

EXPLANATORY MEMORANDUM TO
THE PERSONAL INDEPENDENCE PAYMENT (TRANSITIONAL PROVISIONS)
(AMENDMENT) REGULATIONS 2016

2016 No. 189

1. Introduction

- 1.1 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

- 2.1 This instrument modifies the requirement for a terminally ill claimant who is transferring from Disability Living Allowance (DLA) to Personal Independence Payment (PIP) to wait a minimum of 28 days after the first pay day following the decision to award PIP. The amendment will only apply if, the claimant is awarded a greater weekly rate of PIP than their current DLA weekly rate.
- 2.2 If the conditions apply, the DLA entitlement will terminate the earlier of: the last day of the DLA payment period; or the first Tuesday after the PIP decision. PIP entitlement will begin the following day.

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 A proposed non-government amendment was received, during the passage of the Welfare Reform and Work Bill 2015, to remove the requirement for terminally ill claimants transferring from DLA to PIP to wait approximately 28 days before becoming entitled to PIP.
- 4.2 However that amendment referred to all terminally ill claimants, even if following an assessment determination, such claimants would receive PIP at a lower weekly rate than their current DLA award.
- 4.3 The amendment to the [Personal Independence Payment \(Transitional Provisions\) Regulations 2013](#) (the Transitional Regulations) will only apply if a terminally ill claimant is awarded PIP at a total weekly rate which is greater than their total weekly rate of DLA.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.

- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Subject to agreement of the Northern Ireland Assembly, the Department for Social Development in Northern Ireland will be producing corresponding legislation for 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

- 7.1 These regulations amend the Transitional Regulations so that claimants who become terminally ill and transfer from DLA to PIP do not have to wait 28 days after the first pay day following the decision to award PIP before they become entitled to PIP.
- 7.2 [Regulation 17 \(procedure following and consequences of determination of claim for personal independence payment\)](#) of the Transitional Regulations specify when entitlement to DLA will terminate and if following an assessment, PIP is awarded, when PIP will start.
- 7.3 Presently the effect of that regulation is that DLA entitlement will terminate for claimants who are transferring from DLA to PIP 28 days from the first pay day following the PIP decision. This applies to all claimants who transfer to PIP regardless of whether they receive more or less under PIP, or their circumstances. The Transitional Regulations were designed to allow for support to continue for a short period following the decision to award PIP, to provide limited financial support for those seeing a reduction in their award.
- 7.4 Terminally ill claimants are also subject to this rule. [Section 82\(4\) of the Welfare Reform Act 2012 \(terminal illness\)](#) defines a person as 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.”
- 7.5 There is special provision for terminally ill claimants in [Section 82\(2\) of the Welfare Reform Act 2012 \(terminal illness\)](#) Accordingly a terminally ill claimant is automatically entitled to the enhanced rate of the daily living component of PIP. The required period condition for the mobility component also does not apply (as per subsection (3) of that section). Therefore it is estimated that approximately 99% of claimants who are terminally ill are likely to receive a higher award under PIP than their previous DLA award.
- 7.6 The policy in support of this measure has been developed following an amendment to the Welfare Reform and Work Bill 2015 which proposed the removal of the 28 day rule for terminally ill claimants. However the amendment, as originally drafted, would have applied to all terminally ill claimants even if, following a PIP assessment, they were awarded less than their DLA award. In contrast these amending Regulations will only apply if a terminally ill claimant receives more under PIP than their DLA award. This is to ensure that there are no losers as a result of this policy change.
- 7.7 In making this change we have had to be mindful of the DLA payment cycles. Due to the way in which that benefit has evolved, this has resulted in different payment cycles. Some DLA recipients are paid weekly in arrears or advance, others are paid

monthly in arrears and some are paid on a four weekly cycle with that payment incorporating three weeks in arrears and one week in advance. In developing this policy due regard has been given to the operational complexity of those payment cycles and the need not to inadvertently make a double payment that would result in either the need for recovery from, or writing off, of a double payment.

- 7.8 To avoid this scenario the regulations have been drafted to reflect that DLA will terminate as described in paragraph 2.2.
- 7.9 It is forecasted that 4,000 claimants who are presently receiving DLA will become terminally ill and transfer to PIP from April 2016 up until the end of the reassessment window in 2018. This is based on departmental administrative data of the number of DLA claimants who have previously reported that they are terminally ill during a 12 month period.

Consolidation

- 7.10 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

8. Consultation outcome

- 8.1 No formal consultation has been conducted. However as stated in paragraph 7.6 this policy has been developed following an amendment to the Welfare Reform and Work Bill 2015. In developing the amendment to the Bill, the views were sought from various charities and advice organisations including: Macmillan Cancer and the Citizen Advice Bureaux, who support people who are terminally ill. There is support from these organisations for the removal of the 28 day rule for claimants who are terminally ill. As also stated in paragraph 7.6, the amendment to the regulations ensure that there are no financial losers as a result of this policy change.

9. Guidance

- 9.1 Operational guidance for DWP has been revised to take account of the changes. The changes will also be mirrored within the Decision Makers Guide that provides guidance for DWP decision makers and is published at www.gov.uk. <https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>.
- 9.2 Information will be provided to external stakeholders to advise them of the change through existing stakeholder communication channels.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is a forecast increase in Annually Managed Expenditure of £1.3 million which is based on departmental administrative data and forecast caseload. The delivery costs of this change are minimal and equate to approximately £35,000 including additional staffing resource and associated costs to update business products.
- 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 We will monitor the impact of this change through established operational feedback processes. However it is beneficial for those in the target group of terminally ill claimants.

13. Contact

13.1 Amanda Brookes at the Department for Work and Pensions Telephone: 0207 4495137 or email: Amanda.Brookes@dwp.gsi.gov.uk can answer any queries regarding the instrument.