/dla-reform-and-pip-completing-the-detailed-design

14. Monitoring & review

14.1 This instrument maintains existing PIP policy and procedures. The Department for Communities will continue to monitor the introduction of PIP and the transitional arrangements for those successfully moving across from DLA.

15. Contact

15.1 Anne McCleary, Director of Social Security Policy and Legislation Division at the Department for Communities, can confirm that this Explanatory Memorandum meets the required standard and can be contacted with any queries regarding this instrument: anne.mccleary@communities-ni.gov.uk or 028 9082 3332.

15.2 Justin Tomlinson, Minister of State for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.