

EXPLANATORY MEMORANDUM TO

The Personal Independence Payment (Amendment) Regulations (Northern Ireland) 2020

S.R. 2020 No. 245

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Communities ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 88(3) of the Welfare Reform (Northern Ireland) Order 2015 ("the 2015 Order") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This rule corrects an unintentional gap in Regulation 27 of the Personal Independence Payment Regulations (Northern Ireland) 2016 (S.R. 2016 No. 217) ("the PIP Regulations") to ensure that it fully underpins and accurately reflects the longstanding policy of restricting access to a new or enhanced award of the mobility component of Personal Independence Payment ("PIP") for claimants over State Pension age (SPa) where their award is revised or superseded.

3. Background

- 3.1. PIP is a disability benefit for those of working age (age 16 to SPa). SPa is termed "the relevant age" in both the PIP Regulations and the 2015 Order which is defined in Article 88(2) of that Order as pensionable age within the meaning of paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995) or, if higher, age 65. A person can continue to receive PIP over SPa if they claimed prior to reaching SPa and so long as they continue to meet the entitlement conditions.
- 3.2. PIP assesses 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. PIP is 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 that they are likely to incur.
- 3.3. The activities are split into two components: daily living and mobility. A person can receive one or both components at either standard or enhanced rate, depending on the level of support that they need.
- 3.4. PIP is intended to support those who become disabled before reaching SPa, who have had less opportunity to work, earn and save for retirement. Once a person reaches SPa it is intended that the mobility component will not be awarded or increased. This policy is based on the fact that developing mobility needs in later life is a normal consequence of ageing, which non-disabled younger people have had opportunity to plan and save for. Age restrictions in relation to mobility support have been in place

since Mobility Allowance, the first benefit of its kind, was introduced in 1976.

- 3.5. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 (S.R. 2016 No. 221) ("the D&A Regulations") make detailed provision in respect of supersession. Regulation 23 permits the Department to supersede a PIP decision where there has been a relevant change of circumstances; regulation 26 permits the Department to supersede a PIP decision where medical evidence has been received from a healthcare professional or other person approved by the Department.
- 3.6. Regulation 27 of the PIP Regulations includes provision for supersession, without making reference to any specific ground in the D&A Regulations, when a person is over the "relevant age". Regulation 27(2) and (3) provides that where, in relation to the mobility component of PIP, there is a 'relevant change of circumstance which occurred after C reached the relevant age', C's award of PIP cannot be superseded to either newly award or to increase an existing award of that component.
- 3.7. The mobility component can be awarded or increased by means of a supersession under both regulation 23 and regulation 26 of the D&A Regulations. Regulation 23 is the prescribed ground for a relevant change of circumstances and thereby is clearly captured by the words in regulation 27 of the PIP Regulations. Regulation 26 provides for receipt of medical evidence from a Departmental approved healthcare professional as the ground for supersession. From the introduction of PIP regulation 27 of the PIP Regulations has been applied to regulation 26 of the D&A Regulations on the basis that, although the medical evidence had not identified a relevant change of circumstances, the fact that the healthcare professional had recommended a new or increased award indicated that there had been a change since the previous decision had been made. Accordingly, the words were considered wide enough to include a change under regulation 26.
- 3.8. The corresponding legislation has been applied on the same basis by the Department for Work and Pensions in Great Britain. However, on 22 May 2020 an Upper Tribunal in Great Britain decided that the reference to 'a relevant change in circumstances' in regulation 27 of the Social Security (Personal Independence Payment) Regulations 2013 (S.I. 2013/377) ("the GB PIP Regulations") applied only to regulation 23 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (S.I. 2013/381) ("the GB D&A Regulations") and regulation 26 had to be considered as a wholly separate ground for supersession in this context. The decision of the Upper Tribunal contravenes the original policy intent. As regulation 27 of the GB PIP Regulations does not engage regulation 26 of the GB D&A Regulations, the Department for Work and Pensions is unable to restrict an award of the mobility component where the ground is receipt of new medical evidence. As the policy intent is not to award or increase an award of the mobility component after the claimant

reaches SPa the UT decision means that the law no longer meets the policy intent. As corresponding Regulations are in place in Northern Ireland the same issue exists for the Department here.

- 3.9. Essentially there is a gap in the PIP Regulations governing this group of claimants which means that where their PIP award is, following a review, subject to a supersession, the mobility component cannot be restricted on the basis of new medical evidence (a healthcare professional's report) unless a relevant change of circumstances is identified. The policy intent is that the mobility component should also be restricted on the grounds of new medical evidence alone. The recent decision at the Upper Tribunal has been clear that a new medical assessment of needs does not automatically itself constitute a relevant change of circumstances.
- 3.10. This means that there is disparity in treatment between those SPa claimants whose award is being superseded due to new medical evidence, and those whose award is being superseded due to a relevant change of circumstances – with the former being entitled to receive a new or increased mobility award, and the latter not entitled. The gap in the legislation undermines the policy intent.
- 3.11. These amending Regulations therefore restore the policy intent by amending regulation 27 of the PIP Regulations to explicitly refer to regulations 23 and 26 of the D&A Regulations, permitting the Department to consider either regulation when superseding an award for claimants who have reached the relevant age. This will ensure that all SPa claimants are treated equally and in line with the policy intent. The Department will seek to identify those claimants affected prior to the legislative gap being closed and award them with a new or increased mobility component if they are entitled.

4. Consultation

- 4.1. As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain consultation with the Social Security Advisory Committee is not required.

5. Equality Impact

- 5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity or good relations. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities, social enterprises or voluntary bodies.

7. Financial Implications

- 7.1. The legislative amendment is required to enable the original policy intent to be met and avoid any additional increase in public expenditure going forward.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with EU law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The corresponding Great Britain Regulations are the Social Security (Personal Independence Payment) (Amendment) Regulations 2020, due to come into force from 30th November 2020.
- 10.2. In line with the long-standing policy of parity in social security, the Regulations will come into operation on the same day as the Great Britain Regulations. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.

11. Additional Information

- 11.1. Not applicable.