

2016 No. 227

SOCIAL SECURITY

**The Personal Independence Payment (Transitional Provisions)
Regulations (Northern Ireland) 2016**

<i>Made</i> - - - -	<i>3rd May 2016</i>
<i>Laid before Parliament</i>	<i>10th May 2016</i>
<i>Coming into operation</i> -	<i>20th June 2016</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by Articles 98 and 99 of, and Schedule 10 to, the Welfare Reform (Northern Ireland) Order 2015(a).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) of the Welfare Reform (Northern Ireland) Order 2015.

Citation and commencement

1. These Regulations may be cited as the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 and come into operation on 20th June 2016.

Interpretation

2.—(1) In these Regulations—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998(b);

“the 2015 Order” means the Welfare Reform (Northern Ireland) Order 2015;

“the 1987 Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(c);

“appropriate office” has the meaning given by regulation 2(1) of the Claims and Payments Regulations(d) (interpretation);

“assessment determination” means the determination, under regulation 4 of the Personal Independence Payment Regulations (assessment of ability to carry out activities), of a claim for personal independence payment made by a transfer claimant;

“change of circumstances” means a change of circumstances which a person might reasonably have been expected to know might affect the continuance of that person’s entitlement to disability living allowance (by ending entitlement to one component or both components or resulting in entitlement to one or both components being at a different rate);

(a) S.I. 2015/2006 (N.I. 1)
(b) S.I. 1998/1506 (N.I. 10)
(c) S.R. 1987 No. 465
(d) S.R. 2016 No. 220

“the Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016;

“component”, in relation to disability living allowance, means one of the components of disability living allowance referred to in section 71 of the Contributions and Benefits Act(a);

“disability living allowance” means the benefit provided for in sections 71 to 76 of the Contributions and Benefits Act(b);

“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(c);

“DLA entitled person” means a person aged 16 or over who is entitled to either component or both components of disability living allowance;

“electronic communication” has the meaning given by section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(d) (interpretation);

“notified person” means a DLA entitled person who has been sent a notification by the Department under regulation 3(1);

“pay day”, in relation to disability living allowance, means—

(a) in the case of a payment of disability living allowance in respect of a period to which regulation 25(2) of the 1987 Regulations(e) (payment of disability living allowance at a daily rate) applies, the day on which the payment is made in accordance with paragraph (1) of that regulation;

(b) in the case of any other payment of disability living allowance, the day on which the allowance is payable in accordance with paragraph 1 of Schedule 6 to those Regulations(f) (days for payment of long term benefits);

“the Personal Independence Payment Regulations” means the Personal Independence Payment Regulations (Northern Ireland) 2016(g);

“transfer claimant” means a person who is either—

(a) a notified person who has claimed personal independence payment in response to a notification sent by the Department under regulation 3(1); or

(b) a voluntary transfer claimant;

“voluntary transfer claimant” means a DLA entitled person who has claimed personal independence payment under regulation 4.

(2) For the purpose of these Regulations, except regulations 8, 12 and 16—

(a) a claim for personal independence payment is made—

(i) in the case of a claim made in writing other than by means of an electronic communication, on the day on which a form, authorised by the Department for the purpose, containing all the information requested in the form is delivered to or received at the appropriate office,

(ii) in the case of a claim made in writing by means of an electronic communication made in accordance with the provisions set out in Part 1 of Schedule 1 to the Claims

(a) Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(b) Section 72 was amended by Article 64(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, sections 48 and 54(2) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and regulation 2(4) of S.R. 2011 No. 356, section 73 was amended by Article 64(3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, section 49 of and paragraph 1(2) of Schedule 7 to the Welfare Reform Act (Northern Ireland) 2007 and section 13 of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and section 75 was amended by paragraph 39 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))

(c) S.R. 1992 No. 32

(d) 2001 c. 9 (N.I.); section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)

(e) Regulation 25 was amended by regulation 13 of S.R. 1992 No. 7 and regulation 2 of S.R. 1996 No. 225

(f) Paragraph (1) was substituted by regulation 27(a) of S.R. 1992 No. 7

(g) S.R. 2016 No. 217

and Payments Regulations (electronic communications), on the day on which an electronic communication containing all the information requested by the Department in the form referred to in head (i), or completing that information, is received at the appropriate office, and

(iii) in the case of a claim made by telephone, on the day on which a telephone call takes place during which all the information requested by the Department in the form referred to in head (i) is supplied or which results in all that information having been supplied; and

(b) references to the making of a claim do not include the making of a defective claim.

(3) The Claims and Payments Regulations, the Personal Independence Payment Regulations and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016^(a) apply to the claims for personal independence payment referred to in these Regulations except where—

(a) these Regulations provide otherwise; or

(b) the application of those Regulations would be inconsistent with the application of these Regulations.

(4) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954^(b) (time), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

Invitations to persons entitled to disability living allowance to claim personal independence payment

3.—(1) The Department may by written notification invite a DLA entitled person to make a claim for personal independence payment.

(2) The Department must not send a notification under paragraph (1) to any person who, on 20th June 2016, was 65 or over.

(3) The Department must send a notification under paragraph (1) to a DLA entitled person who reaches 16 as soon as reasonably practicable after the person reaches that age.

(4) Paragraph (3) does not apply to a DLA entitled person whose entitlement, on the day that the person reaches 16, is on the basis that the person is terminally ill within the meaning given by section 66(2) of the Contributions and Benefits Act (attendance allowance for the terminally ill).

(5) Where a DLA entitled person who has neither—

(a) been sent a notification under paragraph (1); nor

(b) made a claim for personal independence payment under regulation 4,

notifies the Department of a change of circumstances other than a change to which paragraph (6) applies, the Department must, as soon as reasonably practicable, send the person a notification under paragraph (1).

(6) This paragraph applies to a change of circumstances where the change notified is that the DLA entitled person is to become or has become absent, whether temporarily or permanently, from Northern Ireland.

Claims by persons entitled to disability living allowance for personal independence payment other than by invitation

4. A DLA entitled person who has not been sent a notification under regulation 3(1) may make a claim for personal independence payment if the person was aged under 65 on 20th June 2016.

(a) S.R. 2016 No. 221

(b) 1954 c. 33 (N.I.)

Persons under 16 not entitled to claim personal independence payment

5.—(1) No claim for personal independence payment may be made by a person who has not reached 16.

(2) Paragraph (1) applies whether or not a person is entitled to disability living allowance.

Persons in the course of claiming disability living allowance not entitled to claim personal independence payment

6.—(1) This regulation applies to a person who is not entitled to disability living allowance if—

- (a) the person claimed disability living allowance before 20th June 2016; and
- (b) that claim remains under consideration on that date.

(2) A person to whom this regulation applies may not claim personal independence payment while the person's claim for disability living allowance remains under consideration.

(3) For the purpose of this regulation a person's claim for disability living allowance remains under consideration only if it has not—

- (a) been decided by the Department under Article 9 of the 1998 Order^(a) (decisions by the Department);
- (b) been withdrawn in accordance with regulation 5(2) of the 1987 Regulations (withdrawal of claim); or
- (c) otherwise ceased to be under consideration before being decided by the Department as mentioned in sub-paragraph (a).

Form of notification inviting a person to claim personal independence payment

7. A notification to a DLA entitled person under regulation 3(1) inviting the person to claim personal independence payment must—

- (a) explain that the person's entitlement to disability living allowance will end if the person does not claim personal independence payment;
- (b) state the date of the last day of the period within which the person should claim personal independence payment, that period being one of 28 days starting with the day that is the stated date of notification;
- (c) tell the person how to claim personal independence payment,

and may contain such additional guidance and information as the Department considers appropriate.

Making a claim for personal independence payment following notification

8.—(1) In this regulation and regulation 9 “the claim period” means the period of 28 days referred to in regulation 7(b).

(2) For the purposes of this regulation a claim, whether or not it is defective as mentioned in regulation 10(3) or (4) of the Claims and Payments Regulations (making a claim for personal independence payment), must be made in accordance with and by a means set out in paragraph (1) (a), (b) or (c) of that regulation.

(3) Such a claim is made—

(a) Article 9 was amended by paragraph 16 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), paragraph 6 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), paragraph 10(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007, paragraph 29 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and is amended by paragraph 36 of Schedule 2 and paragraph 37 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015

- (a) in the case of a claim made in writing, other than by means of an electronic communication, on a form authorised by the Department, on the day on which it is delivered to or received at the appropriate office;
- (b) in the case of a claim in writing made by means of an electronic communication in accordance with the provisions set out in Part 2 of Schedule 1 to the Claims and Payments Regulations (electronic communications), on the day on which it is received at the appropriate office; and
- (c) in the case of a claim made by telephone, on the day on which the telephone call takes place.

(4) Neither regulation 10(6) nor 11(2) of the Claims and Payments Regulations (making a claim for personal independence payment and date of claim for personal independence payment) shall apply in relation to a claim made by a notified person but—

- (a) in a case where the claim is defective as mentioned in regulation 10(3) or (4) of those Regulations, the Department must extend the claim period by a period of 28 days, or such longer period as it thinks fit, starting with the day following the last day of the claim period; and
- (b) in any other case the Department may extend the claim period by such further period as it thinks fit.

(5) The duty in paragraph (4)(a) and power in paragraph (4)(b) to extend the claim period may be exercised before the claim period would otherwise have expired or after it has expired.

(6) The Department may further extend a claim period extended under paragraph (4), either before the extended period would have expired or after it has expired.

(7) Where the claim period has been extended under paragraph (4), the Department must treat the claim as properly made if a claim is made—

- (a) before the end of the period by which the claim period was extended or further extended; and
- (b) in accordance with any instructions of the Department as to the way in which the claim is to be completed.

Suspension of disability living allowance where no claim for personal independence payment made

9.—(1) Where a notified person makes no claim for personal independence payment before the end of the claim period or, where applicable, that period as extended under regulation 8(4) or (6), the person’s entitlement to disability living allowance shall be suspended.

(2) The suspension shall take effect on the first pay day after the last day of the claim period or, where applicable, of that period as extended or further extended.

Further opportunity to claim personal independence payment

10.—(1) The Department must send any notified person in relation to whom regulation 9 takes effect a notice in writing informing the person—

- (a) that the person’s entitlement to disability living allowance will be or has been suspended;
- (b) of the day on which the suspension takes or took effect; and
- (c) that the person’s entitlement to disability living allowance will be terminated unless the person makes a claim for personal independence payment before the end of the period of 28 days beginning with the day on which the suspension takes or took effect.

(2) The Department must send a notice under paragraph (1) before, on or as soon as practicable after, the day on which the suspension takes effect in accordance with regulation 9(2).

(3) Where a notice is sent to a notified person under paragraph (1), and the person makes a claim for personal independence payment before the end of the period specified in sub-paragraph (c) of

that paragraph, the person's entitlement to disability living allowance shall be reinstated as if the suspension of the entitlement had never taken effect.

Termination of entitlement to disability living allowance following failure to claim personal independence payment

11.—(1) Where a notice is sent to a notified person under paragraph (1) of regulation 10 and the person makes no claim for personal independence payment before the end of the period specified in sub-paragraph (c) of that paragraph, the person's entitlement to disability living allowance shall terminate with effect from the day on which the suspension of the person's entitlement took effect in accordance with regulation 9(2).

(2) The Department must send any person in relation to whom paragraph (1) takes effect a notice in writing—

- (a) informing the person that the person's entitlement to disability living allowance has terminated and of the date on which the termination took effect; and
- (b) explaining that it is no longer possible for the person's entitlement to disability living allowance to be reinstated but that it remains open to the person to claim personal independence payment.

Defective claims by voluntary transfer claimants

12.—(1) This regulation applies in relation to a claim for personal independence payment by a voluntary transfer claimant if—

- (a) the claim was defective as mentioned in regulation 10(3) or (4) of the Claims and Payments Regulations (making a claim for personal independence payment); and
- (b) no claim completed in accordance with the instructions of the Department is received within the period of one month or longer which applies under paragraph (6) of that regulation.

(2) Where this regulation applies—

- (a) regulation 9(1) shall apply to the voluntary transfer claimant as if the claimant were a notified person who has failed to claim before the end of the claim period; and
- (b) for the purpose of that regulation the claim period for the voluntary transfer claimant shall be treated as ending on the last day of the period of one month or longer referred to in regulation 10(6) of the Claims and Payments Regulations,

and regulations 9(2), 10 and 11 shall apply as if the voluntary transfer claimant were a notified person.

Failure to provide information etc.

13.—(1) Where, in relation to a claim for personal independence payment made by a transfer claimant—

- (a) a negative determination is made in relation to both components under regulation 8 or 9(2) of the Personal Independence Payment Regulations (information or evidence required for determining limited or severely limited ability to carry out activities; claimant may be called for a consultation to determine whether the claimant has limited or severely limited ability to carry out activities); or
- (b) there is a determination by the Department that the transfer claimant has—
 - (i) unreasonably failed to comply with a requirement imposed on the claimant by the Department under regulation 34 of the Claims and Payments Regulations (attendance in person), or
 - (ii) failed to comply with a requirement imposed on the claimant by the Department under regulation 36 of those Regulations (evidence and information in connection with a claim),

the transfer claimant's entitlement to disability living allowance shall terminate with effect from the last day of the period of 14 days starting with the first pay day after the day on which the determination is made.

(2) Where—

- (a) for any reason an assessment determination is made on a claim by a transfer claimant in respect of which there has been a determination referred to in paragraph (1)(a) or (b) (for example, because the determination is revised by the Department under Article 10 of the 1998 Order (revision of decisions) or there is a successful appeal in respect of the determination under Article 13 of that Order^(a) (appeal to appeal tribunal)); and
- (b) personal independence payment is awarded to the transfer claimant,

the transfer claimant shall be entitled to personal independence payment in accordance with regulation 17(4)(b).

Express intention not to claim personal independence payment

14.—(1) This regulation applies where a DLA entitled person who has not made a claim for personal independence payment informs the Department, whether in writing or by telephone, that the person does not intend to claim personal independence payment.

(2) Where this regulation applies the person's entitlement to disability living allowance shall terminate with effect from the last day of the period of 14 days starting with the first pay day after the day on which the Department decides that the person has informed it as mentioned in paragraph (1).

(3) Paragraph (2) does not apply unless the Department is satisfied that the person was told, before the person informed it of the person's intention not to claim personal independence payment, that the person's entitlement to disability living allowance would terminate if the person expressed that intention.

Withdrawal of claim for personal independence payment

15. Where a claim for personal independence payment is withdrawn by a transfer claimant under regulation 30 of the Claims and Payments Regulations (withdrawal of claim) before an assessment determination is made in relation to it, the claimant's entitlement to disability living allowance shall terminate with effect from the last day of the period of 14 days starting with the first pay day after the day on which the Department decides that the transfer claimant has withdrawn the claim.

Death before or after making claim for personal independence payment

16.—(1) Where a notified person dies before making a claim for personal independence payment the law relating to the person's entitlement to disability living allowance shall apply as if the notification had never been sent.

(2) Where a transfer claimant dies—

- (a) before any assessment determination is made in relation to the claim; or
- (b) where an assessment determination is made in relation to the claim, before the day on which the claimant becomes entitled to personal independence payment in accordance with regulation 17(4),

the claim shall be treated as if it had never been made and, if the transfer claimant is a notified person, as if no notification under regulation 3(1) had been sent.

(a) Article 13 was amended by paragraph 19 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and Article 4(2) of S.I. 2014/886

Procedure following and consequences of determination of claim for personal independence payment

17.—(1) Upon an assessment determination being made on a claim by a transfer claimant—

- (a) the Department must, as soon as practicable, send the claimant written notification of the outcome of the determination; and
- (b) except where regulation 13(2) applies to the claimant, the claimant's entitlement to disability living allowance shall terminate—
 - (i) where paragraph (3) applies, on the earlier of—
 - (aa) the last day of the payment period during which the assessment determination is made, or
 - (bb) the first Tuesday after the making of the assessment determination,
 - (ii) in any other case, on the last day of the period of 28 days starting with the first pay day after the making of the assessment determination.

(2) In paragraph (1), “payment period” means a period in respect of which disability living allowance is paid to the claimant in accordance with regulation 22 of the 1987 Regulations(a).

(3) This paragraph applies if—

- (a) the transfer claimant is terminally ill for the purposes of Article 87 of the 2015 Order;
- (b) the outcome of an assessment determination in respect of that claimant is an award of personal independence payment; and
- (c) the total weekly rate of personal independence payment payable by virtue of that award is greater than the total weekly rate of disability living allowance payable by virtue of that claimant's existing award of disability living allowance.

(4) Where the outcome of an assessment determination is an award in respect of either or both components of personal independence payment, the claimant's entitlement to personal independence payment starts with effect from the day immediately following—

- (a) the day on which the claimant's entitlement to disability living allowance terminates in accordance with paragraph (1)(b); or
- (b) where regulation 13(2) applies to the claimant, the day on which the claimant's entitlement to disability living allowance terminated under regulation 13(1).

(5) The notification referred to in paragraph (1) must state—

- (a) except where regulation 13(2) applies to the claimant, the day on which the claimant's entitlement to disability living allowance will terminate in accordance with paragraph (1)(b); and
- (b) if personal independence payment is awarded, the day on which the claimant's entitlement to personal independence payment starts in accordance with paragraph (4).

(6) This paragraph applies to a person—

- (a) whose claim for disability living allowance was refused;
- (b) who claimed personal independence payment after that refusal; and
- (c) who, as a result of the determination of legal proceedings initiated under the 1998 Order in relation to that refusal, becomes entitled, after the assessment determination, to disability living allowance.

(7) The entitlement of a person to whom paragraph (6) applies to disability living allowance shall terminate—

- (a) where personal independence payment is awarded, on the day before that on which the person becomes entitled to personal independence payment; and

(a) Regulation 22 was amended by regulation 2(3) of S.R. 1996 No. 432, regulation 2(3) of S.R. 2002 No. 297, regulation 2(5) of S.R. 2008 No. 417, regulation 2(4) of S.R. 2009 No. 409 and regulation 3(5) of S.R. 2010 No. 81

- (b) where personal independence payment is not awarded, on the last day of the period of 28 days starting with the first pay day after the making of the assessment determination.

Extension of certain fixed term period awards of disability living allowance for persons reaching 16

18.—(1) Where there is an award of disability living allowance to a DLA entitled person and—

- (a) the award is of—
 - (i) both components and the award in respect of either or both is for a fixed term period, or
 - (ii) one component only and for a fixed term period;
- (b) the person reaches 16 on or after 20th June 2016; and
- (c) the fixed term period expires in the period starting with the day before the person reaches 16 and ending with the day before the person reaches 16 years and 6 months,

the fixed term period shall be extended.

(2) A fixed term period extended under paragraph (1) shall expire on the day before the person reaches 17 or, where these Regulations have the effect that the person's entitlement to disability living allowance terminates on an earlier day, on that day.

General power to extend fixed term period awards of disability living allowance

19.—(1) Where there is an award of disability living allowance to a DLA entitled person and—

- (a) the award is of—
 - (i) both components and the award in respect of either or both is for a fixed term period, or
 - (ii) one component only and for a fixed term period; and
- (b) the Department considers that the fixed term period may expire before an assessment determination can be made,

the Department may extend the period by such further period as it considers appropriate.

(2) The Department may extend a fixed term period under paragraph (1)—

- (a) regardless of whether the person has yet made a claim for personal independence payment;
- (b) where the fixed term period has already been extended under regulation 18; and
- (c) on more than one occasion.

(3) A fixed term period extended under paragraph (1) shall expire—

- (a) on the last day of the period by which the Department extended or last extended it; or
- (b) where these Regulations have the effect that the person's entitlement to disability living allowance terminates on an earlier day, on that day.

Notifications of change of circumstances

20.—(1) This regulation applies where—

- (a) a person notifies the Department of a change of circumstances; and
- (b) paragraph (3), (4) or (5) applies.

(2) If this regulation applies—

- (a) the notification shall not be regarded as relating to disability living allowance and accordingly neither Article 11 of the 1998 Order^(a) (decisions superseding earlier decisions) nor any other provision of that Order shall apply; and
- (b) the notification to the Department must be treated in all respects as if it were a notification under regulation 37(4) of the Claims and Payments Regulations (evidence and information in connection with an award) of a change of circumstances which the person might reasonably be expected to know might affect the continuance of entitlement to personal independence payment.

(3) This paragraph applies where a notified person notifies the Department of a change of circumstances before the person makes a claim for personal independence payment.

(4) This paragraph applies where a transfer claimant notifies the Department of a change of circumstances.

(5) This paragraph applies where a DLA entitled person notifies the Department of a change of circumstances and, as a result, it is required by regulation 3(5) to send a notification under paragraph (1) of that regulation inviting the person to claim personal independence payment.

(6) Paragraphs (3) and (4) do not apply where the change of circumstances notified is that the notified person or the transfer claimant, as the case may be, is to become or has become absent, whether temporarily or permanently, from Northern Ireland.

Extinguishment of rights of appeal etc. under disability living allowance regime

21. No suspension of a person's entitlement to disability living allowance that takes place by virtue of the application of these Regulations is to be regarded as a decision of the Department to which Article 9 or 11 of the 1998 Order (decisions by the Department or decisions superseding earlier decisions) applies, and accordingly—

- (a) no revision by the Department may take place in relation to the suspension under Article 10 of that Order (revision of decisions); and
- (b) no right of appeal in respect of the suspension is to be available to the person under Article 13 of that Order (appeal to appeal tribunal).

Extinguishment of right to claim disability living allowance

22.—(1) No person may claim disability living allowance who is—

- (a) entitled to personal independence payment; or
- (b) entitled to claim personal independence payment.

(2) Paragraph (1) does not apply to a person whose award of disability living allowance is of—

- (a) both components, and the award in respect of either or both is for a fixed term period; or
- (b) one component only, and the award is for a fixed term period,

if the person has been notified by the Department that, because the fixed term period is due to come to an end, the person needs to claim disability living allowance again, or to apply for a supersession of the award, if the person wishes to continue to be entitled to disability living allowance in respect of the component or components subject to the fixed term period.

Assessment of claim: transfer claimants to be taken to meet part of the required period condition

23.—(1) In applying the required period condition under Part 3 of the Personal Independence Payment Regulations to a claim by a transfer claimant or by a person to whom paragraph (2) or (3) applies, the claimant shall be regarded as meeting such of the conditions contained in the

(a) Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

following provisions of that Part (which relate to a claimant's abilities in the past) as are relevant to the claim regardless of whether those conditions have been met—

- (a) in regulation 12(1)(a) or (2)(a) (required period condition: daily living component);
 - (b) in regulation 13(1)(a) or (2)(a) (required period condition: mobility component).
- (2) This paragraph applies to a person claiming personal independence payment who—
- (a) had not reached 65 on 20th June 2016;
 - (b) was not entitled to disability living allowance on the day the claim was made but was so entitled on the day falling twenty four months before that day or at any time between those days; and
 - (c) is not a person to whom paragraph (3) applies.
- (3) This paragraph applies to a person claiming personal independence payment who—
- (a) was aged 65 or over on the day the claim was made; and
 - (b) was not entitled to disability living allowance on that day but was so entitled on the day falling twelve months before that day or at any time between those days.

Assessment of claim: date by reference to which assessment is to be made

24. In applying the required period condition under Part 3 of the Personal Independence Payment Regulations to a claim by a transfer claimant the “prescribed date” referred to in—

- (a) regulation 12(1) and (2) of those Regulations (required period condition: daily living component); and
- (b) regulation 13(1) and (2) of those Regulations (required period condition: mobility component),

is the date on which the claim is made.

Treatment of persons in hospital or care home during transfer to personal independence payment

25.—(1) This regulation applies to a transfer claimant awarded personal independence payment if, on the day on which the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), the claimant is a person who—

- (a) fails to meet the condition in regulation 8(1) of the Disability Living Allowance Regulations(a) (hospitalisation) but is nevertheless entitled to payment of the care component by reason of the application of regulation 10 of those Regulations(b) (exemption from regulations 8 and 9);
- (b) fails to meet the condition in regulation 12A(1) of the Disability Living Allowance Regulations(c) (hospitalisation in mobility component cases) but is nevertheless entitled to payment of the mobility component by reason of the application of regulation 12B of those Regulations (exemption from regulation 12A); or
- (c) fails to meet both of the conditions referred to in sub-paragraphs (a) and (b) but is nevertheless entitled to payment of both components by reason of the application of regulations 10 and 12B of the Disability Living Allowance Regulations,

and, on the day on which the claimant's entitlement to personal independence payment starts in accordance with regulation 17(4), the claimant meets the condition in Article 91(2) of the 2015 Order (hospital in-patients).

(a) Regulation 8(1) was substituted by regulation 3(2)(a) of S.R. 1992 No. 481
(b) Regulation 10 was amended by regulation 3 of S.R. 1992 No. 144, regulation 4(3) of S.R. 1993 No. 149, regulation 3(3)(b) of S.R. 1993 No. 165, Article 7(4)(b) of S.R. 1999 No. 428 (C. 32), regulation 3(4) of S.R. 2000 No. 195 and regulation 3(3) of S.R. 2007 No. 431
(c) Regulations 12A and 12B were inserted by regulation 4(3) of S.R. 1996 No. 225 and regulation 12A was amended by regulation 4(3) of S.R. 1999 No. 221, regulation 3(2) of S.R. 2000 No. 195 and regulation 12B was amended by regulation 2 of S.R. 1996 No. 290 and Article 7(4) of S.R. 1999 No. 428 (C. 32)

(2) This regulation also applies to a transfer claimant awarded personal independence payment if—

- (a) on the day on which the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), the claimant is a person—
 - (i) to whom the care component of disability living allowance is not payable under regulation 9(1) of the Disability Living Allowance Regulations^(a) (persons in care homes), but
 - (ii) who is nevertheless entitled to payment of that component by reason of the application of regulation 10 of those Regulations; and
- (b) on the day on which the claimant's entitlement to personal independence payment starts in accordance with regulation 17(4), the claimant meets the condition in Article 90(2) of the 2015 Order (care home residents).

(3) Where this regulation applies to a transfer claimant—

- (a) the day on which the claimant's entitlement to personal independence payment starts in accordance with regulation 17(4) shall be treated as being the first day of the period referred to in regulation 30(1) of the Personal Independence Payment Regulations (payability exceptions: care homes and hospitals); and
- (b) regulation 30(2) of those Regulations shall not apply to the claimant in respect of either that day or any consecutive period of days starting with that day during which the claimant meets the condition in Article 90(2) or 91(2) of the 2015 Order.

Temporary absence from Northern Ireland when transfer claimant becomes entitled to personal independence payment

26.—(1) This paragraph applies to a transfer claimant awarded personal independence payment if, on the day that the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), the claimant would otherwise be temporarily absent from Northern Ireland but is treated as present in Northern Ireland by virtue of—

- (a) regulation 2(2)(d) of the Disability Living Allowance Regulations^(b) (conditions as to residence and presence in Northern Ireland), because the first 13 weeks of absence referred to in that regulation have not expired; or
- (b) regulation 2(2B)^(c) of those Regulations, because the first 26 weeks of absence referred to in that regulation have not expired.

(2) In applying regulation 17 of the Personal Independence Payment Regulations (absence from Northern Ireland) to a transfer claimant to whom paragraph (1)(a) applies, the period—

- (a) starting with the first day on which the claimant was treated as present in Northern Ireland by virtue of regulation 2(2)(d) of the Disability Living Allowance Regulations; and
- (b) ending with the day on which the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b),

shall be counted towards the 13 weeks of absence referred to in regulation 17 of the Personal Independence Payment Regulations.

(3) In applying regulation 18 of the Personal Independence Payment Regulations (absence from Northern Ireland to receive medical treatment) to a transfer claimant to whom paragraph (1)(b) applies, the period—

- (a) starting with the first day of absence for the purpose of regulation 2(2B) of the Disability Living Allowance Regulations; and

(a) Regulation 9 was substituted by regulation 3(2) of S.R. 2007 No. 431

(b) Paragraph (2)(d) is substituted by regulation 4(3)(c) of S.R. 2016 No. 229

(c) Paragraph (2B) is inserted by regulation 4(3)(f) of S.R. 2016 No. 229

(b) ending with the day on which the claimant's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), shall be counted towards the 26 weeks of absence referred to in regulation 18 of the Personal Independence Payment Regulations.

Persons aged 65 and over to be entitled to personal independence payment in certain circumstances

27.—(1) Article 88(1) of the 2015 Order (persons of pensionable age) does not apply to a person to whom this regulation applies.

(2) This regulation applies to a person who—

- (a) had not reached 65 on 20th June 2016;
- (b) is a DLA entitled person; and
- (c) claims personal independence payment—
 - (i) in response to a notification sent to the person by the Department under regulation 3(1), or
 - (ii) under regulation 4.

(3) This regulation also applies to a person who—

- (a) had not reached 65 on 20th June 2016;
- (b) claims personal independence payment; and
- (c) is not entitled to disability living allowance on the day the claim is made but was so entitled on the day falling twelve months before that day or at any time between those days.

Persons unable to act: claims for personal independence payment

28.—(1) This regulation applies where, immediately before any claim for personal independence payment is made by or on behalf of a person entitled to disability living allowance, there is a person (“the appointed person”)—

- (a) appointed by the Department in accordance with regulation 33(1) of the 1987 Regulations (persons unable to act); or
- (b) treated, by virtue of paragraph (1A) of that regulation(a), as being a person appointed by the Department in accordance with paragraph (1) of that regulation,

to exercise rights on behalf of the person entitled to disability living allowance and receive and deal with any sums payable to that person.

(2) Where this regulation applies the appointed person shall be regarded as acting on behalf of the person entitled to disability living allowance for the purposes of the making and pursuit of a claim for personal independence payment under these Regulations and, where applicable, the Claims and Payments Regulations.

Persons unable to act: transfer to personal independence payment

29.—(1) This regulation applies if a transfer claimant is awarded personal independence payment and, on the day that the person's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), there is a person (“the appointed person”) who, under regulation 28(2), is to be regarded as acting on behalf of the claimant for the purposes set out in that paragraph.

(a) Paragraph (1A) was inserted by regulation 5(7)(a) of S.R. 2005 No. 46 and amended by paragraph 2(3) of Schedule 2 to S.R. 2006 No. 407

(2) Where this regulation applies then, with effect from the first day on which the transfer claimant is entitled to personal independence payment in accordance with regulation 17(4), the appointed person shall be treated as being a person appointed by the Department in accordance with regulation 52(1) of the Claims and Payments Regulations (persons unable to act) to exercise rights on behalf of the transfer claimant and receive and deal with any sums payable to the transfer claimant.

Application of these Regulations to certain persons becoming entitled to disability living allowance while claiming personal independence payment

30.—(1) If paragraph (2) applies to a person then, with effect from the date of the determination referred to in paragraph (2)(c), the regulations referred to in paragraphs (3) to (6) shall apply in relation to that person in accordance with the provisions of those paragraphs.

(2) This paragraph applies to a person—

- (a) whose claim for disability living allowance was refused;
- (b) who claimed personal independence payment after that refusal; and
- (c) who, as a result of the determination of legal proceedings initiated under the 1998 Order in relation to that refusal, becomes entitled, before the assessment determination, to disability living allowance.

(3) Regulations 13, 15, 16(2), 17(1) to (5), 20(1), (2), (4) and (6) (so far as it applies to regulation 20(4)), 23(1) (in its application to transfer claimants), 24, 25 and 26 shall apply to the person as if the person were a transfer claimant.

(4) Regulations 18 and 19 shall apply to the person as if the person were a DLA entitled person.

(5) Where a person to whom paragraph (2) applies also satisfies the condition in regulation 27(2)(a), regulation 27 shall be treated as applying to the person as if the person satisfied all the conditions in paragraph (2) of that regulation.

(6) Regulation 29 shall apply to the person as if the person were a transfer claimant if, on the day that the person's entitlement to disability living allowance terminates in accordance with regulation 13(1) or 17(1)(b), there is a person ("the appointed person")—

- (a) appointed by the Department in accordance with regulation 33(1) of the 1987 Regulations (persons unable to act); or
- (b) treated by virtue of paragraph (1A) of that regulation as being a person appointed by the Department in accordance with paragraph (1) of that regulation,

to exercise rights on behalf of the person entitled to disability living allowance and receive and deal with any sums payable to that person.

Disabled people: badges for motor vehicles

31.—(1) In this regulation, "the 1993 Regulations" means the Disabled Persons (Badges for Motor Vehicles) Regulations (Northern Ireland) 1993(a).

(2) Where a person satisfies paragraph (3)—

- (a) the person shall be treated as being a disabled person for the purpose of regulation 5A of the 1993 Regulations(b); and
- (b) regulation 8(d) of the 1993 Regulations shall not apply to the person,

until the expiration of the period for which the disabled person's badge referred to in paragraph (3)(b)(i) was issued.

(3) A person satisfies this paragraph if—

(a) S.R. 1993 No. 202; relevant amending Regulations are S.R. 1998 No. 297, S.R. 2008 No. 501 and S.R. 2016 No. 228
(b) Regulation 5A was inserted by regulation 2(5) of S.R. 1998 No. 297

- (a) the entitlement of the person to disability living allowance terminates in accordance with these Regulations;
- (b) on the last day on which the person is entitled to disability living allowance the person—
 - (i) is a holder of a disabled person’s badge in accordance with the 1993 Regulations, and
 - (ii) is a disabled person for the purposes of the 1993 Regulations by virtue of satisfying regulation 4(1)(a) and (2)(a) of the 1993 Regulations**(a)**;
- (c) with effect from the following day the person is no longer a disabled person for the purposes of the 1993 Regulations because the person does not satisfy regulation 4(1)(a) and (2)(g) of the 1993 Regulations**(b)**; and
- (d) the period for which the badge mentioned in sub-paragraph (b) was issued has not yet expired.

Signed by authority of the Secretary of State for Work and Pensions

Justin Tomlinson
Parliamentary Under Secretary of State,
Department for Work and Pensions

3rd May 2016

(a) Regulation 4 was substituted by regulation 2(4) of S.R. 2008 No. 501
(b) Paragraph (2)(g) was inserted by regulation 4(2) of S.R. 2016 No. 228

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain transitional provisions for the phasing out of disability living allowance (“DLA”) and its replacement by personal independence payment (“PIP”). In particular they provide for the Department for Social Development (“the Department”) to invite people entitled to DLA (“a DLA entitled person”) to transfer to PIP and for them to lose their entitlement to DLA if they do not do so. The Regulations also enable people entitled to DLA to transfer to PIP voluntarily.

Regulation 3 has the effect that the Department may send a notification inviting any DLA entitled person aged 16 or more to claim PIP unless they were age 65 or more on 20th June 2016. The Department must send a notification to a DLA entitled person who reaches age 16 as soon as reasonably practicable after the person reaches that age. The notification will not be issued to anyone terminally ill on reaching the age of 16.

Regulation 4 enables any DLA entitled person under age 65 on 20th June 2016 who has not had an invitation from the Department to apply for PIP voluntarily.

Regulation 5 ensures that DLA entitled persons are not entitled to claim PIP when they are under age 16, while regulation 6 prevents people from claiming PIP while they are in the process of claiming DLA.

Regulation 7 sets out what a notification given under regulation 3 must contain.

Regulation 8 provides that a DLA entitled person notified under regulation 3 should claim PIP within 28 days but provides that the Department must extend that period if the claim is defective and may do so in other cases. Regulation 9 provides that if no claim is made within the 28 days or the extended period the Department has allowed, the person’s entitlement to DLA is suspended as from the first “pay day” for DLA purposes that falls after the end of the 28 day period or of that period as extended.

Regulation 10 provides that the Department must send a notice to a person whose entitlement to DLA has been suspended telling the person that the person’s entitlement to DLA will terminate unless the person claims PIP within 28 days of the day when the suspension took effect. If the person claims PIP within that period, the person’s entitlement to DLA is reinstated as if it had not been suspended. Regulation 11 provides that if no claim is made the person’s entitlement to DLA terminates with effect from the day on which the suspension of that entitlement took effect under regulation 9.

Regulation 12 applies the provisions of regulations 9, 10 and 11 to persons who voluntarily make a claim for PIP but whose claim is defective and who do not make a proper claim within the period allowed under regulation 9.

Regulation 13 has the effect that where a DLA entitled person claiming PIP is required to provide information or attend a meeting about the person’s claim and the Department determines that the person has failed to do so, the person’s entitlement to DLA ends 14 days after the first DLA pay day falling after the date of the determination. Taken with regulation 17, it also has the effect that if the Department’s determination is reversed as a result of legal proceedings, and PIP is awarded, entitlement to PIP starts on the first day after entitlement to DLA terminated under the regulation.

Regulation 14 has the effect that if a DLA entitled person who has not claimed PIP informs the Department that the person does not intend to claim it, the person’s entitlement to DLA ends, provided that the person had been told, before the intention was expressed, that the person’s entitlement to DLA would end if it was expressed, 14 days after the first DLA pay day falling after the date on which the Department decides that the person has expressed the intention.

Regulation 15 has the effect that where a DLA entitled person withdraws a claim for PIP the person’s entitlement to DLA ends 14 days after the first DLA pay day falling after the withdrawal.

Regulation 16 deals with cases where a DLA entitled person dies after receiving a notification under regulation 3 but before claiming PIP, or after claiming PIP, but before becoming entitled to PIP.

Regulation 17 provides that when an assessment determination is made on a claim by a DLA entitled person, the person must be informed of the outcome. Whether the person is awarded PIP or not, the person's entitlement to DLA normally ends on the last day of the 28 day period starting with the person's first DLA pay day that falls after the assessment determination. If the person is awarded PIP the person's entitlement to PIP starts on the day immediately after that on which entitlement to DLA ends. 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 the earlier). The person will be entitled to PIP from the following day.

Regulation 18 has the effect that when a person entitled to DLA, or a component of DLA, for a fixed term period reaches age 16 and the fixed term period expires before the person reaches age 16 years and 6 months the fixed term is automatically extended until the day before the person reaches age 17 unless the person's entitlement terminates because of the operation of other provisions in the Regulations, for example where an assessment determination is made on the person's claim.

Regulation 19 gives the Department a general power to extend the fixed term period that applies to a person's entitlement to DLA, or a component of DLA, by such period as it thinks fit where the fixed term may expire before an assessment determination can be made. The fixed term period and entitlement to DLA expire at the end of the period by which the fixed term has been extended unless entitlement terminates earlier because of the operation of other provisions in the Regulations.

Regulation 20 provides that where a DLA entitled person who has received an invitation to claim PIP under regulation 3, or is in the course of claiming PIP, notifies the Department of a change in circumstances that may affect the person's entitlement to DLA the notification is to be treated as if it was a notification in relation to PIP and not DLA.

Regulation 21 prevents any legal proceedings being brought under the Social Security (Northern Ireland) Order 1998 to challenge a suspension of DLA that takes place because of the operation of the Regulations.

Regulation 22 has the effect that, except in narrowly defined circumstances, a person is barred from claiming DLA if the person is entitled to claim PIP or is entitled to PIP.

Regulation 23 provides that DLA entitled persons claiming PIP do not have to meet that part of the required period condition that normally requires claimants to meet the assessment criteria for the three month period before the date by reference to which the assessment is carried out.

Regulation 24 provides that for DLA entitled persons claiming PIP the date by reference to which the assessment on the claim is to be carried out is the date on which the person claimed PIP.

Regulation 25 makes provision for the case where a DLA entitled person who is in a care home or in hospital, but to whom DLA is nevertheless payable, becomes entitled to PIP.

Regulation 26 makes provision for the case where a DLA entitled person who is absent from Northern Ireland, but is nevertheless entitled to DLA, becomes entitled to PIP.

Regulation 27 allows persons to become entitled to PIP when they are over 65 if they are under that age on 20th June 2016.

Regulations 28 and 29 apply where there is a person appointed to exercise rights on behalf of a DLA entitled person and receive and deal with DLA payments. The regulations ensure that the

appointed person is entitled to claim PIP on behalf of the DLA entitled person and, if PIP is awarded, that the appointed person is treated as an appointed person for PIP purposes.

Regulation 30 applies the Regulations, with appropriate modifications, to persons who have their claim for DLA refused, claim PIP and then, as a result of legal proceedings that overturn the refusal, become entitled to DLA before their entitlement to PIP is assessed.

Regulation 31 ensures that a person who has a disabled person's badge but, as a result of losing entitlement to DLA, loses entitlement to the badge, is nevertheless entitled to keep and use the badge until the normal expiration of the period for which it was issued.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on www.legislation.gov.uk.

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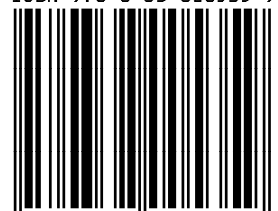
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