**EXPLANATORY MEMORANDUM TO**

# THE PERSONAL INDEPENDENCE PAYMENT (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS 2019

**2019 No. 1011**

## 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 corrects an unintentional gap in The Personal Independence Payment (Transitional Provisions) Regulations 2013 to ensure that all claimants in receipt of Personal Independence Payment ("PIP") after, whichever is the higher of, age 65 or State Pension Age ("the relevant age"), may continue to receive PIP where their award has been subject to revision or supersession.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 As this instrument corrects a gap in the Personal Independence Payment (Transitional Provisions) Regulations 2013, it is being issued free of charge to all known recipients.

***Matters relevant to Standing Orders Nos, 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

## 4. Extent and Territorial Application

4.1 The extent of this instrument is Great Britain

4.2 The territorial application of this instrument is Great Britain.

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 The Personal Independence Payment (Transitional Provisions) Regulations 2013 ("the Transitional Regulations") (S.I. 2013/387)[1] contain provisions for the phasing out of DLA for existing recipients who were aged 16 to 64 on 8 April 2013, and those who have since passed the age of 65 and those reaching age 16 (i.e. "the Claimant Group"), and its replacement by a new benefit provided for in Part 4 of the Welfare Reform Act 2012 ("the Act")[2] known as PIP. In particular, they provide for DLA claimants to be

[1] http://www.legislation.gov.uk/uksi/2013/387/contents
[2] http://www.legislation.gov.uk/ukpga/2012/5/part/4

invited to claim PIP aged 65 or over, notwithstanding section 83 of the Act, which would otherwise prevent such claimants from claiming PIP.

6.2 The PIP Transitional Regulations came into force on 8 April 2013.

6.3 The Department has taken a careful and phased approach to reassessing existing DLA claimants for entitlement to PIP, ensuring that roll out proceeds in a safe and controlled manner, as well as ensuring there is sufficient capacity in place. This has meant that some DLA claimants who were under the age of 65 on 8 April 2013 have been, and will continue to be, invited to claim PIP when aged 65 or over. Under normal circumstances such claims would not be allowed under the terms of section 83(1) of the Act; which provides the general prohibition for those of the relevant age from claiming PIP. However, under the regulation making power at section 83(3) of the Act, regulation 27 of the Transitional Regulations provides exceptions to section 83(1) to allow for a DLA to PIP reassessment claim for those who were not 65 on 8 April 2013. A DLA to PIP reassessment claim by someone aged 65 or over allows a claimant to access both components of PIP, at either the standard or enhanced rate depending on their needs, following their first assessment.

6.4 In line with previous provisions in DLA, the provision above supports a wider policy that those who were in receipt of PIP when reaching the relevant age can continue to receive benefit for as long as they satisfy the entitlement conditions. Additionally, an existing claim from someone of the relevant age can have their awards revised and superseded for a change of circumstances under the terms Regulation 27 of The Social Security (Personal Independence Payment) Regulations 2013 ("the PIP Regulations") (S.I. 2013/377)[3]. However, Regulation 27(1)(a) of the PIP Regulations is itself subject to either of Regulations 25 or 26 of the PIP Regulations.

6.5 Regulation 25 of the PIP Regulations applies only to those who were under the relevant age when they first claimed PIP, whilst Regulation 26 applies to those who have reached the relevant age, had a previous award of PIP and re-claims PIP within a year of their previous entitlement ending. Neither of these circumstances apply to those who have claimed PIP, or have been invited to claim PIP, for the first time aged 65 or over under the terms of Regulation 27 of the Transitional Regulations. Therefore, on a strict reading of the legislation, claimants who have transferred to PIP from DLA aged 65 or over, and who have an award which is subject to revision or supersession, cannot benefit from the provisions in the PIP Regulations that would otherwise apply to those of the relevant age and accordingly, due to the lack of an exemption to s.83(1), would no longer be entitled to receive PIP. That situation is not in accordance with the pre-existing policy position and, if applied, would disadvantage claimants aged 65 or over, who had previously been in receipt of DLA, whereas others of a similar age, who had claimed PIP prior to age 65, would not be similarly disadvantaged.

6.6 This instrument therefore closes the gap by adding in a new provision, Regulation 27A, to the Transitional Regulations. The new provision will provide the same entitlement rights following revision or supersession, as provided for claimants who fall under Regulation 27 of the PIP Regulations for supersessions and revisions, of the awards of claimants who transferred from DLA to PIP aged 65 or over ("a transfer claimant"). Regulation 27A also applies the same limitations to the mobility component as regulation 27 of the PIP Regulations. The effect of this is that where a

[3] http://www.legislation.gov.uk/uksi/2013/377/contents

transfer claimant is in receipt of the mobility component then that award of the mobility component cannot be increased to a higher rate of award than that originally awarded at the date of transfer. Furthermore, that rate of the mobility component can only continue to be awarded where entitlement results from substantially the same condition or conditions for which it was originally made. This is in accordance with pre-existing policy and mirrors the position provided for claimants who fall under regulation 27 of the PIP Regulations.

## 7. Policy background

***What is being done and why?***

Personal Independence Payment

7.1 PIP replaced DLA for new claims from 8 April 2013. PIP involves a more objective assessment of an individual's need, enabling support to be targeted to those disabled people least able to participate in society and experiencing the greatest barriers to living independently.

7.2 The PIP assessment measures 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. These activities have been chosen to consider the impact of a more comprehensive range of impairment types than the DLA criteria. They are 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 they are likely to incur.

7.3 One of the policy intentions within PIP, and DLA before, has been to focus financial support on those who become disabled earlier in life, i.e. before age 65, and have had less opportunity to work, earn and save for their retirement. The age 65 threshold applied equally to men and women since DLA was introduced in 1992 and upon the introduction of PIP. With state pension age now aligned between men and women at age 65, and with it gradually rising towards age 66 (by October 2020), the upper age threshold, known as the relevant age, for claiming PIP is also rising in line with the increases in state pension age.

7.4 The gap identified in the legislation governing this group of claimants means that where their PIP award is subject to a revision or supersession for a change of circumstances there is no exemption in the Transitional Regulations to the upper age restriction. A strict application of the legislation would mean PIP would no longer be payable to this group in this situation. This goes against the policy intent and if applied would disadvantage these claimants.

7.5 The amending regulations provide claimants who transfer from DLA to PIP, aged 65 and over, with the same revision and supersession rights as other PIP claimants. Until such time as the gap in the regulations is closed, the Secretary of State, in agreement with HM Treasury, is continuing to deal with revisions and supersessions in accordance with the policy intent to ensure that claimants continue to be entitled to

PIP and receive their awards following any revision or supersession by way of extra-statutory payments.

**8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

**9. Consolidation**

9.1 The consolidated text of the Transitional Regulations will in due course be available to the public free of charge on the National Archives website, www.legislation.gov.uk.

**10. Consultation outcome**

10.1 There have been five formal consultations and one informal consultation on the introduction of PIP. Initial proposals for the reform of DLA, including the high-level principles of the PIP assessment criteria, were first consulted on between 6 December 2010 and 18 February 2011[4]. The detailed design of PIP, including the principles and policy applying to DLA claimants being invited to claim PIP and those reaching the relevant age were consulted on between 26 March 2012 and 30 June 2012, with the Government response published on 13 December 2012[5].

10.2 Bearing in mind the history of extensive consultation and the fact that the present instrument is intended to ensure DWP have the legal powers to support the original policy intention, the Secretary of State has decided not to undertake further public consultation before making the present instrument.

**11. Guidance**

11.1 Since this instrument simply provides for a sound legislative footing to a policy that continues to be delivered in practice, no changes in guidance are required.

**12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Equality Analysis has been prepared for this instrument and we have assessed the equality impacts of this change based on the information available. We have no evidence that any protected groups would be disproportionately affected by the change in a manner that would result in unlawful discrimination, harassment or victimisation. This is a technical change and is a positive one for those affected.

**13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

[4] *Disability Living Allowance reform* (Cm 7984): https://www.gov.uk/government/consultations/disability-living-allowance-reform

[5] *DLA reform and PIP: completing the detailed design*: https://www.gov.uk/government/consultations/dla-reform-and-pip-completing-the-detailed-design

## 14. Monitoring & review

14.1 This instrument maintains existing PIP policy and procedures. The Department for Work and Pensions will continue to monitor the introduction of PIP and the transitional arrangements for those successfully moving across from DLA.

## 15. Contact

15.1 Karen Elsmore at the Department for Work and Pensions, karen.elsmore@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kerstin Parker, Deputy Director for PIP Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson, Minister of State for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.