

DLA reform and Personal Independence Payment – completing the detailed design

Public consultation on specific detailed proposals in relation to Personal Independence Payment, Disability Living Allowance, Carer's Allowance and Attendance Allowance that will further inform the development of secondary legislation.

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Contents

- 1. Executive summary 2
- 2. Introduction..... 4
- 3. Eligibility..... 5
 - A benefit relating to long-term disability – the required period condition..... 5
 - Re-claiming the benefit – linking rules 6
 - Children 7
 - Claims from young people at age 16 8
 - Residence and presence rules 9
 - Temporary absences abroad..... 11
- 4. Payability of the benefit..... 13
 - Upper age limit – entitlement to Personal Independence Payment 13
 - Hospital and care home residents 14
 - Changes to certain Disability Living Allowance and Attendance Allowance rules 16
 - Prisoners 17
- 5. Reassessing existing Disability Living Allowance claims 20
 - Who will be reassessed 20
 - Timetable for reassessment 21
 - Information requirements: what people need to provide and when 21
 - When payment of Disability Living Allowance will stop and Personal Independence Payment will commence 23
- 6. Award durations and reviews..... 25
- 7. Passporting arrangements..... 26
 - DWP benefits and schemes 26
 - Non-DWP schemes and benefits..... 28
- 8. Changes to Residence and Presence conditions in Disability Living Allowance, Attendance Allowance and Carer’s Allowance 30
 - Residence and Past Presence Tests..... 31
 - Temporary Absences Abroad 31
- 9. Impact assessment..... 32
 - Overview of potential equality impacts..... 32
- 10. About this consultation..... 36
 - Audience, purpose and scope 36
 - Consultation arrangements..... 36
- Annex 1 – Consultation questions 40

1. Executive summary

- 1.1 Disability Living Allowance (DLA) is being reformed to create a new benefit called Personal Independence Payment – initially this will be introduced for people aged 16-64. The Government is committed to supporting disabled people to exercise choice and control and lead independent lives. Personal Independence Payment will focus support to those individuals experiencing the greatest barriers to living an independent life, while making sure that the benefit remains affordable.
- 1.2 Between December 2010 and February 2011 the Government carried out a consultation on the reform of DLA, including the high level structure of the new benefit. The Welfare Reform Act 2012¹ ('the Act') provides the legal framework for Personal Independence Payment, and provides enabling powers for the detailed rules to be set out in secondary legislation.
- 1.3 In January 2012, the Department began a formal 15-week consultation on the draft assessment criteria², in particular on the changes that have been made since the first draft³ (published in May 2011); the proposed descriptor weightings and entitlement thresholds; and the draft Assessment Regulations.
- 1.4 The Government has announced that Personal Independence Payment will be phased-in starting with new claims from April 2013. During the first few months the number of new claims will be limited to a few thousand per month to allow us to test our systems before all new claims for Personal Independence Payment enter the process. We will begin to reassess existing DLA claimants, starting in October 2013, six months after the initial implementation; we will again phase this process.
- 1.5 This consultation sets out the Government's proposals on the detailed rules that will underpin Personal Independence Payment. These proposals concern:
 - **eligibility to the benefit** – residence and presence tests, and how children in receipt of DLA will be brought through to Personal Independence Payment at age 16;
 - **payability of the benefit for certain groups** – how payment of the benefit will be affected for residents of care homes, hospital in-patients, and for people undergoing legal detention; and not providing for an extension of the mobility component to Motability leaseholders affected by the hospital rules;

¹ http://www.legislation.gov.uk/ukpga/2012/5/pdfs/ukpga_20120005_en.pdf

² <http://www.dwp.gov.uk/docs/pip-assessment-thresholds-and-consultation.pdf>

³ <http://www.dwp.gov.uk/docs/pip-draft-assessment-regulations.pdf>

- **the requirements relating to reassessing DLA recipients** – this specifically looks at the rules relating to people aged 16–64 who will be in receipt of DLA in April 2013, and sets out what they can expect from us and what they will need to do if they want to claim Personal Independence Payment; and
 - **passporting arrangements** – this sets out our intentions on how Personal Independence Payment will be used as a gateway for other benefits and schemes, including those for which other Government Departments are responsible and our work with Devolved Administrations relating to their schemes.
- 1.6 This document includes proposals to change the residence and presence conditions in DLA, Attendance Allowance and Carer’s Allowance so that they align with the approach we have set out for Personal Independence Payment. It also outlines our intention to end the existing extension for DLA Motability leaseholders who remain hospital in-patients beyond 28-days. Since this extension is being removed from DLA from April 2013 we will not be replicating it in Personal Independence Payment.
- 1.7 Throughout the development of Personal Independence Payment, Ministers and officials have engaged extensively with disabled people, their families, and disability organisations at both a national and local-level, to seek input to the reforms. The Department has set up an Implementation Development Group⁴ specifically for customer representatives to contribute to the design and development of the operational processes needed to deliver the new benefit. This work is ongoing and remains fundamental to the design of Personal Independence Payment.
- 1.8 Responses from this consultation will inform the development of secondary legislation that will underpin the new benefit. We would like to hear from disabled people and their organisations to ensure that we are able to consider their views and get the detailed design right. We are therefore carrying out a formal consultation which will run for 14 weeks, from 26 March to 30 June 2012. Our current intention is that final draft Regulations will be made by the end of this year.

⁴ Personal Independence Payment Implementation Development Group, our primary mechanism to consult with national and local organisations that represent a broad range of disabled people on the operational design, development and implementation of Personal Independence Payment.

2. Introduction

- 2.1 The Government is committed to supporting disabled people to exercise choice and control and lead independent lives, and recognises that disabled people face extra costs in doing so. Disability Living Allowance (DLA) is being reformed to create a new benefit called Personal Independence Payment which will ensure that support towards meeting such extra costs is focussed on those individuals who experience the greatest barriers to living full, active and independent lives.
- 2.2 The high-level legislative framework underpinning Personal Independence Payment is set out in the Welfare Reform Act 2012 ('the Act'). The Government's intention is that the detailed requirements for the new benefit will be set out in secondary legislation, and is committed to continuing to involve disabled people and disability organisations in the development of the detailed design.
- 2.3 This consultation sets out the Government's proposals on the detailed rules that will underpin eligibility and payment of the new benefit. We are also consulting on some of the proposals on assessment of existing DLA claims and changes to DLA, Attendance Allowance and Carers Allowance. We will also provide information about the use of Personal Independence Payment as a passport to other benefits and schemes.
- 2.4 Responses from this consultation will inform the development of secondary legislation that will underpin the new benefit. The consultation period will run from 26 March to 30 June 2012. We will publish the Government's response to this consultation later this year.

3. Eligibility

- 3.1 This chapter sets out our proposals relating to eligibility for Personal Independence Payment.
- 3.2 Individuals must have a long-term disability or health condition in order to be eligible for the benefit. The Act includes provision for this in the form of a 12 month required period condition, consisting of a three-month qualifying period and nine-month prospective test. This section sets out the proposed approach in relation to individuals re-claiming the benefit under linking rules and how the required period condition may be modified in certain circumstances.
- 3.3 The intention is that individuals will also have to satisfy certain rules on residence and presence, and conditions will apply to temporary absences abroad.

A benefit relating to long-term disability – the required period condition

- 3.4 In order to qualify for Personal Independence Payment an individual must have met the entitlement conditions for a past period (we call this the qualifying period) and be expected to meet the entitlement conditions for a future period (the prospective test) – this is known as the required period condition. In the DLA reform consultation⁵ the Government set out its proposals to restructure the existing qualifying period and prospective tests for Personal Independence Payment so that the overall period covered by the tests more closely align with the general definition of long-term disability used within guidance for the Equality Act 2010⁶. Under those proposals the qualifying period and prospective test would each have been set at six months, making for an overall required period condition of 12 months.
- 3.5 Since then we have continued to work with disabled people and their representative organisations, and have listened to the views of Parliamentarians on this and other issues as the Act passed through Parliament. We are grateful for the views expressed. During discussions, the consensus has been that an overall required period condition of 12 months is appropriate, but there should be some rebalancing of the qualifying period and the prospective test to ensure it works effectively. Our view is that a three-month qualifying period and a nine-month prospective test offers the fairest solution, both to claimants and to the sound administration of the benefit. Amendments were therefore made and accepted to the Act as it passed through Parliament⁷. **These provisions are now in section 81 of the Act; we are not consulting on these arrangements.**

⁵ *Disability Living Allowance reform*, Cm 7984

⁶ Office for Disability Issues, 2011, *Equality Act 2010, Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability*

⁷ Hansard, House of Lords, 17 January 2012, Columns 549 to 550.

Re-claiming the benefit – linking rules

People of working age

- 3.6 Under current provisions for DLA individuals can re-claim a component or components of the benefit without having to satisfy the qualifying period where they had a previous entitlement to that component within the last two years. The new entitlement to DLA could be on the basis of an existing condition which has fluctuated or deteriorated following a period of remission or where they develop a new condition. Our view is that the provision which allows for a claim based on a new condition to bypass the qualifying period is not consistent with the main policy objectives of the required period condition for Personal Independence Payment and does not adequately establish whether someone has, and will have, a long-term condition.
- 3.7 For Personal Independence Payment, where someone has a condition that goes into remission, we would expect that their entitlement to Personal Independence Payment will be payable at a lower rate or stop. However, many such conditions can subsequently deteriorate again, sometimes in a pattern of remission and deterioration (for example, certain types of multiple sclerosis). Where people need to re-claim Personal Independence Payment as a result of a deterioration in their condition, our view is that they should not have to re-satisfy a qualifying period for any component they previously received.
- 3.8 Under the regulation-making powers we have at section 81(4) of the Act we propose that where someone is re-claiming Personal Independence Payment on the basis of a previous condition, or a range of conditions⁸, the claimant will not need to satisfy the qualifying period for any component or components to which they previously had been entitled. A period of one year can elapse between such claims rather than the two currently used. We believe this time period offers a sensible period over which we can relax the qualifying period; it aligns the rules with those already applying to DLA recipients over the upper age limit and allows for information on the previous claim to be retained for a reasonable period of time thus reducing storage costs.
- 3.9 Re-claims to Personal Independence Payment by individuals who have developed a new condition or conditions will be treated as a new claim and so have to fulfil a qualifying period of three months. Our view is that this position maintains the integrity of the benefit as one which should only be paid to those who have, and will have, a long-term condition. These proposals are currently within the draft Regulations published in relation to the consultation on the assessment criteria.

⁸ We will take a broad, rather than a strict, view on these re-claims on the basis that many conditions can interact in complex ways making it difficult to assign the effects of disability on any one condition. We intend to make revisions to the current draft Regulations, which are subject to a separate consultation exercise, to ensure this outcome.

Question 1

Does our approach on the linking rules support the policy intention of providing continued support to those with a long term condition which can fluctuate or deteriorate in the most reasonable and effective way? If you don't agree, please tell us why and what an alternative approach could be?

People aged 65 or over

- 3.10 As for DLA, Personal Independence Payment will allow a claimant to continue to receive their existing award for as long as they satisfy the entitlement conditions, regardless of any upper age limit⁹ (see paragraphs 4.2 to 4.7). Renewal claims on fixed term awards which expire after someone reaches the upper age limit will also be permitted to allow someone to continue receiving Personal Independence Payment where they satisfy the entitlement conditions.
- 3.11 Where someone in receipt of DLA after the age of 65 loses entitlement to the benefit, perhaps because their condition has improved or they have submitted a renewal claim late, linking rules allow for a new claim to be made for DLA within one year of the expiry of the old claim. Such a claim allows for an individual to re-establish entitlement to either component of DLA they were receiving before, or to establish a new entitlement to the middle or highest rate care component, but does not allow for a new or higher entitlement to the mobility component. Where someone establishes entitlement to a previously received component they do not have to satisfy a qualifying period.
- 3.12 Under the regulation-making powers we have at section 83(3) of the Act we intend to broadly follow those rules but with the exception that a linked claim to Personal Independence Payment received after the upper age limit has been reached must be on the basis of a similar condition or range of conditions that gave rise to a previous entitlement. As with our proposals on people of working age (above), in such circumstances any component previously received would not be subject to the qualifying period. This arrangement would more closely align the linking rules across all ages.
- 3.13 Paragraphs 4.2 to 4.7 provide more details on our proposals in relation to people on, around or after the upper age limit, including these proposals.

Question 2

Are there specific matters regarding this age group that would warrant a different approach?

Children

- 3.14 Personal Independence Payment eligibility will not be extended to children when it is introduced in April 2013. The Government's response to the DLA

⁹ The upper age limit is age 65 or state pension age, whichever is the greater.

reform consultation set out its intention that children below the age of 16 will still be able to claim DLA. We recognise that children's requirements are different from adults', and are committed to consulting formally before extending Personal Independence Payment to children. We will also learn from implementing the new benefit for individuals of working age.

Claims from young people at age 16

- 3.15 A young person will only be able to apply or be assessed for Personal Independence Payment when they reach the age of 16. Our commitment is to ensure that when a claim is made by someone already in receipt of DLA the transition to Personal Independence Payment is effective with no gaps in payments, subject to their meeting the eligibility criteria.
- 3.16 To understand Personal Independence Payment design and delivery requirements and to meet the needs of young people we have set up a sub-group of the Implementation Development Group (IDG) called the Personal Independence Payment Young Persons Panel¹⁰. We have also begun work with focus groups and held one-to-one interviews with young people as part of our design method which considers the needs and behaviours of users throughout all stages of project design and delivery.
- 3.17 Schedule 10 to the Act provides a power to consider transitional arrangements. Following our early engagement with the IDG and the Young Persons Panel, we will ensure that provision is made in our regulations to enable DLA payments to continue until a determination of a Personal Independence Payment claim has been made, and subject to the individual satisfying the eligibility criteria.
- 3.18 To ensure that there are no gaps in payment for young people approaching age 16 we intend to write to the parent or guardian before the individual reaches that age to tell them that their DLA award is due to end. This process will also apply to those currently on indefinite awards. Our starting point will be that the young person themselves will be the recipient of the benefit and we will therefore ask if they intend to claim Personal Independence Payment. Where individuals tell us that they do wish to claim the benefit we intend to contact them to tell them what they need to do. We will also confirm that, if the young person intends to claim, they are able to manage their own affairs when they are 16 and that their disability does not require a nominated adult to be appointed to act on their behalf. Our intention is that Personal Independence Payment will help meet the aspirations of young people as they start to move to adulthood and make decisions about other aspects of their lives.
- 3.19 If we are unable to establish contact or cannot determine if a Personal Independence Payment claim will be made the individual will no longer receive benefit payment from age 16 when their DLA award will come to an end. We will not be inviting claims to Personal Independence Payment until age 16.

¹⁰ The Young Person's Panel is a sub group of the IDG and has been established to inform the way in which Personal Independence Payment is delivered for young people aged 16 to 24 and to ensure that PIP is built around their needs through informed user-centred design.

Example

John was diagnosed with Duchenne muscular dystrophy at the age of 8 and has been using a powered wheelchair since the age of 12. He is now 15, attends mainstream school and is looking forward to going to Sixth Form College when he is 16. He was in receipt of the middle rate care component and highest rate mobility component of DLA. When John was aged 15 years and 7 months his mother received a letter from DWP advising her that John's DLA was going to end when he reached 16 and that he would be able to make a claim to Personal Independence Payment in his own right. John's mother was also asked to return to DWP a "intent to claim" form for PIP and confirmation that John would or would not need an appointee when he reached 16.

As John's mother had returned the "intent to claim" form in good time DWP were able to issue an invitation to claim Personal Independence Payment to John on his 16th birthday and ensure that his DLA continued in payment until John's claim had been processed. John claimed immediately and provided details of all the people who helped him, including his school, to DWP.

Once the claim for Personal Independence Payment was received by DWP it was passed to an independent assessor who decided he would like some more information. John was asked to go to a face-to-face consultation with the assessor to discuss his circumstances in more detail and decided to take his mother with him as well. John was able to tell the assessor how his condition affected him on a day to day basis. Following the consultation John received a letter from DWP saying that he was entitled to the enhanced rate for both the daily living component and the mobility component. John was delighted as this meant that he could start taking driving lessons at age 16 and could consider getting a car under the Motability scheme when he had passed his test. Having a car would mean he could travel independently to his Sixth Form College.

Question 3

Do you think we should do something different from our proposed approach to ensure transition at age 16 works effectively?

Residence and presence rules

3.20 Section 77(3) of the Act provides regulation-making powers to set out conditions relating to residence and presence. As Personal Independence Payment is a non means-tested, non-contributory benefit paid out of general taxation, residence and presence conditions are an important part of the eligibility requirements.

Habitual residence test

- 3.21 We propose that claimants will need to be present in Great Britain and meet a habitual residence test¹¹. DLA claimants have to be present and ordinarily resident in Great Britain – this is a similar test to habitual residence. Claimants of income-related benefits, such as Jobseeker’s Allowance (income-related), already have to meet a habitual residence test. Requiring Personal Independence Payment claimants to meet a habitual residence will align the residence tests with other benefits so that claimants only have to meet one test.
- 3.22 We will carry forward current exceptions to the current test which includes treating serving members of Her Majesty’s Forces as present in Great Britain. However, the current rules for DLA still require serving members to be ordinarily resident in Great Britain. We propose to make a change so that this group (and members of their families) are treated as habitually resident in Great Britain whilst stationed and serving abroad.

Past presence test

- 3.23 DLA claimants have to satisfy a past presence test – they must have spent 26 weeks out of the previous 52 weeks in Great Britain at the point of claim and throughout an award. If they meet all the other conditions of entitlement they do not need to have any other connection with Great Britain. We consider that this test is now outdated and does not represent a long standing or sufficient connection with Great Britain.
- 3.24 We therefore propose that the period should be extended so that claimants can demonstrate a more enduring association with Great Britain to justify receipt of a benefit funded by the British taxpayer. For some benefits this is five years and other countries have longer periods. We acknowledge that EU law affects how we apply our rules to certain claimants However the EU impact is outside the scope of this consultation¹².
- 3.25 Our current thinking is that claimants should have spent, as a minimum, at least two years in Great Britain out of the last three years before they can access Personal Independence Payment.

¹¹ The term "habitual residence" is not defined in social security legislation. In deciding whether a person is actually habitually resident, decision makers consider a wide variety of factors. These include reasons for coming to the Great Britain, the length of their stay, future intentions, previous links with the country and, in the case of people returning to the Great Britain, the reasons for their absence.

¹² Claiming: www.direct.gov.uk/en/DisabledPeople/FinancialSupport/Introductiontofinancialsupport/DG_174941

Exporting: www.direct.gov.uk/en/DisabledPeople/FinancialSupport/Introductiontofinancialsupport/DG_073387

Question 4

Do you agree that it is sensible to move towards a habitual residence test to simplify the claiming process by aligning with other benefits?

Question 5

Do you think a requirement that a claimant must have been present in Great Britain for two years out of the previous three years is reasonable in order to demonstrate a long standing affiliation to Great Britain? Would a longer period be more appropriate?

And if so what do you think that longer period should be and why?

Question 6

Do you think that serving members of Her Majesty's Forces and their families should be treated as habitually resident in Great Britain when serving and stationed abroad?

Temporary absences abroad

- 3.26 Section 77(3) of the Act states that a person must meet prescribed conditions relating to residence and presence in Great Britain. The current absence abroad rules for DLA were introduced in 1992 and were based on the rules for Attendance Allowance (introduced in 1971). Under regulation 2 of the DLA regulations¹³ an individual can be absent for up to 26 weeks for any reason before they lose entitlement to benefit. This period can be extended for an unlimited period if the Secretary of State has given prior agreement to medical treatment outside Great Britain.
- 3.27 There have been many social and economic changes since 1971 and it was never envisaged that benefit claimants would generally be allowed to spend lengthy periods abroad. The present provisions date from a time when absences were mainly for treatment in sanatoria in Europe, where for instance long term rest was recommended.
- 3.28 We consider that continuing to pay benefit for up to six months abroad no longer reflects the original policy intention and provides a loophole whereby people who are mainly resident abroad could continue to claim benefits by claiming they are on extended holidays.
- 3.29 We propose that after four weeks abroad Personal Independence Payment should no longer be payable and entitlement should end. Around 75 per cent of working age DLA claimants are also in receipt of incapacity benefits (including Employment and Support Allowance) and these benefits only allow an absence of four weeks abroad. Also, the 14 per cent of DLA recipients¹⁴ in work are unlikely to be able to take more than a four week holiday abroad. However, where people have gone abroad for specific medical treatment we propose that the period of absence be extended up to a maximum of 26 weeks.

¹³ <http://www.dwp.gov.uk/docs/a3-2701.pdf>

¹⁴ http://research.dwp.gov.uk/asd/asd1/adhoc_analysis/2011/analysis_of_disability_living_allowance_DLA_awards.pdf

- 3.30 According to the Office for National Statistics International Passenger Survey the average time working age people spend out of Great Britain is 11 days in a year. We therefore think the proposal to limit temporary absence abroad is proportionate and reasonable.

Question 7

Is the period of four weeks temporary absence from Great Britain sufficient? If no - why do you think the absence should be longer? And what do you think that longer period should be (and why?)

Question 8

Is six months temporary absence for medical treatment sufficient? If no - please explain why you think this period should be extended. And to what period?

Question 9

Are there any other circumstances when you think the temporary absence period should be longer?

Enhanced facilities for locomotion

- 3.31 Under the current DLA provisions people who cannot “benefit from enhanced facilities for locomotion”¹⁵ are prohibited from entitlement to the mobility component. These provisions have traditionally been used to exclude people in a coma or in a Persistent Vegetative State.
- 3.32 For Personal Independence Payment we looked to take forward these provisions from DLA using the regulations-making power at section 79(7) of the Act. We made clear during the passage of the Welfare Reform Bill¹⁶ that we only intended to use these provisions as they affect people who are in a coma or a Persistent Vegetative State. Having considered this further, however, we expect that most people who would be unable to benefit from enhanced mobility as a result of these conditions would be in a hospital or similar institution where no benefit is payable after the first 28 days. We do not therefore intend to make regulations under this power but will monitor the situation.

¹⁵ Section 73(8) Social Security Contributions and Benefits Act 1992.

¹⁶ Welfare Reform Bill, Commons Committee, 10 May 2011, Hansard, column 794 to 796 – <http://www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/110510/am/110510s01.htm>

4. Payability of the benefit

- 4.1 This chapter sets out how the payment of benefit is envisaged to operate for certain groups of people. This includes proposed provisions relating to payment of benefit for care home residents, hospital in-patients, and those undergoing legal detention. It also sets out the proposed approach relating to entitlement to benefit in respect of those people who reach the upper age limit (age 65 or state pension age, whichever is higher). Personal Independence Payment benefit rates have not been set and have not been included in this consultation document. The rates of Personal Independence Payment will be in regulations and will be announced following the Autumn Statement 2012.

Upper age limit – entitlement to Personal Independence Payment

- 4.2 Section 83 of the Act provides that Personal Independence Payment will not be available to those over State Pension age or age 65, whichever is the higher (the upper age limit)¹⁷, other than by exceptions made in regulations. We intend to make regulations that will allow those who are in receipt of Personal Independence Payment when they reach the upper age limit to continue to receive their existing award for as long as they remain entitled.

Mobility component

- 4.3 DLA claimants over the upper age limit cannot establish a new entitlement to either rate of the mobility component or move between rates where they are entitled to one. These rules are in part due to the eligibility criteria focussing on different needs rather than a continuum of need, and in part to align with the rules for Attendance Allowance (AA) which does not have a mobility component.
- 4.4 Unlike DLA, the new assessment criteria for the mobility component of Personal Independence Payment will be based on the severity of the impact on an individual's ability to plan or follow a journey or to move around and will allow for someone to receive the standard or enhanced rate by reference to either or both of these activities. We are therefore proposing that where an individual's needs reduce, they will be allowed to move down from the enhanced to the standard rate of the mobility component where their condition or disability is substantially the same. Where an individual's entitlement has been reduced they can only move back up to the enhanced rate if their mobility difficulties are due to the condition or conditions that gave rise to the previous entitlement and the change occurs within one year. Like DLA, where someone does not have an entitlement to the mobility component of Personal

¹⁷ These provisions are to allow for the upper age limit to rise in line with State Pension age once that has been aligned between men and women and begins rising. Changes to state retirement pension brought forward under the Pensions Act 2011 mean that State Pension age will start rising from age 65 to 66 in 2018. Further rises will occur at later dates.

Independence Payment, they will not be able to establish an entitlement once they are past the upper age limit. As for DLA, individuals will also not be able to increase an existing standard rate award to the enhanced rate.

Care Component and Daily Living Component

- 4.5 Currently people can establish new entitlements to the middle or highest rate care component of DLA so long as they have an entitlement to the lowest rate care component or to either rate of the mobility component. This aligns the rules and levels of payment with those applying in AA. No new entitlement can be established for the lowest rate care component and individuals cannot move from the middle or highest rate to the lowest rate. This is because there is no equivalent to the DLA lowest rate care component in AA.
- 4.6 For Personal Independence Payment, with its simpler daily living component structure, we propose that people should be able to move freely between the rates and will be able to establish a new entitlement to the component after the upper age limit, so long as they have an entitlement to the mobility component.
- 4.7 As now, those people who are over the upper age limit and are not in receipt of Personal Independence Payment and develop care or supervision needs will be able to claim AA.

Question 10

Our approach to people over the upper age limit is designed to strike the right balance between claimants' needs and our intention to make Personal Independence Payment affordable and sustainable in the future. Do you agree our approach achieves those aims? If you disagree, please tell us what approach would achieve the right balance.

Hospital and care home residents

- 4.8 Sections 85 and 86 of the Act provide powers to make regulations concerning the payment of Personal Independence Payment in care homes and hospitals. Section 85 sets out that residents of care homes will not be paid the daily living component if any of the 'qualifying services' (defined in subsection (4)) they receive are met from public or local funds by virtue of a specified enactment. Regulations will specify these enactments.
- 4.9 Section 86 sets out that neither the daily living component nor the mobility component will not be payable to persons undergoing medical or other treatment as an in-patient at a hospital or similar institution when any of the costs of the treatment, accommodation or any related treatment are met from public funds. Regulations will determine whether these costs are met from public funds.

- 4.10 We propose that Personal Independence Payment follows the approach taken by DLA and AA in relation to residency in care homes and in-patient care in hospitals.
- 4.11 Under these rules, payment of AA or the DLA care component stops after 28 days for residents of care homes but any mobility component continues to be paid to eligible residents.
- 4.12 Payment of AA and both the care and mobility components of DLA stop after 28 days for in-patients of a hospital or similar institution. The primary intention of these provisions is to prevent the duplication of funding that would otherwise arise if these disability-related benefits were paid at the same time as those costs were being met from public or local funds.
- 4.13 Payment is made for the first 28 days to pay for any continuing costs and to avoid a break in the claim during short periods of hospitalisation or respite care.
- 4.14 Those affected by these rules remain entitled to the benefit and payment resumes when they leave the care home or hospital and continue to satisfy eligibility conditions.

Existing transitional protection arrangements

- 4.15 Although the payability principles for hospital in-patients in DLA are broadly being carried over into Personal Independence Payment, we do not propose to retain any transitional protection arrangements which apply to DLA. DLA regulation 12B provides that when the current rules applying to mobility component in hospital were enacted in 1996, people who had been in hospital for at least a year, and since then have not spent longer than 28 continuous days out of hospital, can continue to receive the lower rate of mobility component whilst in hospital. Although Personal Independence payment is a successor to DLA, it is a new benefit and everyone will be subject to re-assessment, in addition the remaining people benefiting from this provision have had a significant period to adjust to the new rules. We do not therefore think it is appropriate to carry over this transitional protection to the new benefit.

Extension of benefit payment to Motability customers

- 4.16 Similarly, the extension which applies to DLA Motability leaseholders will not be carried over into Personal Independence Payment. This is because we intend to withdraw this extension in DLA and it is reasonable that the same approach is taken in Personal Independence Payment. This is discussed in more detail in the section “Changes to certain DLA & AA rules” below.

Question 11

Do you have any views on our proposal to take forward into Personal Independence Payment the approach taken by DLA and AA in relation to residency in care homes and in-patient care in hospitals?

Changes to certain Disability Living Allowance and Attendance Allowance rules

Ending the extension of payment of the Disability Living Allowance higher rate mobility component to in-patients who have a Motability vehicle.

- 4.17 Generally, when a person is an in-patient of a hospital or similar institution, payment of their DLA care and mobility components stop after 28 days (84 days for children under 16). However, if the in-patient is leasing a vehicle through the Motability Scheme, existing provisions allow for the continued payment of the higher rate mobility component for the duration of the Motability lease contract which could be up to three years.
- 4.18 This provision was introduced in 1996 when the payment of the mobility component to long term hospital in-patients was removed. It was introduced under powers contained in s113(2) of the Social Security Contributions and Benefits Act 1992. It afforded a reasonable easement to those people who were committed to a Motability contract when the new rules came in. Any lease held by somebody entering hospital in 1996 will have long expired but new customers can still benefit from this provision. The Government announced in the 2010 Spending Review that it intends to address this anomaly by removing this provision in DLA regulations in 2012. It has now been decided that this change should roll out from 2013 alongside the implementation of Personal Independence Payment. This will ensure that all hospital in-patients are treated in the same way, whether they are a Motability customer or not. We have worked closely with Motability on this matter.

Addressing an anomaly in Disability Living Allowance and Attendance Allowance regulations highlighted by a recent Court of Appeal Judgement

- 4.19 The rules concerning payment of DLA and AA for in-patients of hospitals or similar institutions and residents of care homes aim to strike a balance between continuing to provide support while avoiding duplication of public funding. This is why, generally, payment of AA and both components of DLA stops after 28 days (84 days in the case of children under the age of 16) to in-patients of hospitals or similar institutions.
- 4.20 For residents of care homes payment of AA and the DLA care components stop after 28 days. Payment of the mobility component of DLA continues for

eligible residents. Prior to a Court of Appeal judgement in December 2011, payment of the mobility component stopped if a resident of a care home was being funded by the NHS through Continuing Healthcare as they were treated as being an in-patient of a hospital or similar institution and subject to those rules.

- 4.21 The Court of Appeal judgement determined that care home residents funded by the NHS should only be treated as being an in-patient of a hospital or similar institution if the care home employed doctors, qualified nurses or other health care professionals and the resident received medical or other treatment by or under the direct supervision of a qualified doctor, nurse or nurses at the care home. If these criteria do not apply, the resident will be subject to the care home rules and will be eligible to receive payment of the mobility component.
- 4.22 As they are currently worded, DLA Regulation 9(6)(f) and AA Regulation 7(3)(f) now mean that a care home resident whose accommodation costs are being funded under the NHS Acts can also be paid any DLA care components or AA they may be entitled to. However, this will result in duplication of funding since the individual's disability-related care needs are already being met by the NHS. This is also why care home residents who are funded by the local authority are not eligible to receive payments of DLA care component or Attendance Allowance because their care needs are being met by the local authority. Therefore, to avoid the taxpayer paying twice for the same need, and in order to restore the policy intention of preventing duplication of payment, we propose removing paragraph 9(6)(f) from the DLA Regulations and paragraph 7(3)(f) from the AA Regulations, in line with the powers contained in s67(2) and s72(8) of the Social Security Contribution and Benefits Act 1992.
- 4.23 We are also considering whether we need to retain Regulation 13 and Schedule 2 of the Social Security (Disability Living Allowance) Regulations 1991 and whether these provisions need to be replicated in Personal Independence Payment. This relates to the historical Invalid Vehicle Scheme that was closed to new customers in 1976.

Prisoners

- 4.24 Recipients of DLA are disqualified from receiving benefit, and payment is terminated, where they have been sentenced to:
- a term of imprisonment under a criminal penalty; or
 - detention in a young offenders institution; or
 - an order for detention in a young offenders institution; or
 - detention in Great Britain as a result of any order made under the Colonial Prisoners Removal Act 1884.
- 4.25 For the period leading up to trial a person held on remand has their payment of DLA suspended. However, a lump sum payment of DLA is paid for the arrears accrued where a suspension has been lifted, for example because they have been found "unfit to plead", "not guilty" or found "guilty" but not

received a penalty involving a term of imprisonment. Someone released on bail pending trial will only have outstanding arrears paid at the conclusion of their trial.

- 4.26 The prison environment, whether at an open or secure prison, caters for all the disability-related needs of disabled prisoners (whether on remand or as a result of a sentence of imprisonment). As such there is a principled case that, to avoid duplication of provision, payment of benefit should stop when someone is placed in legal custody.
- 4.27 We also know that under current arrangements, notifications of imprisonment or legal detention are taking a long time to reach the Department, resulting in overpayments which have to be repaid once someone is released from custody. Such a situation can disadvantage people who have been sentenced to a term of imprisonment and on release have to begin repaying the overpaid benefit.
- 4.28 Section 87 of the Act sets out that, unless Regulations otherwise provide, Personal Independence Payment will not be payable for any period a claimant is undergoing imprisonment or detention in legal custody. We are proposing that when an individual enters prison or legal custody, payment of Personal Independence Payment stops after 28 days. It is also the intention that this measure should apply to imprisonment or legal custody in relation to both criminal and civil offences. Any two terms of imprisonment of less than 28 days will link together if they are less than a year apart (as could happen when someone is arrested, detained on remand, bailed and subsequently jailed). Any period of imprisonment will also link with periods spent within a care home or hospital and vice versa and include provision that a transfer between one institution and another will not result in the 28 day period starting again or payment recommencing.
- 4.29 These new rules are intended to ensure that expenditure on Personal Independence Payment is not duplicated with other state-provided provision and further supports the aim that expenditure will be sustainable in the long term and focused on those most in need of additional support. Allowing for a short period of continued payment of Personal Independence Payment for all people who are imprisoned or detained in legal custody will enable recipients to cover short-term ongoing costs (for example an outstanding bill) and reduce the number of ex-prisoners leaving prison with an overpayment of benefit.

Example

Following his arrest for handling stolen goods on 1 August 2013, Peter is ordered by a Magistrate to be detained in legal custody pending trial. His wife reports that he is in prison three weeks later and benefit is suspended with effect from the date Peter was first detained. Peter's trial takes place in March 2014 and he is found **guilty** and sentenced to a term of imprisonment. Currently he would receive no payment of benefit from 1 August 2013 and would only become entitled to be paid benefit again when he is released having served his sentence. On his release he would also owe the Department three weeks of benefit payments which he would have to pay back from his benefit. **Under our proposals** he will be paid 28 days benefit from 1 August 2013 and benefit will be terminated with effect from 29 August 2013. Because Peter's wife reported that he had been detained within this period he leaves prison owing no money and payment of his benefit is reinstated.

Question 12

Have we correctly identified that there would be duplication of funding if we continued to pay Personal Independence Payment while someone is in prison or legal detention?

Question 13

Do you agree that Personal Independence Payment should carry on in payment for 28 days to allow disabled individuals to settle outstanding disability related costs? If not, why not? What alternative period do you think we should consider?

Question 14

Do you agree that two periods of imprisonment should link if there has been a gap of less than one year? If you disagree that periods of imprisonment should link please tell us why. If you agree that they should link but think it should cover a different period please suggest an alternative period.

5. Reassessing existing Disability Living Allowance claims

- 5.1 Every Disability Living Allowance (DLA) claimant aged 16 to 64 on 8 April 2013 will be eligible to claim Personal Independence Payment and will be assessed for entitlement to Personal Independence Payment where they do so. This is called the reassessment strategy. We set out our high level strategy for reassessment in a briefing document published on 14 March¹⁸. In that note we made clear that reassessment activities will not start until October 2013, six months after Personal Independence Payment has been introduced for new claims only in order to ensure that our processes are working effectively.
- 5.2 This chapter sets out further details on our proposals including how we will inform people of the changes and what they need to do in order to claim Personal Independence Payment. It also sets out how and when we envisage payment of the benefit will commence. The Transitional regulations will be provided for under the powers in Schedule 10 to the Act.

Who will be reassessed

- 5.3 All existing claimants to DLA who are aged between 16 and 64 when Personal Independence Payment is introduced (8 April 2013) will be invited to claim Personal Independence Payment and will be assessed for the new benefit if they choose to claim it. This will apply to those on both fixed and indefinite awards. Anyone who is aged 65 or over on that date will not be reassessed for Personal Independence Payment and will remain on DLA as long as they continue to satisfy the entitlement conditions. We estimate that around two million people will be invited to claim Personal Independence Payment.
- 5.4 In developing and designing Personal Independence Payment, the Department has taken account of the Military Covenant agreement that recognises the unique and important role played by the UK Armed Forces and ensures that they continue to receive fair treatment, are valued and respected as individuals. We are working with the Ministry of Defence to explore how we ensure that those injured as a result of service are able to access the right support and are able to live full, active and independent lives. As part of this, we will consider how veterans who are injured during active service should be assessed.
- 5.5 There are two broad categories of existing DLA claimants who will go through the reassessment process:
- **Natural reassessment** – where an existing DLA claimant enters the reassessment process due to reporting a change in their care or mobility needs which might affect their award (known as supersession cases) or where a fixed-term award comes to an end (known as renewal cases); and

¹⁸ <http://www.dwp.gov.uk/docs/pip-briefing-high-level-reassessment.pdf>

- **Managed reassessment** – where the Department initiates the reassessment process. We intend to select people randomly¹⁹ other than where they fall in to specific groups where a different timetable for reassessment may be required. An example of where we may want to take someone out of the random approach, or randomly select but to a managed timetable, would be those people turning 65 during the reassessment period – particularly for the period from April 2013 to February 2014.

Timetable for reassessment

- 5.6 From October 2013 any recipient of DLA reporting a change in their care or mobility needs will be invited to claim Personal Independence Payment. We will also begin inviting claims to Personal Independence Payment from people whose existing fixed-term award expires from March 2014 onwards.
- 5.7 Between October and December 2013 we will run a Pathfinder exercise of around 30,000 DLA claimants subject to the managed reassessment process. Any further lessons we learn during this exercise will be incorporated before we start the full reassessment exercise from January 2014.
- 5.8 The exercise to contact and invite a claim to Personal Independence Payment for all recipients of DLA will conclude by March 2016, although we would expect that not all reassessments will have been completed until later that year.

Information requirements: what people need to provide and when

- 5.9 Before Personal Independence Payment is introduced we will ensure that all current DLA claimants are provided with information on what will happen to their existing claim and when they may expect to be invited to claim Personal Independence Payment.
- 5.10 All claimants who have been selected for reassessment under either natural or managed reassessment will be told that their DLA will be ending and that they can instead make a claim to Personal Independence Payment. Claimants will have four weeks from the date that they are notified of their requirement to claim in which to do so. We are currently considering what the claim will need to ask for, how the claim can be made and how we can support claimants through this process. As for other process and design features, we are involving the Implementation Development Group and other stakeholders in this development. We will provide further details in due course.
- 5.11 Where a claim to Personal Independence Payment is not made within the time limit we will initially suspend payment of DLA and let the claimant know what we have done and that they can have the suspension lifted if they make their claim within a further four week period. If no contact is made by the claimant

¹⁹ Existing DLA awards will be selected randomly by computer. Random selection will require that set numbers of awards are selected per week based on even geographical coverage.

during this period then the claim to DLA will be terminated. There will be limited appeal rights against the decision to terminate DLA, for example where there have been procedural irregularities, and safeguards will ensure that people who genuinely were not able to claim Personal Independence Payment within the time limits will be able to re-engage with the claiming process without penalty. Those safeguards will be based on our draft regulations²⁰ which allow for people to ask us to consider good reason for not being able to comply with a requirement, especially if it was as a result of their disability or state of health at the time.

- 5.12 The initial claim process for Personal Independence Payment under reassessment will be similar to the process for new claimants. Once a claimant has submitted their claim we will send them a questionnaire on which they will be able to provide additional details in support of their claim. The questionnaire will ask claimants to describe in their own words how their disability or impairment affects them and for the names of any health care professionals, or other people, who may be able to provide supporting evidence. Claimants will also be encouraged to submit any supporting documents they may have but will not be required to obtain them if they do not already have them. Return of the questionnaire will be an obligatory part of the claiming process: failure to return the form may result in the claim to Personal Independence Payment being rejected unless there are good reasons why it could not have been completed. We will ensure that there are processes in place to send reminders and to support those we have identified as needing additional support in the claiming process.
- 5.13 Once we receive the questionnaire, an independent assessor will determine whether additional evidence is required from anyone else. It will be the assessor's responsibility to gather that evidence from either the people or organisations the claimant has identified as being able to provide the most relevant information or any other source. Once the assessor has gathered all the evidence they will decide whether or not a face-to-face consultation is required. We expect the majority of all claims will require a face-to-face consultation in the first instance. Where the questionnaire has not been received, we will ensure that anyone identified as requiring additional support will automatically be given a face-to-face consultation so that they are given the opportunity to explain in their own words how their disability affects them.
- 5.14 All claimants who are called to a face-to-face consultation will be given advance notice of when their consultation is due. Claimants that fail to attend a consultation without good reason²¹ will not be awarded Personal Independence Payment.
- 5.15 Claimants who are called for a face-to-face consultation will be able to bring a friend, relative, carer or any other person who can support them at the consultation.
- 5.16 The draft Regulations relating to the provision of information in the questionnaire and to the face-to-face consultation as they apply to new claims,

²⁰ www.dwp.gov.uk/docs/pip-second-draft-assessment-regulations.pdf

²¹ See draft Regulation 8 for what we will take to be grounds for us to consider what constitutes a good reason - <http://www.dwp.gov.uk/docs/pip-second-draft-assessment-regulations.pdf>

have already been published²² and are being consulted on. We intend that the Regulations and processes to support claimants for reassessment claims will be similar. **We are not additionally consulting on any Regulations required once a claim to Personal Independence Payment has been received.**

Question 15

There will be limited appeal rights against the decision to terminate DLA and safeguards will ensure that people who genuinely were not able to claim Personal Independence Payment within the time limits will be able to re-engage with the claiming process without penalty. Is this a fair and proportionate approach to ensure people engage with the claiming process?

Question 16

Do our plans and timetable to reassess people for Personal Independence Payment appear sensible and reasonable? If not, what changes do you think we should consider introducing?

Question 17

We intend to build in a process to help us identify claimants who may need additional help to claim, for example those with learning difficulties or mental health problems who do not have an appointee. Although this process will not be subject to regulations, we would be grateful for any views on this proposal and how best to identify those people who need additional support from the Department or from other organisations.

Question 18

Our plans include procedures and rules to ensure that everyone invited to claim Personal Independence Payment will be repeatedly reminded before their benefit is first suspended and then terminated. Are there any other matters we should consider to ensure that everyone currently on DLA who may be entitled to claim Personal Independence Payment does so, and within reasonable time limits?

When payment of Disability Living Allowance will stop and Personal Independence Payment will commence

- 5.17 Once the independent assessor has gathered all the evidence, including any evidence from the face-to-face consultation, they will provide a report with their recommendations to a DWP Decision Maker. The Decision Maker will review the evidence received and the recommendations from the independent assessor to ensure all evidence has been looked at and that the recommendation is consistent with the evidence used. The Decision Maker

²² www.dwp.gov.uk/docs/pip-assessment-thresholds-and-consultation.pdf

can ask the assessor to review their recommendation where, in their view, not all the evidence has been looked at or given due regard or where the recommendation is in any other way inconsistent. In all cases it will be for a Decision Maker to make the final decision on a claim to Personal Independence Payment and the appropriate rate of payment where entitlement has been established.

- 5.18 Once a decision has been reached on a claim to Personal Independence Payment it will be communicated to the claimant. If entitlement has been established, payment of Personal Independence Payment will begin shortly after the decision notice is sent. Payment of DLA will end the day before payment of Personal Independence Payment begins ensuring there will be no break. Where entitlement to Personal Independence Payment has not been established the DLA will stop shortly after the decision notice has been sent. In all cases, a decision on ending someone's payment of DLA will be subject to limited appeal rights but the decision on Personal Independence Payment will have no such limitations.

6. Award durations and reviews

- 6.1 Section 88 to the Act makes provision for award durations for an award of Personal Independence Payment to be for a fixed term, except where Decision Makers consider it inappropriate. The Act requires that the Government sets out details on award durations in guidance. This section includes details on the link between decisions on award durations and the individual's ability to participate in society. It also provides information on the frequency and format of Personal independence Payment reviews.
- 6.2 Our intention for Personal Independence Payment has always been that benefit entitlement will be based on the degree to which individuals are able to participate in society, not on their health condition or impairment. Health conditions and impairments, including degenerative ones, can affect people in a range of different ways. For this reason, decisions on award durations will be based on individual circumstances, following appropriate consideration of all the evidence that has been provided. Decisions on award durations will be taken by DWP Decision Makers following advice from assessors. In some cases awards may be fixed for a short period of time such as one or two years. In others, longer term awards of five or 10 years may be more appropriate. We anticipate that ongoing awards would be used in cases where changes, either positive or negative, are unlikely. For example, where improvement over time or in response to treatment or rehabilitation is unlikely and where the needs of the individual are also likely to remain broadly the same. This approach will help to ensure that claimants are not required to go through unnecessary or inappropriate assessments.
- 6.3 We want to ensure that everyone continues to receive the correct level of award and that Personal Independence Payment reflects further changes in our society and advances in medicine or support, including changes in treatments. There is a duty to both claimants and the taxpayer to ensure awards stay correct throughout. All Personal Independence Payment awards will therefore be reviewed at appropriate intervals.
- 6.4 The frequency and format of reviews will vary depending on the individual's needs, the likelihood of their health condition or impairment changing and potentially the successful use of aids and appliances. These reviews could involve gathering evidence from various sources, including self-report forms, information from relevant professionals who support the individual and face-to-face or telephone discussions. This will depend on the individual circumstances.
- 6.5 The Act includes a requirement to produce guidance on the duration of an award, including when an ongoing award would be appropriate and with what frequency that awards will be reviewed. This guidance will be evidence based and we are committed to co-producing it with the appropriate experts in relevant fields. We are also keen to involve disabled people and their representatives where possible to ensure that we get the detail right. **As we will be engaging and involving interested parties in the development of this guidance we are not consulting on the detailed proposals.**

7. Passporting arrangements

- 7.1 Section 92 of the Act includes powers to make consequential amendments to existing legislation through secondary legislation.
- 7.2 Entitlement to Disability Living Allowance (DLA) is a commonly accepted and broad definition of disability. In many instances receipt of a particular component/rate of DLA can provide a passport to other support, although it may not always be the only route to entitlement.
- 7.3 In designing the assessment for Personal Independence Payment, and the entitlements it will bring, the Government committed to keep in mind the existing passporting arrangements with a view to maintaining them wherever possible.
- 7.4 This chapter covers DWP related benefits and schemes and provides an update on our work with other Government Departments and the Devolved Administrations who are responsible for sponsoring their own schemes. It sets out proposals on the component and rate of Personal Independence Payment that will be used as a gateway for other benefits and schemes.

DWP benefits and schemes

Carer's Allowance

- 7.5 The Government has considered the findings of the DLA reform consultation exercise and recognises the importance of the current passporting arrangements from DLA to Carer's Allowance (CA), both to disabled people and their carers, so people do not have to face unnecessary multiple assessments.
- 7.6 The Government has confirmed that the standard and enhanced rate of the daily living component of Personal Independence Payment will form part of the gateway to CA in the same way as the middle and highest rate care component of DLA.

Income-related benefits

- 7.7 Universal Credit will replace the current income-related benefits (such as Income Support, Jobseekers Allowance (income-based), Employment and Support Allowance (income-related) and Housing Benefit, including their components and rates). In the main, entitlement to additional support within Universal Credit for adults will no longer rely on a direct link with DLA (or Personal Independence Payment). In the future access to this additional support will be through the Work Capability Assessment. There will be a period of transition from the current benefits to Universal Credit during which some people will remain on their existing benefits before moving to Universal Credit.

- 7.8 We are carefully considering the transition of both the income-related benefits to Universal Credit and DLA to Personal Independence Payment between 2013 and 2017; this includes, for example, the position of the current premiums for disability. We intend that Personal Independence Payment will act as a gateway to support that is provided through the existing income-related benefits prior to the introduction of Universal Credit and the reassessment of current claimants onto the new system.
- 7.9 In line with our commitment we will broadly maintain the current passporting arrangements during this period. One of the main premiums relates to disability²³. Our intention is that any component/rate of Personal Independence Payment will provide entitlement to the disability premium; the standard or enhanced rate of the daily living component will provide entitlement to the severe disability premium, and the enhanced rate of the daily living component will provide entitlement to the enhanced disability premium.
- 7.10 We will take the same approach in respect of other premiums, provided through the income-related benefits, during this transition period so that existing arrangements are maintained insofar as possible.
- 7.11 The specific component and rate of Personal Independence Payment that will form a gateway to the premiums in the income-related benefits will be set out in Regulations.

Pensioner related benefits

- 7.12 Pension Credit will remain as the main income related benefit for pensioners following the introduction of Universal Credit in 2013. Within Pension Credit there is an additional amount for severe disability. Currently DLA middle or highest rate care component provides a passport to this additional amount. Our intention is that entitlement to this additional amount is linked to the standard or enhanced daily living component of Personal Independence Payment.
- 7.13 The Carer's Credit, which provides a contribution towards State Pension entitlement, is also based on DLA care at the middle or highest rates. Our intention is that the standard or enhanced rate of the Personal Independence Payment daily living component should provide a gateway to this credit. Broadly this will maintain parity with the current arrangements, and maintain an alignment with the treatment of Carer's Allowance.
- 7.14 The component and rate of Personal Independence Payment that will form a gateway to Pension Credit and Carer's Credit of will be set out in Regulations.

Motability

- 7.15 In our consultation on DLA reform we made it clear that we will work with Motability to ensure that the scheme remains supported within Personal Independence Payment. In our response we stated that we wanted to ensure

²³ The premiums are: disability premium, enhanced disability premium and severe disability premium. The entitlement conditions for each premia vary. Claimants may receive more than one premium.

that, as now, people with the greatest barriers to participation are able to access other support services and support as easily as possible. Motability is such a service which we intend should be supported by Personal Independence Payment.

- 7.16 At present, eligibility to the Motability scheme depends upon a person being in receipt of the higher rate mobility component of DLA. Following discussions with the Motability scheme we can confirm that the enhanced rate of the mobility component of Personal Independence Payment will act as the gateway to the Motability scheme in the future. The new assessment criteria for Personal Independence Payment will help to ensure that the Motability scheme will now be available to a broader range of disabled people with mobility barriers than was the case under DLA. We will continue to work with Motability colleagues to ensure that they are ready for the introduction of Personal Independence Payment in 2013. The component of Personal Independence Payment that will form a gateway will be set out in Regulations.

Non-DWP schemes and benefits

- 7.17 Other Government Departments and the Devolved Administrations currently use the receipt of DLA as a gateway to a range of additional support. In designing the assessment for Personal Independence Payment, and the entitlements it will bring, the Government committed to keep in mind the existing passporting arrangements with a view to maintaining them wherever possible.
- 7.18 Decisions on passporting arrangements remain the responsibility of the Government Departments and the Devolved Administrations who administer them. We are working closely with other Departments and the Devolved Administrations to ensure that suitable arrangements are put in place and that decisions are effectively communicated to stakeholders prior to the introduction of Personal Independence Payment from April 2013.
- 7.19 Some Departments are planning to undertake their own consultation exercise on passporting arrangements between the schemes they administer and Personal Independence Payment.
- 7.20 Currently, people in receipt of the Higher Rate of the Mobility Component of DLA are able to apply to the relevant issuing local authority for a Disabled Persons Parking Permit, or Blue Badge, without any further assessment. The Department for Transport (DfT) plans to consult shortly on options for dealing with the impact of the change to Personal Independent Payments on eligibility for a Blue Badge. The consultation document will be available on DfT's website²⁴.
- 7.21 There are a number of existing tax reliefs relating to DLA. HM Treasury will publish draft legislation in autumn 2012 setting out how tax reliefs currently available to DLA claimants will apply to claimants of PIP. In the interim the Government will consult specifically in relation to the definition of trusts for vulnerable and disabled people.

²⁴ www.dft.gov.uk

- 7.22 Receipt of DLA satisfies some or all of the qualifying conditions for a number of additional elements of Working Tax Credit and Child Tax Credit. HM Treasury are considering what amendments to tax credits secondary legislation will be required to reflect the introduction of Personal Independence Payment. We are working closely with HM Treasury and HM Revenue and Customs on the arrangements.
- 7.23 The Scottish Government is exploring the best method of consulting stakeholders on the range of passported benefits under its competence. Any formal consultation will cover benefits passported from both Personal Independence Payment and Universal Credit. Welsh Ministers are currently considering the issue of passported benefits following welfare reforms and will confirm their proposals shortly.
- 7.24 The Department for Business, Innovation and Skills are considering changes to their schemes alongside the wider changes to the right to request flexible working and parental leave proposals in Modern Workplaces consultation launched 16 May 2011²⁵. They will set out proposals on these issues in the Government Response to the consultation due to be published later in 2012.
- 7.25 DLA is one of the qualifying benefits for council tax severe mental impairment discount disregard, and for council tax carers discount disregard. The Department for Communities and Local Government, which has overall responsibility for council tax, is currently considering what changes will be needed to the legislation governing the two disregards to reflect the phasing out of DLA and the introduction of Personal Independence Payment.
- 7.26 We will continue to work with other Government Departments and the Devolved Administrations sponsoring their own schemes to ensure that any future passporting arrangements remain appropriate for their own schemes and maintain the administrative benefits of the current links with DLA.

²⁵ <http://c561635.r35.cf2.rackcdn.com/11-699-consultation-modern-workplaces.pdf>

8. Changes to Residence and Presence conditions in Disability Living Allowance, Attendance Allowance and Carer's Allowance

8.1 This chapter sets out the Government's proposals that similar provisions in Personal Independence Payment relating to residence and presence are introduced for Disability Living Allowance (DLA), Attendance Allowance (AA) and Carer's Allowance (CA). The residence and presence test will remain important features of these benefits. See paragraphs 3.20 to 3.25 for the discussion of these changes.

To summarise – the changes are:

- Introduce a habitual residence test instead of an ordinarily resident test
- Increase the past presence test (currently 26 weeks out of the previous 52 weeks) to two years out of the previous three years, applied on a one-off basis
- DLA will continue to be available for children and adjustments will be considered for very young children who would not be able to meet an extended past presence test due to their age
- Allow serving members of Her Majesty's Forces and members of their families to satisfy the habitual residence test whilst stationed abroad – (DLA and CA only – not applicable to AA)
- Decrease the temporary absence period abroad from 26 weeks to four weeks (DLA only)
- Decrease the temporary absence period abroad from 26 weeks to four weeks or such other period as is considered reasonable for Personal Independence Payment/DLA pensioners (AA only)
- Limit the temporary absence period abroad for medical treatment to 26 weeks (DLA and AA only)

Residence and Past Presence Tests

Question 19

Do you think claimants should have to satisfy a habitual residence test instead of the ordinarily resident test?

Question 20

Do you think a requirement that a claimant must have been present in Great Britain for two years out of the previous three years is reasonable in order to demonstrate a sufficient affiliation to Great Britain? Would a longer period be more appropriate?

Question 21

Do you think that children should have to satisfy a shorter past presence test? What would be a reasonable test for children?

Question 22

Do you think that serving members of Her Majesty's Forces and their families should not be expected to be habitually resident in Great Britain?

Temporary Absences Abroad

Question 23

Is the period of four weeks temporary absence from Great Britain sufficient? If no - why do you think the absence should be longer?

Question 24

Is six months temporary absence for medical treatment sufficient? If no - please explain why you think this period should be extended.

Question 25

Are there any other circumstances when you think the temporary absence period should be longer for instance for people over state pension age?

9. Impact assessment

- 9.1 The purpose of this public consultation is to inform secondary legislation on the detailed design of Personal Independence Payment. The Department carried out a formal consultation on the reforms to DLA²⁶ and published an equality impact assessment on the planned changes in October 2011.
- 9.2 This consultation sets out a number of detailed proposals on which we are seeking views. The proposals in this document would have no impact on the private sector and civil society organisations. We are considering equality impacts as the detailed policy is developed; the overview below provides our current assessment of the potential impacts of these proposals for the protected equality groups.

Overview of potential equality impacts

Equality Area	Impact
Disability	<p>Personal Independence Payment is designed to target support to those with the greatest needs therefore. The entitlement criteria for Personal Independence Payment will be different to those of DLA and will result in some people who have health conditions or disabilities but lesser barriers to participation relative to others receiving reduced support. This is in line with the policy aim to focus support on those with greatest barriers to leading full and active lives. We have already published information on how the benefit caseload will be affected in the consultation document on the assessment criteria published on 16 January 2012.²⁷</p> <p>Central to entitlement to the new benefit will be an assessment to enable an accurate, objective, consistent and transparent consideration of individuals. The assessment criteria are being designed to reflect a more complete consideration of the impact of health conditions or disabilities than Disability Living Allowance, which can give undue priority to physical impairments compared to sensory, mental, cognitive and intellectual impairments. Testing of the draft criteria have shown that they are working to prioritise support on the basis of need, regardless of impairment type.</p> <p>The assessment will determine entitlement based on individuals' ability to carry out a series of key everyday activities and entitlement will not be based on the type of</p>

²⁶ <http://www.dwp.gov.uk/docs/dla-reform-consultation.gpdf>

²⁷ <http://www.dwp.gov.uk/docs/pip-assessment-thresholds-and-consultation.pdf>

	<p>impairment claimants have. This should help to remove differences in treatment which can currently arise depending on an individual's health condition or disability.</p> <p>The assessment criteria for Personal Independence Payment are being developed in collaboration with a group of independent specialists in disability, health and social care, including disabled people. We are currently carrying out a separate formal consultation on the draft assessment criteria, which runs until 30 April 2012 (www.dwp.gov.uk/pip).</p> <p>Meanwhile we have already engaged with and will continue to engage with the Personal Independence Payment Implementation Development Group, as well as national and local user-led groups on the design to explore impacts of the reforms.</p>
Age	<p>Reform of Disability Living Allowance (DLA) is aimed at working age disabled people aged 16 to 64 (although recipients of Personal Independence Payment will be able to continue to receive the benefit past age 65 if they continue to fulfil the entitlement conditions). We will continue to consider if our policy proposals will have any disproportionate impact on age.</p> <p>The Government's proposed changes to DLA and Attendance Allowance regulations are intended to protect the principle of avoiding duplication of provision and align with the proposals we are making for Personal Independence Payment. We currently have limited data available in these areas and are unable to provide any reliable assumptions regarding the impact of these proposals as yet. We intend to collect data on age when Personal Independence Payment is rolled out.</p> <p>The affects for those under 16 are separate and not within the scope of this consultation</p> <p>We have modified our rules for pensioners over 65 who will be treated slightly differently. The numbers affected in relation to renewals and migration for those not being migrated are small. The action required to collect this data will have a significant administrative impact.</p>
Race	<p>The UK's benefit payment systems do not currently record the nationality or ethnicity of claimants as neither of these characteristics is of itself a condition of entitlement. There is no evidence to suggest that policy proposals in this document would be more likely to affect any particular ethnic minority group. In our published EIA data from the Family Resource survey indicates ethnic minorities are less likely to receive DLA than people from White backgrounds. There are no indications that people from white backgrounds will be disproportionately affected.</p>

Gender	At this stage, no potential adverse impacts on gender have been identified. As the number of men and women in receipt of DLA is broadly equal in general terms there is no reason to suggest that either men or women are more likely to be affected by the introduction of Personal Independence Payment. Following our limited initial testing published in the payment thresholds consultation ²⁸ findings showed that there were no statistically significant effects by gender.
Sexual orientation	The UK's benefit payment systems do not currently record the sexual orientation of claimants. No data is collected on the sexual orientation of DLA recipients. We believe that there are no grounds to suggest that DLA recipients are adversely affected on the basis of their sexual orientation and the same should hold true for Personal Independence Payment.
Religion/ Belief	The UK's benefit payment systems do not currently record the religion or belief of claimants. The department does not hold information on its administrative systems on the religion or beliefs of claimants. Based on our knowledge of the policy design and of the customer group, the government does not consider an adverse impact on these grounds.
Marriage/ Civil Partnership	The Department does not hold information on its administrative systems for DLA on the civil partnership status of claimants. Based on our knowledge of the policy design and of the customer group, the Government does not envisage an adverse impact on these grounds.
Pregnancy/ Maternity	The Department only holds information on pregnancy and maternity on its administrative systems where it is the primary reason for incapacity. It cannot therefore be used to accurately assess the equality impacts. Based on our knowledge of the policy design and of the customer group, the Government does not envisage an adverse impact on these grounds.
Gender reassignment	The Department does not hold information on its administrative systems for DLA on transgender persons. The Government does not envisage an adverse impact on these grounds.

We will continue to monitor and evaluate the impact of our proposals. The Government will consider our current impact and equality impact assessments

²⁸ <http://www.dwp.gov.uk/docs/pip-assessment-thresholds-and-consultation.pdf>

relating to these proposals. In light of feedback from this consultation, updates will be provided as appropriate and a full Equality Impact Assessment will follow when we are in a position to consider how the policies might affect different groups of people. Moving forward we will continue to invite views and engage with disabled people and their representatives.

Question 26

What impact could our proposals have on the different equality groups?

Question 27

What else should we consider when developing our policy?

Question 28

We have indicated areas we do not have information to consider the impact on protected groups. We would be interested in suggestions on where we can find robust evidence that we can use.

10. About this consultation

Audience, purpose and scope

Audience

- 10.1 This consultation is intended to seek views on the detailed proposals that will inform the secondary legislation on Personal Independence Payment. We would like to hear from all who are interested, including disability organisations and disabled people.

Purpose of the consultation

- 10.2 This consultation document seeks your views to inform the secondary legislation on Personal Independence Payment and provide an update on policy and design decisions. We would especially like to hear from disability organisations and disabled people.

Scope of consultation

- 10.3 This consultation applies to England, Wales and Scotland. Social Security is a devolved matter in Northern Ireland. We are, however, working closely with colleagues in Northern Ireland and would welcome comments from individuals and organisations in Northern Ireland.

Consultation arrangements

Duration of the consultation

- 10.4 This document was published on 26 March 2012. We need you to respond to the consultation questions by 30 June 2012.

How to respond to this consultation

- 10.5 Please send your consultation responses to:

Email: Pip.feedback@dwp.gsi.gov.uk

PIP Policy Team
Department for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

- 10.6 Please ensure your response reaches us by **30 June 2012**. We have listed the **main questions** we would like you to respond to in **chapters 3, 4 5, 8 and**

9 and again in **Annex 1**. You are, however, free to respond to any part of the consultation document. You may find it useful to copy the questions from Annex 1 into a separate document and add your responses after each question.

- 10.7 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

What will we do after the consultation?

- 10.8 We will publish a response to the consultation in a report that summarises the responses and describes which areas are identified as being the most important. This report will be published on the consultation section of our website²⁹ later this year.

Other ways of getting involved

- 10.9 We want to get views from as broad a range of people as possible. We intend to meet with disabled people and disability organisations throughout the consultation period.

- 10.10 This document is available in a range of formats, including large print, Braille, audio, BSL video/DVD and Easy Read either from our website – www.dwp.gov.uk/pip or on request from:

Email: Pip.feedback@dwp.gsi.gov.uk

PIP Policy Team
Department for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

- 10.11 We have sent this consultation document to people and organisations who have already been involved in this work or who have expressed an interest.

- 10.12 Please share this document with, or tell us about, anyone you think will want to be involved in this consultation.

Queries about the content of this document

- 10.13 Please direct any queries about the subject matter of this consultation to:

Email: Pip.feedback@dwp.gsi.gov.uk

PIP Policy Team
Department for Work and Pensions

²⁹ www.dwp.gov.uk/consultations

Caxton House
Tothill Street
London
SW1H 9NA

How we consult

Freedom of information

- 10.14 The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.
- 10.15 All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
- 10.16 To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:
- Central Freedom of Information Team
The Adelphi
1-11, John Adam Street
London WC2N 6HT
- Freedom-of-information-request@dwp.gsi.gov.uk
- 10.17 The Central Freedom of Information team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

The consultation criteria

- 10.18 The consultation is being conducted in line with the Government Code of Practice on Consultation (BIS) – <http://www.bis.gov.uk/policies/bre/consultation-guidance>

The seven consultation criteria are:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.

- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on the consultation process

10.19 We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Elias Koufou
 DWP Consultation Coordinator
 Ground Floor, Caxton House
 6-12 Tothill Street
 London
 SW1H 9NA

Telephone: 020 7449 7439

Caxtonhouse.legislation@dwp.gsi.gov.uk

- 10.20 In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.
- 10.21 If you have any requirements that we need to meet to enable you to comment, please let us know.

Annex 1 – Consultation questions

We have listed the **main questions** we would like you to respond to in **chapters 3, 4, 5, 8 and 9** and again here. You are, however, free to respond to any part of the consultation document.

You may find it useful to copy the questions from Annex 1 into a separate document and add your responses after each question.

Chapter 3 questions – Eligibility

- Q1 Does our approach on the linking rules support the policy intention of providing continued support to those with a long term conditions which can fluctuate or deteriorate in the most reasonable and effective way? If you don't agree, please tell us why and what an alternative approach could be?
- Q2 Are there specific matters regarding this age group that would warrant a different approach?
- Q3 Do you think we should do something different from our proposed approach to ensure transition at age 16 works effectively?
- Q4 Do you agree that it is sensible to move towards a habitual residence test to simplify the claiming process by aligning with other benefits?
- Q5 Do you think a requirement that a claimant must have been present in Great Britain for two years out of the previous three years is reasonable in order to demonstrate a long standing affiliation to Great Britain? Would a longer period be more appropriate? And if so what do you think that longer period should be and why?
- Q6 Do you think that serving members of Her Majesty's Forces and their families should be treated as habitually resident in Great Britain when serving and stationed abroad?
- Q7 Is the period of four weeks temporary absence from Great Britain sufficient? If no – why do you think the absence should be longer? And what do you think that longer period should be (and why)?
- Q8 Is six months temporary absence for medical treatment sufficient? If no - please explain why you think this period should be extended. And to what period?
- Q9 Are there any other circumstances when you think the temporary absence period should be longer?

Chapter 4 questions – Payability of Benefit

- Q10 Our approach to people over the upper age limit is designed to strike the right balance between claimants' needs and our intention to make Personal Independence Payment affordable and sustainable in the future. Do you agree our approach achieves those aims? If you disagree, please tell us what approach would achieve the right balance.

- Q11 Do you have any views on our proposal to take forward into Personal Independence Payment the approach taken by DLA and AA in relation to residency in care homes and in-patient care in hospitals?
- Q12 Have we correctly identified that there would be duplication of funding if we continued to pay Personal Independence Payment while someone is in prison or legal detention?
- Q13 Do you agree that Personal Independence Payment should carry on in payment for 28 days to allow disabled individuals to settle outstanding disability related costs? If not, why not? What alternative period do you think we should consider?
- Q14 Do you agree that two periods of imprisonment should link if there has been a gap of less than one year? If you disagree that periods of imprisonment should link please tell us why. If you agree that they should link but think it should cover a different period please suggest an alternative period.

Chapter 5 questions – Reassessing existing DLA claims

- Q15 There will be limited appeal rights against the decision to terminate DLA and safeguards will ensure that people who genuinely were not able to claim Personal Independence Payment within the time limits will be able to re-engage with the claiming process without penalty. Is this a fair and proportionate approach to ensure people engage with the claiming process?
- Q16 Do our plans and timetable to reassess people for Personal Independence Payment appear sensible and reasonable? If not, what changes do you think we should consider introducing?
- Q17 We intend to build in a process to help us identify claimants who may need additional help to claim, for example those with learning difficulties or mental health problems who do not have an appointee. Although this process will not be subject to regulations, we would be grateful for any views on this proposal and how best to identify those people who need additional support from the Department or from other organisations.
- Q18 Our plans include procedures and rules to ensure that everyone invited to claim Personal Independence Payment will be repeatedly reminded before their benefit is first suspended and then terminated. Are there any other matters we should consider to ensure that everyone currently on DLA who may be entitled to claim Personal Independence Payment does so, and within reasonable time limits?

Chapter 8 questions – Residence and past presence tests

- Q19 Do you think claimants should have to satisfy a habitual residence test instead of the ordinarily resident test?

- Q20 Do you think a requirement that a claimant must have been present in Great Britain for two years out of the previous three years is reasonable in order to demonstrate a sufficient affiliation to Great Britain? Would a longer period be more appropriate?
- Q21 Do you think that children should have to satisfy a shorter past presence test? What would be a reasonable test for children?
- Q22 Do you think that serving members of Her Majesty's Forces and their families should not be expected to be habitually resident in Great Britain?
- Q23 Is the period of four weeks temporary absence from Great Britain sufficient? If no – why do you think the absence should be longer?
- Q24 Is six months temporary absence for medical treatment sufficient? If no - please explain why you think this period should be extended.
- Q25 Are there any other circumstances when you think the temporary absence period should be longer for instance for people over state pension age?

Chapter 9 questions – Impact assessment

- Q26 What impact could our proposals have on the different equality groups?
- Q27 What else should we consider when developing our policy?
- Q28 We have indicated areas we do not have information to consider the impact on protected groups. We would be interested in suggestions on where we can find robust evidence that we can use.