

Personal independence payment

The government has published draft regulations¹ under the powers in the Welfare Reform Bill 2011 to replace disability living allowance (DLA) with a new benefit called personal independence payment (PIP). These will no doubt be the subject of further debate, as the first version of the assessment regulations must be approved by both Houses of Parliament. Before this happens, the DWP will test the draft regulations. The next stages in developing the assessment are:

<i>Date</i>	<i>Activity</i>
June–July	Seek comment from disabled people and their organisations
June–September	Test the impact of the criteria
September	Refine the criteria further where necessary
October	Publish a second draft of the regulations

This fact sheet examines the first draft of the regulations, and the technical note which accompanies them. It also summarises other areas where the government has provided some clarification of how it intends to use powers relating to PIP.

Activities and descriptors

There will be two components of PIP: daily living and mobility. Both will be paid at either a standard or an enhanced rate. The assessment will be points-based, focussing on activities judged to be fundamental to participation, with a number of descriptors for each one. The decision on the points scored for the individual descriptors, and the threshold score for each component will be taken in the autumn.

The activities chosen divide into five groups chosen as proxies for the extra costs faced by disabled people. These are accessing food and drink; managing medical conditions and treatment; managing personal hygiene; communication; and getting around. They break down into 11 activities.

Daily living component

1. Planning and buying food and drink
2. Preparing and cooking food
3. Taking nutrition
4. Managing medication and monitoring health conditions
5. Managing prescribed therapies other than medication
6. Washing, bathing and grooming
7. Managing toilet needs or incontinence
8. Dressing and undressing
9. Communicating with others

Mobility component

1. Planning and following a journey
2. Moving around

There is a nil scoring descriptor which refers to the ability to undertake the activity 'unaided', and a list of points scoring descriptors. The descriptors further down the list will be given higher scores. More than one descriptor in an activity may be allocated the same score, and there may not be a uniform pattern of scores for the descriptors (as there is in the work capability assessment). The draft descriptors for the dressing and undressing activity are shown below as an illustration.

<i>Activity 8. Dressing and undressing</i>
a. Can dress and undress unaided.
b. Can dress and undress only with the use of an aid or appliance.
c. Can dress and undress unaided but can only select clothing appropriate for the environment or dress in the correct order with intermittent prompting.
d. Can dress and undress lower body only with intermittent assistance.
e. Can dress and undress unaided but cannot determine appropriate circumstances for remaining clothed.
f. Can dress and undress upper body only with intermittent assistance.
g. Can dress and undress only with continual assistance.

While the scores have not yet been decided, the current intention is that the managing treatment and medication activities will be low scoring and the communication and mobility component activities will be high scoring. The remainder of the activities will

sit between the two. Even if every points-scoring descriptor will give entitlement to a component (which seems extremely unlikely), it is clear that if this version of the assessment becomes law significant numbers of DLA recipients will not qualify for PIP.

Daily living component

Despite the rhetoric about enabling participation, the activities are extremely limited in scope. This will result in a loss of entitlement for those who have less severe disabilities, or who have adapted well and can manage the basics of survival. There is no provision to give special recognition to night time care needs, which is a significant change from the structure of the DLA care component.

Many of those who require 'continual supervision' and receive middle rate care under the DLA rules will find it very difficult to qualify under the new criteria, which only recognises intervention from another person in the form of 'assistance' or 'prompting'. For instance, uncontrolled epilepsy is mentioned in the technical note only with reference to the preparing food activity. Claimants who have regular seizures may not satisfy the medication and monitoring health condition descriptors as drafted.

The draft regulations contain attempts to head off the development of a body of interpretative caselaw by including narrow definitions of what would otherwise be considered ordinary everyday words. In contrast to the cooking test for DLA with its extensive caselaw, there are definitions of the words 'cook', 'prepare', 'simple meal' and 'snack' as used in activity 2. This combines with the use of restrictively worded descriptors which distinguish between different cooking techniques to leave much less scope for interpretation.

The definitions in the regulations also include the following: "intermittent" means for at least half the duration of the activity; ...

"continual" means throughout the entire duration of the activity'.²

The settled distinction between 'continuous' and 'continual'³ has simply been defined out of existence. Despite the definition, it is hard to imagine that an assessment of the need for 'intermittent prompting' will lead to consistent decision-making.

The technical note highlights that the claimant will be considered unable to perform an activity unless they can complete it 'reliably, in a timely fashion, repeatedly and safely, and where appropriate using suitable aids and appliances'.⁴ Again, this is an area in which consistent decisions will be very difficult to achieve.

Mobility component

The planning and making a journey activity is a replacement for both the lower rate of the DLA mobility component, and entitlement to the higher rate for those with sensory or mental impairments. Claimants with a sensory impairment will find it difficult to satisfy the higher scoring descriptors, and the recent extension of DLA higher rate mobility to those who are severely visually impaired is not replicated in PIP. There is reference to this group potentially satisfying descriptors 'depending upon the extent to which they have adapted to their impairment'.⁵ Those with severe mental health problems may also satisfy some descriptors in this activity.

There is a distinction in the moving around activity between those who can walk under 50 metres, between 50–200 metres, and over 200 metres (the latter will almost certainly not score

any points). This will be assessed with the use of a ‘manual aid’ – eg, crutches, sticks or prostheses. The higher scoring descriptors distinguish between those who need to use a manual aid to move 50 metres, those who need a manual wheelchair to do so and those who need an ‘assisted aid’ – eg, motorised wheelchair. The layout of the descriptors strongly suggests an intention to restrict the higher rate to people who cannot use a manual wheelchair for short journeys.

The Welfare Reform Bill provides that those who are ‘unlikely to benefit from enhanced mobility’ cannot qualify for the mobility component.⁶ The government does ‘not want to be prescriptive about the conditions within the primary legislation. To do so would fail to take into account individuals who may not be able to benefit from mobility assistance, who are not in a coma or vegetative state but in some similar state.’⁷ The current draft regulations provide no detail of which other groups may be deemed ineligible for the mobility component.

Fluctuating conditions and changes in circumstances

An activity descriptor is ‘to apply if the disabling effect applies the majority of the time’.⁸ This will be based on consideration of a one-year period unless otherwise stated, to align with the required period condition for PIP (see below). If a claimant fluctuates between satisfying different descriptors within a year, then the one which applies the majority of the time will be counted.

The technical note states that no account should be taken in the assessment of the potential effect of planned treatments and interventions on a claimant’s future needs. It also states that aids and appliances which are potentially available but not used will not be taken into account. Neither of these important clarifications have been written into the draft regulations.

Delivery of the benefit and assessment process

The DWP is still considering how PIP will be delivered, but said that the claimant will be ‘at the centre’ of the assessment process. The form will be redesigned, with an emphasis on shortening it due to the central role of the new assessment in the decision-making process.

The assessment will be undertaken by a trained independent assessor who will collect evidence from a wide variety of sources. **In most cases this will involve a face-to-face consultation with the claimant.** The assessor will then provide advice to the decision maker, taking into account all of the evidence. ‘Face-to-face consultations may not be appropriate in absolutely every case – for example, when there is sufficient evidence on which to make an assessment for those individuals with the most severe impairments.’⁹

There will be a revamped reconsideration process for unsuccessful claims or where claimants wish to challenge the components or rates awarded. This seeks ‘greater engagement with claimants to improve their understanding of the reasons for the decision with the aim of reducing unnecessary appeals’.¹⁰ It is not clear whether a right of appeal to the First-tier Tribunal will arise only after an application for revision has been made and considered by the DWP.¹¹

The power to reassess PIP recipients is very similar to that in the ESA regulations, so a claimant awarded PIP can be reassessed if ‘the Secretary of State wishes to determine whether there has been a relevant change of circumstances.’¹² It remains

to be seen whether this power will be widely used to reassess claimants whose PIP awards have years left to run. The DWP intends to ‘remind claimants that their fixed-term award is coming to an end and give them an indication of their options going forward.’¹³ This would appear to signal a renewal claim process that will differ significantly from that which applies for DLA at present. Specifically referring to reassessments, the government has said that ‘if we should decide – for example, as a result of testing the assessment or in the light of operational experience – that we need to deem certain individuals exempt, we already have the powers to do so in clause 78(3)(a).’¹⁴ The use of this power is not evident in the current version of the regulations.

The required period condition

The required period test for PIP extends the past period qualifying test to six months, and retains the requirement that the needs must be expected to last a further six months from the date of claim. Thus the ‘required period’ is one year. As part of the assessment process, the assessor will advise when the qualifying period will end; and whether the ongoing test is likely to be satisfied.¹⁵ Some claimants will be treated as satisfying the past period test. They must have ceased to receive PIP on the basis of the same condition less than a year previously, and satisfy the ongoing test at the date of the new claim.¹⁶

Claimants with a terminal illness will be exempt from the required period condition for both components. However, they will only be passported to the daily living component, still needing to pass the assessment to be entitled to the mobility component. Claimants already in receipt of PIP whose condition deteriorates will only be entitled to a different rate of a component if their new needs satisfy both the past and ongoing tests.

Duration of awards

The intention is for the vast majority of PIP awards to be for a fixed term. The length of an award will be set bearing in mind the likelihood of changes in either the condition(s) or the impact on the claimant’s daily life. Among the examples given is that of short-term awards of up to two years where significant improvement could be expected within that time. Longer-term awards of five or 10 years are mentioned, where change is less likely or the claimant’s condition may deteriorate. Finally, ongoing awards are envisaged in a small number of cases where any change in needs is unlikely.

Children

PIP will initially only apply to working age claimants. The government is committed to developing a separate assessment specifically for children before introducing PIP for under 16s. This may be part of the planned Department for Education single assessment process for special educational needs, health and social care in England.¹⁷ Should this happen, it will leave a question mark over how claims will be assessed in the areas of the UK with devolved responsibility for these matters. The development of the assessment for children will be the subject of further consultation, as well as parliamentary scrutiny of the first draft of the regulations.¹⁸

Over 65s

Those entitled to PIP when they reach pension age will continue to receive it as long as their needs do not change. The age limit

is defined with reference to the Pensions Act 1995, so this is expected to increase to 66 in line with reforms to the default retirement age. 'As with DLA, [the government plans to introduce] linking rules that will allow individuals who have a short break in their claim after pensionable age to claim PIP, provided their claim is made within a given period.'¹⁹

However, the independent Commission on Funding of Care and Support's recommendations will possibly mean changes to the PIP regulations. There is a statement that any changes 'would be subject to Parliamentary approval';²⁰ although no special procedures for scrutiny are set out in the Welfare Reform Bill. Similarly to the concern set out above regarding children, this commission is only considering the future of social care in England.

PIP and passporting

Entitlement to PIP will be part of the gateway for carer's allowance entitlement. It has not yet been decided which rate of the daily living component will act as a passport. The Motability scheme will continue to be supported, although no decision has been taken on the rate of the mobility component that will qualify.

The intention is that PIP will also be a proxy by which other authorities can identify those who may be eligible for support such as blue badges, concessionary public transport fares and vehicle excise duty exemptions. This will involve considering 'how award notifications can assist Local Authorities in identifying entitlement under their conditions.'²¹ This will presumably allow authorities to focus assistance on those claimants who score points for particular descriptors, and may lead to claimants on the same rate of PIP having different entitlements.

Residence and presence conditions

No detail has been published beyond that in the Welfare Reform Bill. This states that conditions may be prescribed by regulations, and also that the daily living component will not be payable unless the UK is the component state for payment of sickness benefits under the EU co-ordination rules.²² However, the government also intends 'to introduce an habitual residence test to bring PIP into line with other non-contributory benefits, instead of the ordinary residence test, which applies for DLA.'²³

Further information

Updated CPAG information will be available in future editions of the *Welfare Rights Bulletin* and at www.cpag.org.uk.

Read the draft PIP regulations and briefing notes on the DWP website at www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/personal-independence-payment-briefing/.

Follow the parliamentary debates about PIP on the UK Parliament website at <http://services.parliament.uk/bills/2010-11/welfarereform.html>.

- 1 The Social Security (Personal Independence Payment) (Assessment) Regulations 201X Draft PIP Assessment Regs
- 2 Schedule para 1 Draft PIP Assessment Regs
- 3 Eg, in R(A) 1/73 continual is something less than continuous
- 4 DWP technical note, 'Personal Independence Payment: initial draft of assessment criteria' "PIP Assessment technical note", para 6.5
- 5 PIP Assessment technical note, Annex A, Activity 10
- 6 Clause 77(7) Welfare Reform Bill 2011
- 7 House of Commons Hansard, Welfare Reform Bill Public Bill Committee (17th Sitting), 10 May 2011 col 795
- 8 PIP Assessment technical note, para 6.18
- 9 House of Commons Hansard, Welfare Reform Bill Public Bill Committee (18th Sitting), 10 May 2011 col 807
- 10 DWP, 'Personal Independence Payment – Policy briefing note: Delivery – the operational approach' para 16
- 11 This power is contained in clause 99 Welfare Reform Bill 2011
- 12 Reg 5 Draft PIP Assessment Regs
- 13 DWP, 'Personal Independence Payment – Policy briefing note: Award durations and exceptions to fixed term awards' para 14
- 14 House of Commons Hansard, Welfare Reform Bill Public Bill Committee (18th Sitting), 10 May 2011 col 821
- 15 DWP, 'Personal Independence Payment – Policy briefing note: Required period condition' para 11
- 16 Reg 8 Draft PIP Assessment Regs
- 17 DWP, 'Personal Independence Payment – Policy briefing note: Children' para 6
- 18 Clause 91(6) Welfare Reform Bill 2011
- 19 House of Commons Hansard, Welfare Reform Bill Public Bill Committee (18th Sitting), 10 May 2011 col 857
- 20 DWP, 'Personal Independence Payment – Policy briefing note: Persons aged over 65' para 7
- 21 DWP, 'Personal Independence Payment – Policy briefing note: Passporting from Personal Independence Payment' para 20
- 22 Clause 75 (3) and Clause 82 Welfare Reform Bill 2011
- 23 House of Commons Hansard, Welfare Reform Bill Public Bill Committee (17th Sitting), 10 May 2011 col 780

© Child Poverty Action Group, June 2011

Child Poverty Action Group is a charity registered in England and Wales (registration number 294841) and in Scotland (registration number SC039339). Company limited by guarantee registered in England (registration number 1993854). Registered office: 94 White Lion Street, London N1 9PF.