

**EXPLANATORY MEMORANDUM TO
THE PERSONAL INDEPENDENCE PAYMENT (TRANSITIONAL PROVISIONS)
REGULATIONS 2013**

2013 No. 387

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument provides transitional arrangements to support the introduction of Personal Independence Payment (PIP) under powers taken at Part 4 of the Welfare Reform Act 2012 (c. 5)¹ [“the Act”] and to assess for entitlement to PIP Disability Living Allowance (DLA) claimants aged between 16 and 64 on 8 April 2013, or who reach age 16 after that date.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Part 4 the Act 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 Act sets out that regulations may make provision for replacing DLA with PIP.

4.2 This instrument is directly related to three further instruments. The Social Security (Personal Independence Payment) Regulations 2013 [“the PIP Regulations”] provide the detailed legislative rules for entitlement to PIP. The Social Security (Personal Independence Payment) (Consequential and Supplementary Provisions) Regulations 2013 will provide for consequential and supplementary arrangements and amendments resulting from the introduction of PIP. The Social Security (Personal Independence Payment) (Amendment) Regulations 2013 insert a new paragraph into regulation 4 of the PIP Regulations so that consideration of an individual’s ability to complete an activity must include whether they can do so safely, to an acceptable standard, repeatedly and in a reasonable time period.

4.3 The Committee’s attention is also drawn to the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 and the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013. These Regulations provide the regulatory framework for the manner of claiming and administering PIP (other than provisions used within this instrument) and changing decisions and managing appeals.

¹ www.legislation.gov.uk/ukpga/2012/5/part/4

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Explanatory Memorandum to the PIP Regulations explains the broader policy background to the introduction of PIP. PIP will be available for new claimants in a limited geographic area from 8 April 2013 with national roll out expected to follow from June 2013. DLA claimants aged 16 to 64 on 8 April 2013, 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. Nearly 2 million people will be assessed for PIP beginning from October 2013. The process of inviting people to claim PIP from the existing stock of working age DLA claimants is expected to be completed by October 2017. The plans and impacts for reassessing the existing stock of eligible DLA claimants were published on 13 December 2012².

7.2 This instrument provides that existing DLA recipients will be invited to apply for PIP on receipt of a written notification from the Secretary of State. The notification will not be issued to anyone aged 65 or over on 8 April 2013 nor to anyone terminally ill on reaching the age of 16 (regulation 3). On receipt of such a notification, the default period for claiming PIP is 28 days although that period can be extended by the Secretary of State (regulations 7 and 8).

7.3 Because of the scale of the programme to assess individuals for entitlement to PIP, and an aim to constantly test, monitor and improve processes, there will be a gradual approach to implementation. Selection of existing DLA claimants will therefore be phased in under the following timetable:-

- Those with a fixed term award of DLA due to expire from February 2014 onwards. We will start to invite PIP claims from these claimants from October 2013 onwards i.e. before their existing award ends.
- Those who report a change in their care or mobility needs from October 2013 onwards.
- Children reaching the age of 16 after October 2013. Children who are terminally ill will only be invited to claim PIP towards the end of their existing award or by October 2017 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 October 2015 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 and payment of PIP, where awarded, will start the following day (regulation 17). DLA entitlement will also cease in the event of a failure by the claimant to provide information or to attend a consultation (regulation 13).

² www.dwp.gov.uk/docs/pip-reassessments-and-impacts.pdf (corrected on 8 January 2013)

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 (regulations 9 to 11). In those circumstances, should the individual wish to claim in the future, a new claim for PIP would need to be made.

7.6 Regulation 4 provides that, until 7 October 2013, existing DLA claimants cannot make a claim to PIP. After that date, however, anyone in receipt of DLA will be able to claim PIP, subject to the following exceptions. Nobody under the age of 16 is entitled to claim PIP (regulation 5). Anyone with an outstanding DLA claim is also barred from claiming PIP (regulation 6) 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.

7.7 Regulations 18 and 19 allow fixed term DLA awards to 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 Great Britain, 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 Secretary of State appointments to act on behalf of a claimant to be brought over to a claim to PIP (regulations 28 and 29);
- anyone who was under the age of 65 on 8 April 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 (regulation 27);
- 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 (regulation 25);
- 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.

8. Consultation outcome

8.1 The Government consulted on the high level principles of DLA reform in December 2010³. 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.

³ *Disability Living Allowance Reform (CM 7984)*: www.dwp.gov.uk/consultations/2010/dla-reform.shtml

8.2 The Government set out its high level strategy on 14 March 2012 about how, and to what timescale, it would assess all existing DLA claimants aged 16 to 64⁴. In the Government's most recent consultation on the detailed design of PIP⁵, published on 26 March 2012, additional 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 a briefing note⁶, published on 13 December 2012 alongside the Government's response to the latest consultation⁷, the Government set out their final proposals relating to how every working age DLA claimant will be assessed for entitlement to PIP, including young adults reaching age 16 from October 2013. As a result of these 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 draft Regulations and guidance currently being drafted:-

- discretionary provision to allow for additional time in which the initial claim to PIP can be made, where the Secretary of State deems it appropriate, e.g. if the claimant goes in to 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.
- 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 The PIP Implementation Stakeholder Forum, and its sub-groups, comprising representatives from over 60 support organisations of and for disabled people, has engaged with the Department for Work and Pensions to help inform thinking and further development of PIP delivery arrangements, including reassessing DLA claimants for PIP. This has included detailed implementation products including PIP information for claimants, such as a leaflet specifically for younger people, decision notifications and a toolkit of materials for independent advisers. The Forum has also been involved in work to design the forms used by the claimant to articulate how their disability affects them. The Department is continuing to engage with the Forum on other areas of future design, continuous improvement and guidance for assessors. There has also been considerable work with claimants to gain their insight first-hand. These approaches are helping ensure the implementation products meet the needs of disabled people as far as possible.

9.2 Guidance is being developed for Department staff to support the PIP delivery arrangements. Publicly available information is already being made available on the DWP

⁴ www.dwp.gov.uk/docs/pip-briefing-high-level-reassessment.pdf

⁵ *DLA reform and Personal Independence Payment – completing the detailed design:*
www.dwp.gov.uk/consultations/2012/pip-detailed-design.shtml

⁶ www.dwp.gov.uk/docs/pip-reassessments-and-impacts.pdf (corrected on 8 January 2013)

⁷ www.dwp.gov.uk/docs/pip-detailed-design-response.pdf

website⁸, including materials directly aimed at advisers⁹, and the new Government services and information website¹⁰.

10. Impact

10.1 There is no impact on business or civil society organisations. The Government has worked closely with Motability, a charity, and Motability Operations, a not-for-profit organisation which runs the Motability scheme¹¹, to ensure that the introduction of PIP can continue to provide vehicles and powered wheelchairs or scooters to people who meet the qualifying criteria¹². The Government is also continuing to work with disability charities and Disabled People's User Led Organisations to support them with their preparations for the introduction of PIP.

10.2 The impact on the public sector is negligible. Administrative arrangements to provide passports to other schemes and benefits, such as the Blue Badge scheme and concessionary travel, are being maintained wherever possible and in line with policy decisions made by the Government Departments or Devolved Administrations administering those benefits and schemes.

10.3 An updated Impact Assessment was published in May 2012¹³. Additional DLA and PIP caseload impacts were made available on 13 December 2012¹⁴ and updated Carer's Allowance impacts were published on 8 February 2013¹⁵.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions will carry out a comprehensive programme of monitoring and evaluation using a range of methods and sources and making links, where possible, with the evaluation of Universal Credit. The Department has published an outline of its evaluation proposals¹⁶ including detailing what the evaluation will cover:-

- Claimant experiences of PIP;
- Implementation and delivery;
- Claimant outcomes (e.g. the relationship between employment and PIP); and
- The effectiveness of the decision-making, reconsiderations and appeals processes.

12.2 Section 89 of the Act also provides for two biennial, independent reviews within

⁸ <http://www.dwp.gov.uk/policy/disability/personal-independence-payment/#con>

⁹ <http://www.dwp.gov.uk/policy/disability/personal-independence-payment/information-for-advisers/>

¹⁰ www.gov.uk/pip

¹¹ The Motability scheme (www.motability.co.uk) provides vehicles and powered wheelchairs and scooters to qualifying disabled people in receipt of the higher rate mobility component of DLA or a War Pensions Mobility Supplement.

¹² The enhanced rate of the PIP mobility component will provide access to a Motability vehicle.

¹³ www.dwp.gov.uk/docs/dla-reform-wr2011-ia.pdf

¹⁴ <http://www.dwp.gov.uk/docs/pip-reassessments-and-impacts.pdf> (corrected on 8 January 2013)

¹⁵ <http://www.dwp.gov.uk/docs/pip-briefing-carers-allowance.pdf>

¹⁶ Available from: www.dwp.gov.uk/policy/disability/personal-independence-payment/

the first four years of the implementation of PIP assessment: 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. The Government has also committed to undertake a third independent review if the second demonstrates ongoing issues with the operation of the assessment¹⁷.

13. Contact

Phil Joseph, phil.joseph@dwp.gsi.gov.uk, 020 7449 5289, at the Department for Work and Pensions can answer any queries regarding the instrument.

¹⁷ Hansard, 17 January 2012, Columns 568 to 569:
www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0003.htm#12011769000243