

**PIP Public Consultation Response**

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**“Q1 – What are your views on the latest draft Daily Living Activities?”**

**“In the explanatory note we set out revised proposals for the activities relating to entitlement to the Daily Living component (Activities 1-9). These include three new activities: *Communicating, Engaging socially* and *Making financial decisions*. We would welcome your views on the activities. Are the changes and the new activities an improvement? Do you think we need to make any further changes?”**

**Response:**

Activity 1, preparing food and drink. Descriptors (f) is redundant. If a claimant needs assistance to prepare or cook a simple meal (f), it is also clear that they cannot prepare and cook that simple meal (g), since if they can prepare and cook a meal, then they wouldn't need assistance. Descriptor (f) should be removed. This activity, and its descriptors, should also include the washing up cooking utensils, crockery and cutlery used in the preparation, cooking and eating of the meal.

Activity 4, bathing and grooming. The definitions for bathing and grooming are unsatisfactory. The definition included in the regulation of "bathe" is restricted to cleaning one's torso, face, hands and underarms. This definition is insulting to disabled people. The definition should be revised to include washing the overall body, including the head, upper limbs, torso, and lower limbs. Similarly grooming is inadequate (currently just combing or brushing hair, washing hair, and cleaning teeth). Grooming should include shaving, foot care and cutting nails. Foot care is particularly important for some disabled conditions and if not addressed can quickly lead to further health problems and further incapacity. The descriptor (g) is superfluous. If the claimant needs assistance to bathe, then clearly they are unable to bathe by themselves, and consequently they are eligible under (h).

Activity 5, managing toilet needs. This activity should allocate points to those who need assistance to manage menstruation.

Activity 7, communicating. This activity must include a wider range of communication. Writing is a crucial part of communication, which can also be problematic for some disabling conditions. In many situations computer use is replacing the written word, and is often the only means of access to information and services. Increasingly government communication with citizens is increasingly focused on computer use. This activity should be widened with descriptors to recognise a wider range of communication problems, including difficulties with writing and speech.

Activity 8, engaging socially. Social support should not be restricted to a person trained or experienced in assisting people to engage in social situations. The descriptor should recognise the wide range of support that people with impairments and disabilities require to help them engage socially.

Yes we do believe further changes should be made the Daily Living Activities, particularly taking into account feedback from disability charities, including the feedback that we have provided above. RSI Action would be pleased to engage further with DWP to improve these descriptors.

**Q2 – What are your views on the weightings and entitlement thresholds for the Daily Living Activities?**

**In the explanatory note we set out proposals for the weightings of descriptors in the activities relating to entitlement to the Daily Living component (Activities 1-9). In this document we have set out the entitlement thresholds for the benefit. How well do you think they work to distinguish between differing levels of ability in each activity? How well do you think they work to prioritise individuals on the basis of their overall need? Do you think we need to make any changes to weightings or thresholds?**

**Response**

The currently proposed weightings and thresholds do raise concerns with us. Particularly with those points raised in Q 1 and those under fluctuating conditions. DWP should consider feedback from disability charities to improve the descriptors, waiting and thresholds to minimise the cases should be in receipt of PIP but are missed due to inappropriate or inflexible descriptors, weightings and thresholds.

Weightings and entitlement thresholds are clearly inter-related. It is also very dependent upon the assessment regime. The current ESA / WCA regime places the premise of disbelieving the claimant at the forefront of the assessment process, HCP training appears to be focused on taking one off observations to “disprove” claimant’s statements, and to selectively edit claimant statements to misrepresent their capacity. These problems are particularly evident for claimants with fluctuating conditions, and conditions which are not immediately visible.

The assessment regime is likely to have a significant impact the success of PIP. Unless DWP take significant steps to work with the disability community to ensure that a regime similar to ESA is not implemented for PIP assessments. Such an assessment regime will result in further disadvantage, stress and further ill-health to the most disadvantaged in our society.

Official figures already show that benefit fraud is minimal in regards to disability benefits (measurement accuracy for the DWP data is 0.5%, claimant fraud is done in the noise at 0.5% for ESA / IB, whereas the official overpayment and overpayment for this benefit is close to 3%). The assessment regime for PIP must not let vulnerable and deserving claimants be denied benefit.

**Q3 – What are your views on the latest draft Mobility Activities?**

**In the explanatory note we set out revised proposals for the activities relating to entitlement to the Mobility component (Activities 10-11).**

**Are the changes an improvement? Do you think we need to make any further changes?**

**Response**

No response.

**Q4 – What are your views on the weightings and entitlement thresholds for the Mobility Activities?**

**In the explanatory note we set out proposals for the weightings of descriptors in the activities relating to entitlement to the Mobility component (Activities 10-11). In this document we have set out the entitlement thresholds for the benefit. How well do you think they work to distinguish between differing levels of ability in each activity? How well do you think they work to prioritise individuals on the basis of their overall need? Do you think we need to make any changes to weightings or thresholds?**

**Response:**

No response.

**“Q5 – What are your views on how the regulations work regarding benefit entitlement?”**

**Draft Regulations 1 to 4 set out how the assessment will work to prioritise individuals and determine entitlement to the benefit. How well do you think the draft regulations achieve the intent of the assessment set out in the explanatory note? Do we need to make any changes?”**

**Response:**

Ensuring that the assessment addresses whether a claimant is able to carry out an activity "reliably, repeatedly, safely and in a timely manner" is vital. This must be placed on the face of the regulations to ensure that it is consistently applied. Despite departmental and ministerial assurances, including the Minister's statement in the Lords debate in March 2011 regarding the new ESA regulations, we have clear and explicit evidence that BDCs and the DMA Policy Unit are systematically failing this policy in ESA cases. To avoid this occurring for PIP, the requirement to consider reliability, repeatability, safety and timely manner must be placed in the regulations and in the information sent out to all claimants.

It must not be assumed that people can adapt to their condition over time, or that their level of disability will decrease.

The approach to aids and appliances is unsatisfactory. We are concerned that aids and appliances are defined as not including "those ordinarily used by person without a physical or mental condition". Somebody with a disability or impairment may rely far more heavily on a mainstream device (such as a food processor or electric toothbrush). And these should be equally recognised as "a reliance on an aid or appliance". Whereas an ordinary person may be inconvenienced without such an appliance, the lack of such an appliance may result in somebody with a disability or impairment being unable to undertake an activity.

**“Q6 – What are your views on how we are dealing with fluctuating conditions?”**

**“Regulation 4(4)(c) of the draft regulations and paragraphs 7.13 to 7.15 of the explanatory note set out how we are proposing to assign descriptors to people who have fluctuating conditions. These are that: - Scoring descriptors will apply to individuals where their impairment(s) affects their ability to complete an activity on more than 50 per cent of days in a 12 month period.**

**- If one descriptor in an activity applies on more than 50 per cent of the days in the period – i.e. the activity cannot be completed in the way described on more than 50 per cent of days – then that descriptor should be chosen.**

**- If more than one descriptor in an activity applies on more than 50 per cent of the days in the period, then the descriptor chosen should be the one which applies for the greatest proportion of the time.**

**- Where one single descriptor in an activity is not satisfied on more than 50 per cent of days, but a number of different descriptors in that activity together are satisfied on more than 50 per cent of days – for example, descriptor ‘B’ is satisfied on 40 per cent of days and descriptor ‘C’ on 30 per cent of different days – the descriptor satisfied for the highest proportion of the time should be selected. What are your views on this approach and how this is set out in the regulations?”**

**Response:**

Ensuring that the assessment addresses whether a claimant is able to carry out an activity "reliably, repeatedly, safely and in a timely manner" is vital. This must be placed on the face of the regulations to ensure that it is consistently applied. Despite departmental and ministerial assurances, including the Minister's statement in the Lords debate in March 2011 regarding the new ESA regulations, we have clear and explicit evidence that BDCs and the DMA Policy Unit are systematically failing this policy in ESA cases. To avoid this occurring for PIP, the requirement to consider reliability, repeatability, safety and timely manner must be placed in the regulations and in the information sent out to all claimants.

It must not be assumed that people can adapt to their condition overtime, or that their level of disability will decrease.

While we welcome the proposal that the person will score points against an activity if they are unable to complete or perform it at some stage of the day, it remains difficult to individuals to calculate whether they have been able to complete an activity on 50% of days. In addition, those who experience severe fluctuations which result in considerable costs were significant amounts of the time that amount to less than 50% of the days are unlikely to score any points, this is unsatisfactory.

**“Q7 – What are your views on the definitions of ‘safely’, ‘timely’, ‘repeatedly’ and ‘in a timely’ manner?”**

**“In the assessment an individual must be able to complete an activity descriptor reliably, repeatedly, safely and in a timely manner. Otherwise they should be considered unable to complete the activity described at that level. In paragraph 7.4 of the explanatory note we set out draft definitions for these as follows:**

- Reliably means to a reasonable standard.**
- In a timely fashion means in less than twice the time it would take for an individual without any impairment.**
- Repeatedly means completed as often during the day as the individual activity requires. Consideration needs to be given to the cumulative effects of symptoms such as pain and fatigue – i.e. whether completing the activity adversely affects the individual’s ability to subsequently complete other activities.**
- Safely means in a fashion that is unlikely to cause harm to the individual, either directly or through vulnerability to the actions of others; or to another person.**

**What are your views on these? Some organisations have suggested that these terms should be included within the regulations. Do you agree? If so, do you have views on how we should do so – for example, as a general provision or referring to them in the detail of activity descriptors?”**

**Response:**

Reliably. This should include the ability to undertake the activity on a bad day as well as good day, as well as being able to undertake the activity to achieve its normal purpose or to a reasonable standard.

In a timely fashion. This should include being able to undertake the activity when it is needed.

Repeatedly. We are pleased to see that consideration would be given to the cumulative effects of pain and fatigue. However there is a lack of clarity regarding the number of repeats that may be considered, since the wording is "completed as often during the day as the individual activity requires." Sufficient flexibility must be applied to take into consideration the number of repeated activities and that the individual wishes or needs to undertake the activity, rather than impose a restrictive or prescriptive limit.

**“Q8 – What are your views on the definitions in the regulations?”**

**“The draft regulations contain a number of definitions in Regulation 1 (Interpretation) and Schedule 1. Do we need to make changes to any of these?”**

**Response:**

please see further explanation in earlier sections where relevant.

Aid or appliance. As stated above this should not exclude an aid or appliance ordinarily used by a person without a physical or mental condition.

“negative determination” definition is given in draft regs section 2, and refers to Section [78](6) of the Act. I can not find the reference. This should be checked. I have found a ref in [80](5) and [80](6). I assume that it may be that since the Act was a bill when the draft regs (as on DWP website on 30 April 2012) were published in Nov 2011, that changes to sections have occurred during passage of the Bill, so that what was [78}(6) is now [80](6).

“bathe”, this should be the common meaning of the word, and include washing the whole of the body including head, upper limbs, torso, lower limbs.

“Communicate” this should include a range of communication to assist independent living, and should include writing as well as reading, being able to access information and provide information.

“groom” should include shaving and training fingernails and foot care.

“prepare” food should include washing and cleaning utensils as well as using them for the preparation of food.

**“Q9 – Do you have any other comments on the draft regulations?”**

**Regulations 5 to 10 of the draft regulations relate to elements of the assessment process for Personal Independence Payment, around the requirement to provide information and attend face-to-face consultations, the consequences of failing to meet these requirements and when individuals might have good reason for not meeting these. Do you have any comments on these regulations?”**

**Response:**

None.

**Other Comments**

**“Other comments on the second draft criteria – in particular on the changes made in the November 2011 version, the proposed weightings and the entitlement thresholds – are welcome. At this point in the development process we do not envisage making significant changes to the broad principles or scope of the assessment – i.e. to incorporate social and environmental factors. We are therefore not seeking comments on these aspects of the second draft criteria.**

**We are also not seeking views at this stage on Regulations 11 to 13 of the draft regulations relating to the required period conditions. These will be subject to separate consultation at a later point.”**

**Response:**

No further comments other than those relating to the second draft criteria already provided to earlier questions.