# EQUALITY COMMISSION FOR NORTHERN IRELAND

# RESPONSE TO 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 to further inform the development of secondary legislation

## Department for Work and Pensions/Department for Social Development Consultation

## June 2012

### Introduction

1. The Commission welcomes the opportunity to respond to 'DLA Reform and Personal Independence Payment (PIP) – Completing the Detailed Design Consultation Draft' from the Department of Social Development. Taking account of consultation questionnaire provided, the Commission wishes to highlight some recommendations and observations and these are briefly highlighted below.

### General Observations / Comments

2. We note the Minister for Social Development's recent commitment to consider the issue of flexibility in relation to specific concerns regarding welfare reform in Northern Ireland and would highlight the importance of DSD undertaking an equality impact assessment (EQIA), under Section 75 of the Northern Ireland Act 1998, prior to the operation of the PIP Regulations in Northern Ireland.

3. We would also remind Government that in its development and implementation of legislation and policies, in accordance with the United Nations Convention on the Rights Disabled People (UNCRPD), it should closely consult and actively involve disabled people in Northern Ireland (Article 4.3).

International Standards & Obligations

4. The Commission is concerned that the proposals within the Consultation Paper do not appear to have been fully considered against human rights standards and the obligations placed upon the UK Government under domestic and international human rights law, in particular those within the UNCRPD.

5. The Commission wishes to remind Government of its obligation to progressively realise the economic, social and cultural rights of disabled people and, in doing so, not to put in place retrogressive measures (Article 4.2 of UNCRPD).

The Rights of Disabled People verses the Needs of Disabled People

6. The Commission wishes to highlight the importance of moving towards the social model of disability in accordance with the rights set out within the UNCRPD and the associated obligations placed upon Government.

**Summary of recommendations**

7. The Commission recommends that consideration should be given to:

- taking into account the impact of fluctuating conditions on the day-today activities of claimants rather than simply the fact that the condition has gone into remission, when deciding entitlement to Personal Independence Payment.

- extension of the time-frame for the use of the Motability car scheme for in care hospital patients. This will offset unnecessary costs to claimants in short term care arising from the likely restricted mobility resulting

from the waiting period for a fresh claim for a replacement Motability vehicle.

- the additional steps necessary, beyond written notification, to ensure disabled claimants are made aware of the proposed benefit changes/entitlements.

- improving transparency of assessments by providing claimants and those providing support for them to have access to all the evidence considered in their particular cases.

- extension of the permitted periods of absence abroad to take into account both educational and training opportunities to increase employability of PIP claimants in the UK and to enable health treatment needs to be met.

- establishment of independent monitoring arrangements to ensure transparency and fairness of the new procedures governing qualification and entitlement to PIP.

8. Finally, the Commission would welcome clarification of the justification for multiple assessments for claimants to receive additional income-related benefits. Information gathered in relation to the PIP assessment, in our view, should suffice as a reasonable measure of entitlement for additional support.

**Chapter 3 - Eligibility**

**Linking rules support policy for fluctuating and deteriorating conditions**

9. The Commission agrees in principle that where someone has an impairment (condition) which goes into remission, entitlement to the Personal Independence Payment (PIP) should be at a lower rate. However, when considering fluctuating conditions such as Multiple Sclerosis (MS) as highlighted in the consultation paper, the impact of the condition on the day-to-day activities of the person should be taken into account rather than simply the fact that the condition has gone into remission. For example, in relation

to MS each relapse causes further deterioration and physical disability, even though the person concerned may enter a period of remission.

10. We welcome the revised three months qualifying period for the Disability Living Allowance and the new PIP as a beneficial improvement on the six months period provided for under the existing DLA rules.

## Chapter 4 - Payability of Benefit for Certain Groups

### Removal of benefit payment to Motability customers in long-term hospital care

11. The consultation paper recommends that payment for the higher rate of the Motability component for the duration of the 3 year mobility contract for inpatients of hospitals and similar institutions would stop after a period of 28 days for adults and 84 days in the case of children under the age of 16 (in relation to the exiting DLA).

12. This would mean that a PIP claimant in hospital for five weeks after leaving hospital would have to resubmit a claim to the Motability Scheme to acquire a motability vehicle. This could take up to two to three months thus possibly placing the claimant at a significant interim disadvantage by inhibiting mobility and access to appropriate services as well as imposing additional transport and other costs on claimants and additional administrative costs on the state.

13. The Commission is concerned that the period of 28 days is too short a duration to consider withdrawing entitlement from people who are currently members of the Motability Scheme.

14. We recommend that either this period be lengthened to mirror the provision allowed for children with disabilities or arrangements are put in place to enable the immediate recommencement (on discharge from hospital) of transport provision/motability payments as appropriate. This would

ensure that claimants in receipt of short-term medical care would not be placed at a substantial disadvantage.

**Chapter 5 - Reassessment of DLA Claims**

15. The Commission is concerned with the procedural and safeguarding arrangements provided to enable existing DLA claimants to put forward fresh claims under PIP. We do not consider that posting questionnaires/letters is sufficient to ensure that all claimants are aware of the Department's decision-making process as it relates to the personal circumstances of each claimant.

16. The Commission recommends that the Department takes account of the UK's international obligations under the UN Convention on the Rights of Persons with Disabilities UNCRPD), with particular emphasis on Article 9, in developing its arrangements for contacting claimants regarding their benefit status. This Article necessitates that: "*to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others…to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public"*. We consider that the commitment to send questionnaires to existing DLA claimants and potential PIP claimants is unlikely to meet the accessibility requirements of the Convention.

17. The Commission is aware that, in the past, claimants have lost entitlement to benefit due to inappropriate communications with claimants regarding the benefit entitlement. We would strongly urge the Department to consider the full range of actions necessary, taking into account the specific requirements of each claimant, to ensure that all are made aware of the changes to their benefit entitlement e.g. through contacting their guardian, carer, social worker or by utilising telephone communication

or by using alternative formats such Plain English, easy read etc. Such an approach must ensure that claimants are appropriately informed of the Department's decision to terminate their existing DLA entitlement, and clearly establishes their entitlement to put forward a new claim under the PIP arrangements

18. The Department should consider additional measures such as appropriate follow up contact with claimants in instances where:

- a fresh claim is not submitted under PIP; or
- in situations where it cannot be reasonably established that claimants have received and clearly understood correspondence relating to their claim.

19. Furthermore, the four-week limitation governing the requirement for fresh claims for PIP would appear to be too restrictive given the limited rights of appeal to challenge termination of DLA.

20. We believe that the 4 week time allowed to enable claimants to put forward fresh claims or to respond to changes in their benefit status is likely to be too short for a number of reasons:

- the extensive paperwork involved in processing fresh claims;

- the need to address queries and concerns from claimants about their benefit status;

- the individual circumstances of disabled claimants e.g. a claimant with a learning disability or a claimant living away from home on a temporary basis, are likely to result in time lags as to when claimants understand and respond to the proposed changes in their benefit entitlement.

## Assessment Procedure

21. To improve the transparency of the assessment, claimants, guardians and/or advocates should have access to all the evidence considered in their respective case, to fully inform and assist them in regard to the next steps they may wish to take, including the right to appeal the initial decision. Furthermore, any evidence-based critera should take fully into account the views of the claimant and those who know the claimant e.g. relevent professionals who are familiar with the claimant's disability and the impact it has on their daily living/mobility activities.

22. We are concerned that the Atos Assessment Procedures, similar to those currently utilised in the Work Capability Assessment with respect to the transition from Incapacity Benefit to Employment Support Allowance, will also be used in respect of assessments for PIP. Both assessments use similar medical descriptors to determine qualification for the relevant benefit. We are mindful that over 40% of negative decisions against claimants seeking Employment Support Allowance were overturned on appeal.

23. The Commission would also recommend that the Department should make every effort to ensure claimants are aware of all their rights with regard to the assessment proceedure, including their right to be accompanied by an advocate, family member or friend at the face-to face assessment consultation[1].

## Chapter 6 - Award Durations and Reviews

24. The Commission welcomes the proposal to extend the duration of some awards up to 5 and 10 years, reflecting, to some degree, past custom and practice of the old

[1] The Commission has been advised of at least one case involving a young man with a learning disability who was assessed for entitlement to Employment Support Allowance without the presence of a family member or appropriate advocate and rejected, although the decision was successfully appealed and the claimant re-assessed in the presence of his mother.

‘indefinite/lifetime’ awards for people whose disability was unlikely to improve or change over a long period of time. This will help ensure that claimants in this category will not be put through further unnecessary and inappropriate assessments.

**Independent Monitoring Arrangements**

25. To ensure the fairness of the assessment process, the determination of awards and the appropriate time frame for reviews, the Commission recommends that the Department gives consideration to developing independent monitoring arrangements. Such arrangements would reassure claimants/potential claimants and tax payers of the validity and transparency of the decision making processes, with respect to the assessment, determination of award, appeals and their outcomes as well as the review time-table likely to be considered for individual cases.

**Chapter 7 - Passporting Arrangements**

26. The Commission would welcome further detailed information regarding entitlement to passport benefits for those who qualify for one or more levels of PIP. We are concerned by the caveat in the consultation paper that the Government remains committed the maintenance of existing passport arrangements **whenever possible.** We note, for example, that entitlement to additional income related benefits for adults will no longer rely on a direct link with DLA/or PIP under the proposed Universal Credit system and we are concerned with the implications of this decision for claimants including those on low income.

27. At present, under the existing rules, DLA claimants in receipt of middle or high rate care are likely to receive additional income related benefits as a direct result of entitlement to the middle rate care component. While such entitlement to additional income related benefits is not automatic, claimants in receipt of middle rate care component on low incomes are more likely to receive the standard rate disability premium or, in some cases, the

severe disability premium, as an addition to standard Income Support.

28. The consultation document advises that access to additional income-related benefits for those awarded PIP will be determined through the Work Capability Assessment following on from the transition to Universal Credit. We have a number of concerns with this approach:

- Successful claimants who receive the daily living component at either the standard or enhanced rate will possibly lose additional income-related benefits that they would have automatically received as passported benefits linked to DLA.

- Claimants for the new PIP will be required to undertake two separate assessments as opposed to one single assessment to receive additional income-related benefits.

29. The Commission queries why the initial PIP assessment for qualification for this benefit is not sufficient to determine access to other income-related benefits. Indeed, the consultation document acknowledges (at paragraph 7.5) the importance of the current passporting arrangements for DLA both to disabled people and their carers with particular importance being placed on avoiding claimants having to face '**unnecessary multiple assessments'.**

30. The Commission welcomes the fact that the Government has confirmed that the standard and enhanced rate of the daily living component of PIP will form part of the gateway to Carers Allowance in the same way as the middle and highest rate care component of DLA.

31. We are of the view, however, that consideration of additional income related benefits passported through DLA should remain directly linked with PIP under the new arrangements.

32. Furthermore, where claimants qualify for PIP and are working but are on low incomes, they should automatically qualify for additional income-related benefits as is the case under the existing DLA in relation to the standard and severe disability premiums which currently supplement claimants Income Support entitlement.

## Chapter 8 - Residence and Past Presence Test

### Temporary Absences Abroad

33. The Commission notes the Department's rationale for suggesting that payment of PIP only allows for an absence of four weeks abroad to be extended up to a maximum of up to 26 weeks for medical purposes.

34. However, we recommend assessment of such cases on an individual basis, taking into account the reasons for the claimant's absence and the specific circumstances surrounding the claimant's reasons for being abroad.

35. Consideration should be given to the circumstances of claimants travelling abroad for educational or vocational purposes to enhance their employability skills in order to better compete in the UK labour market e.g. university placements, career secondments etc. An extension to the four-week rule should be permitted where there is clear evidence that the person in question would be enhancing their professional and personal qualifications for the purposes of seeking employment or retaining employment in the UK.

36. Similarly, we propose that the maximum period abroad permitted for medical treatment is extended beyond 26 weeks where there is sufficient evidence relating to the benefits of such treatment and that any extension is in their best interests. Arbitrary timescales may not be appropriate in these circumstances and the proposals should allow for exceptions.

37. In considering these proposals, the Department should also consider what actions it can take to promote equality of opportunity for disabled people. It is important to remember that equality for disabled people may mean treating them more favourably than non-disabled people, recognising equality of opportunity cannot be achieved simply by treating disabled and non-disabled people alike. This principle underpins the Disability Discrimination Act 1995.

**Other matters**

**Children**

38. We acknowledge that eligibility to claim PIP will not be extended to children when it is introduced in April 2013 and that the Government intends to consult with this group at a later stage. In consulting with children and young people, the Department should ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right taking into account also the best interests of the child. (Article 7 (1) and (2) of the UN Convention on the Rights of Persons with Disabilities and Article 3 UN Convention on the Rights of the Child).

39. Finally, with respect to engaging with children and young people we recommend that the Department refer to our guidance for public authorities, *Let's Talk, Let's Listen*[2].

**June 2012**

[2]Equality Commission for Northern Ireland (2008): *Let's Talk, Let's Listen - guidance for public authorities on consulting and involving children and young people* http://www.equalityni.org/archive/letstalkletslisten(final).pdf

## Annex 1: The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

2. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.

3. The Commission's general duties include:

   - working towards the elimination of discrimination;
   - promoting equality of opportunity and encouraging good practice;
   - promoting positive / affirmative action
   - promoting good relations between people of different racial groups;
   - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
   - keeping the legislation under review;
   - promoting good relations between people of different religious belief and / or political opinion.

4. The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of UNCRPD in Northern Ireland.