

Equality Commission for Northern Ireland

Personal Independence Payment: Assessment Thresholds and Consultations

Consultation Response

April 2012

Executive Summary

- a) The Equality Commission for Northern Ireland (“Commission”) welcomes the opportunity to respond to the Department for Social Development (“DSD”) public consultation on the “Personal Independence Payment: Assessment Thresholds and Consultations” (“PIP Consultation Paper”) and the “Personal Independence Payment: Second Draft of Assessment Regulations” (“PIP Regulations”).

General Observations / Comments

Impact, Consultation, Participation, and Mitigation

- b) 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.
- c) 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

- d) The Commission is concerned that the proposals within the PIP Consultation Paper and the PIP Regulations 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.
- e) 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

- f) 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.

Response on Specific Issues

Eligibility & Provision

- g) The Commission is concerned that the removal of the 'low' rate component in the move from DLA to PIP, in conjunction with the high thresholds for claimant qualification for the PIP rates, may exclude many current claimants on the existing 'low' and 'medium' rate components of DLA from receiving PIPs.
- h) The Commission is of the view that the benefits associated with the PIP rates should provide enough support to enable disabled people to lead fully independent lives.
- i) The Commission seeks assurances from DSD / DWP that those claimants currently eligible for the 'low' rate component under DLA, who become ineligible under PIPs, will be eligible for relevant 'passport' benefits and other support provided by the State.

Understanding the Real Life Circumstances of Disabled People

- j) The Commission is concerned that the case studies as outlined within the PIP Consultation Paper do not fully represent all the real life circumstances faced by disabled people.

Review & Assessment

- k) The Commission is of the view that the assessment criteria rely too heavily upon care support provided by family and friends.
- l) The Commission is also concerned that the criteria do not consider the barriers and costs associated with dealing with the seasonal effects on a claimant's disability.
- m) The Commission recommends that the regularity of reviews and assessments should be based upon a claimant's individual circumstances, particularly for those claimants with fluctuating conditions.
- n) We recommend that lessons learnt from the Harrington Review of 'Work Capabilities Assessments' are considered for PIP assessments.
- o) The Commission seeks clarity as to how the criteria are considered against the views of the disabled claimant, the assessor and the decision maker.
- p) The Commission asks DWP / DSD to clearly outline the weightings that will be allocated to independent medical evidence; information collated from other professionals familiar with the claimant; and the views of the claimant themselves.

Introduction

1. The Equality Commission for Northern Ireland¹ (“Commission”) welcomes the opportunity to respond to the Department for Social Development (“DSD”) public consultation² in Northern Ireland of the Department of Work and Pensions (“DWP”) policy proposals detailed in the “Personal Independence Payment: Assessment Thresholds and Consultations” (“PIP Consultation Paper”)³ which in turn proposes regulations within “Personal Independence Payment: Second Draft of Assessment Regulations” (“PIP Regulations”)⁴.

Northern Ireland Socio-economic Context

2. The Commission is mindful of the economic challenges faced by the United Kingdom Government and the ongoing fiscal measures that have been adopted to restrain public spending.
3. The PIP Consultation Paper acknowledges that the PIP Regulations are likely to produce a caseload of approximately 1.7 million people receiving some form of benefit under PIPs as they are currently framed, while the existing Disability Living Allowance (DLA) claimant count is approximately 2.2 million. This suggests that 500,000 claimants will no longer be entitled to this form of disability benefit under the new regime.
4. It is essential that the DSD / DWP consider the unique social and economic environment in Northern Ireland. The DSD estimates that over 184,500 people in Northern Ireland currently receive DLA. This represents 10.3 per cent of working age people in Northern Ireland and is approximately twice the level in Great Britain⁵.

¹ Further details about the role and remit of the Equality Commission are contained in Annex 1.

² Publication of Consultation Document – Personal Independence Payment: Assessment Thresholds and Consultation. <http://www.dsdni.gov.uk/pip-cover-letter.doc>

³ Personal Independence Payment: assessment thresholds and consultation. January 2012. Department for Work and Pensions <http://www.dwp.gov.uk/docs/pip-assessment-thresholds-and-consultation.pdf>

⁴ Personal Independence Payment: second draft of assessment regulations. November 2011. Department for Work and Pensions <http://www.dwp.gov.uk/docs/pip-second-draft-assessment-regulations.pdf>

⁵ Disability Living Allowance Statistics – Summary of Statistics (August 2010) Department for Social Development. http://www.dsdni.gov.uk/dla_publication_august_10.xls

5. Furthermore, as highlighted in our research, “Employment Inequalities in the Economic Downturn”⁶ during the current economic downturn, disabled people may be even further removed from the labour market as they face increased competition from the newly unemployed. This may further limit disabled people’s opportunity to challenge the barrier of economic disadvantage.
6. In this context, the Commission wishes to respond to the DSD / DWP Northern Ireland public consultation on the PIP Regulations in two ways:
 - **General Observations / Comments** – In respect to the need for an assessment of the impact of the proposed PIP Regulations on disabled people in Northern Ireland; the participation of disabled people in the development of the PIP Regulations; and measures that may be put in place to mitigate any adverse impacts. Furthermore, we highlight the standards and obligations placed upon the United Kingdom under domestic and international human rights law.
 - **Specific Comments** – By making comments on the eligibility of and the provision to claimants; the real life circumstances of disabled people; and the review and assessment of claimants, to address some of the nine (9) questions within PIP Consultation Paper.

General Observations / Comments

Impact, Consultation, Participation, and Mitigation

7. **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 Ireland⁷.**
8. **We 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.**

⁶ McQuaid, R., Hollywood, E. and Canduela, J. (July 2010): *Employment Inequalities in an Economic Downturn*, Equality Commission for Northern Ireland.

<http://www.equalityni.org/archive/pdf/EconDownturnSummaryReport.pdf>

⁷ NI Assembly - Oral Answers 12.03.12: Benefits

9. The Commission seeks assurances from the DSD / DWP that any adverse impact on the economic and social lives of disabled people in Northern Ireland by the proposed PIP Regulations will be addressed through the implementation of robust mitigating measures to ensure that their rights, mindful of Article 19 (Independent Living) and Article 28 (Adequate Standard of Living and Social Protection) of the United Nations Convention on the Rights Disabled People (UNCRPD) are fully protected.
10. Furthermore, the Commission agrees with the Joint Committee for Human Rights recommendation that there should be a trial period for the PIP assessment process, along with a report to Parliament on the implementation of the new system, to ensure that the impact of the new assessment process is fully analysed in light of its operation in practice⁸.
11. We agree with, and support, the Joint Committee on Human Rights recommendations that the PIP Regulations and assessment criteria:
 - must not create a disincentive to using aids and adaptations;
 - continue to be based on the fundamental principle that it is a benefit based on the additional costs of impairment and not based on a medical diagnosis; and
 - following on from the pilot introduction of the PIP Regulations, that it be subject of independent review, which we acknowledge has already been agreed to by Government but it must be one that engages fully with disabled people and their representative organisations before it is fully implemented on a UK wide basis⁹.
12. **We remind Government that in its development and implementation of legislation and policies, in accordance with the UNCRPD, it should closely consult and actively involve disabled people in Northern Ireland.**
13. UNCRPD contains an obligation on the United Kingdom:

“[I]n the development and implementation of legislation and policies to implement the present Convention and in other decision-making processes concerning issues relating to

⁸ Joint Committee on Human Rights 21st Report Welfare Reform, December 2011

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/23303.htm>

⁹ Joint Committee on Human Rights 23rd Report “Independent Living” Recommendations page 145

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/25702.htm>

persons with disabilities, States Parties [UK] shall closely consult with and actively involve persons with disabilities, including children with disabilities, through representative organisations” (Article 4(3).

14. The Commission acknowledges the level of consultation to date on PIP Regulations in Great Britain. However, we would recommend that DSD undertake further face-to-face meetings with disabled people and their representative organisations from across all areas of Northern Ireland as part of an equality impact assessment on the PIP Regulations in Northern Ireland. The DSD should also be mindful of its own acknowledgement that the proportion of disabled people, per head of population, is greater in Northern Ireland than the rest of the United Kingdom¹⁰.

International Standards & Obligations

15. **The Commission is concerned that the proposals within the PIP Consultation Paper and the PIP Regulations 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.**
16. We fully endorse the views adopted by the Joint Committee on Human Rights (JCHR), in its Twenty-first Report on the Welfare Reform Bill, which states that *“We are disappointed by the Government’s failure to carry out any detailed analysis of the compatibility of the proposals in the Bill with the UK’s obligations under the UNCRC¹¹, the ICESCR¹² and the UNCRDP¹³.”¹⁴* We wish to echo these concerns in relation the PIP Regulations as we are particularly concerned with the compatibility of the proposals for the PIP Regulations with the UK's obligations under UNCRDP and other international treaties.

¹⁰ Disability Living Allowance Statistics – Summary of Statistics (August 2010) Department for Social Development. http://www.dsdni.gov.uk/dla_publication_august_10.xls

¹¹ Convention on the Rights of the Child, 1989 (UNCRC). Article 4. UNCRC entered into force on 2nd September, 1990. <http://www2.ohchr.org/english/law/pdf/crc.pdf>

¹² International Covenant Economic, Social and Cultural Rights, 1966 (ICESCR), Article 2 (1). ICESCR entered into force on 3rd January, 1976. <http://www2.ohchr.org/english/law/pdf/cescr.pdf>

¹³ Convention on the Rights of Persons with Disabilities, Article 4 (2). CRPD entered into force on 3rd May 2008. <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

¹⁴ House of Lords, House of Commons. Joint Committee on Human Rights Legislative Scrutiny: Welfare Reform Bill. Twenty-first Report of Session 2010–12

Pg 3. <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf>

17. Furthermore, the Commission agrees with the Joint Committee on Human Rights in that we are “[n]ot satisfied that the Government has demonstrated reasonable justification for the negative impact of the introduction of PIPs on the right of disabled people to independent living”¹⁵.

18. **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.**

19. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) places a series of general obligations (under Article 4) upon the United Kingdom which are pertinent to the current consultation. In particular, the Commission would like to draw to the Government’s attention to the general obligation under Article 4 (2):

“With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.”

20. We remind DSD / DWP that they should assure themselves that welfare reform proposals - specifically amendments to benefits that are directed towards, or indirectly affect, disabled people, that may reduce their levels of economic support - are not a retrogression of economic, social and cultural rights under the UNCRPD. Furthermore, the Government is reminded that this obligation is also articulated within the International Covenant for Economic Social and Cultural Rights (ICESCR) and the United Nations Convention on the Rights of the Child (UNCRC).

21. The UN Committee on Economic, Social and Cultural Rights stated that:

¹⁵ House of Lords, House of Commons. Joint Committee on Human Rights Legislative Scrutiny: Welfare Reform Bill. Twenty-first Report of Session 2010–12
Pg 21. <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf>

[A]ny deliberately retrogressive measures ... would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources¹⁶.

22. Like the Joint Committee on Human Rights, we also recognise that, “[T]he availability of resources is ... of central relevance in assessing the degree to which the UK is meeting its obligations under such human rights treaties. However, the duty of progressive realisation entails a strong presumption against retrogressive measures¹⁷.” We see the proposed PIP Regulations as a possible retrogressive measure affecting the rights of disabled people to independent living (Article 19) and an adequate standard of living and social protection (Article 28) under the UNCRPD.

The Rights of Disabled People verses the Needs of Disabled People

23. **The Commission wishes to highlight the importance of moving towards the social model of disability in accordance with the obligations in UNCRPD.**
24. The Commission notes that medical model descriptors still predominate the assessment criteria. However, the Commission also acknowledges that DWP, after consultation on the first draft, has moved some way from a clinical / medical model towards descriptors that will be used to determine the qualification criteria for PIPs based upon social circumstances
25. Disabled people have seen DLA as contributing towards a level playing field, by enabling them to meet additional costs associated with impairments and / or disabling barriers. Whereas the assessment criteria and thresholds for PIPs may mean that where an individual ‘successfully’ uses ‘aids and adaptations’, this ability may very well disqualify them from receiving PIPs.
26. In developing the PIP Regulations, the Government should consider how the assessment criteria and thresholds can adopt the ‘social model’ of disability as set out in Article 1 of the UNCRPD.

¹⁶ CESCR General Comments No. 3, *The Nature of States Parties’ Obligations* (Fifth session, 1990), U.N. Doc. E/1991/23, paras. 9

¹⁷ House of Lords, House of Commons. Joint Committee on Human Rights Implementation of the Right of Disabled People to Independent Living. Twenty-third ReportPg 16. <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/257.pdf>

This would include consideration of how the PIP Regulations would ensure that the assessment process for PIPs fully takes into account the social, practical and environmental barriers experienced by disabled claimants. This would greatly assist the PIP Regulations in meeting the standards and obligations outlined within the UNCRPD.

Response on Specific Issues

27. The Commission makes comment in the following areas to address some of the nine (9) questions within PIP Consultation Paper¹⁸ on the second draft of the assessment criteria.

Eligibility & Provision

28. **The Commission is concerned that the removal of the ‘low’ rate component in the move from DLA to PIP, in conjunction with the high thresholds for claimant qualification for the PIP rates, may exclude many current claimants on the existing ‘low’ and ‘medium’ rate components of DLA from receiving PIPs.**
29. **The Commission is of the view that that the benefits associated with the PIP rates should provide enough support to enable disabled people to lead fully independent lives.**
30. **The Commission seeks assurances from DSD / DWP that those claimants currently eligible for the ‘low’ rate component under DLA, who become ineligible under PIPs, will be eligible for relevant ‘passport’ benefits and other support provided by the State.**
31. We note that many such claimants who may become ineligible for receiving PIPs are likely to be those on the ‘low’ rate mobility and ‘low’ rate care components of the existing DLA. We are concerned that these claimants will no longer have automatic access to services such as the ‘Door-to-Door scheme’¹⁹ or automatic entitlement to the ‘Blue Badge scheme’²⁰.

¹⁸ Publication of Consultation Document – Personal Independence Payment: Assessment Thresholds and Consultation. Page 2. <http://www.dsdni.gov.uk/pip-cover-letter.doc> & Personal Independence Payment: assessment thresholds and consultation. January 2012. Department for Work and Pensions. Pages 12-14. <http://www.dwp.gov.uk/docs/pip-assessment-thresholds-and-consultation.pdf>

¹⁹ Disabled people and older people automatically qualify for the Door-to-Door transport scheme in urban and rural areas within Northern Ireland if they meet the following eligibility criteria:- Persons in receipt of Higher Rate Mobility Component of Disability Living Allowance, Persons in receipt of the

Understanding the Real Life Circumstances of Disabled People

32. **The Commission is concerned that the case studies as outlined within the PIP Consultation Paper do not fully represent all the real life circumstances faced by disabled people.**
33. Only one (1) case study of the fifteen (15) case studies refers to a disabled person living completely on their own, without access to family support. Further, it depicts an individual with extremely limited support requirements, no significant costs associated with daily living or mobility activities or any pain management requirements. Indeed, the case study in question concludes that the individual would not qualify for any rate associated with either component of the benefit.

Review & Assessment

34. **The Commission is of the view that the assessment criteria rely too heavily upon care support provided by family and friends.**
35. In fourteen (14) of the case studies, the disabled person is living with, or has daily access to, a family member who is able to assist them with either their daily living and / or mobility activities.
36. The emphasis and reliance upon friends and family to provide support could be seen as a pretext to avoid considering the obligations of the State to provide adequate financial support to

higher rate care component of attendance allowance, persons who are registered blind and person who have reached 80 years of age. People with disabilities who do not qualify for any of these benefits must obtain the relevant medical evidence from their GP or relevant qualified professional to be eligible to receive Door-to-Door transport services. Please see original Door-to-Door eligibility scheme membership within the Department of Regional Development proposals for the Door-to-Door scheme. Page 11

http://www.drdni.gov.uk/paper_on_extending_door-to-door_services_across_northern_ireland.pdf,

²⁰ The Disabled Persons Blue Badge Scheme provides on street parking concessions for badge holders who travel either as drivers or passengers. Automatic entitlement to the Blue Badge is granted under the following conditions:- if you are in receipt of the higher rate of the mobility component of Disability Living Allowance, you are registered blind, you receive a War Pensioner's Mobility Supplement. If however you have a permanent and substantial disability which means you cannot walk, or have very considerable difficulty walking - in this case a doctor or relevant qualified professional will be asked to answer a series of questions to confirm an individual's eligibility for a badge. Children under the age of two, if they have a disability due to a medical condition and need to travel with bulky equipment, or to be close to a vehicle for emergency medical treatment, may be eligible for a badge, dependent on medical evidence from GP or relevant medical professional.

<http://www.nidirect.gov.uk/the-blue-badge-parking-scheme>

enable disabled people generally to live as independently as possible.

37. The assessment criteria should take into account the costs associated with living alone for those with different impairments. The assessment criteria needs to fully consider all the "coping strategies", including pain management techniques adopted by disabled people not only when living alone, but in all other circumstances, such as those highlighted in the other case studies.
38. **The Commission is concerned that the criteria do not consider the barriers and costs associated with dealing with the seasonal effects on a claimant's disability.**
39. **The Commission recommends that the regularity of reviews and assessments should be based upon a claimant's individual circumstances; particularly for those claimants with fluctuating conditions.**
40. The Commission agrees with the principle of having regular reviews and assessments for those in receipt of PIPs. However, we would suggest that, in order to avoid unnecessary stress to these claimants, and to save public resources, the frequency of review should be set commensurate to the likelihood of an individual's disabilities and consequences changing over time. We question the decision to continually review and assess all claimants - in particular, those claimants whose impairments, and their effects, will not change over time.
41. The DSD / DWP should also ensure the accurate assessment of the impact of more progressive conditions, such as individuals with neurological conditions, to ensure that these claimants are given appropriate financial support at the appropriate time.
42. **We recommend that lessons learnt from the Harrington Review²¹ of 'Work Capabilities Assessments' are considered for PIP assessments.**
43. In 2011, we responded to the DSD call the evidence for the Independent Review of the Work Capability Assessment, in which

²¹ See Equality Commission response to the Independent Review of the Work Capability Assessment at http://www.equalityni.org/archive/word/ECNIRResponse_NI_Review_Work_Capability_Assessment170511.doc

we raised concerns about the Atos system²². The Commission is concerned that evidence from the Employment and Support Allowance (ESA) as well as DLA will be taken into account in determining PIPs.

44. We are aware, following the findings and conclusions of the Harrington Report²³ that the majority of the decisions against claimants that had adverse consequences were subsequently overturned on appeal. It has been made clear that the Atos Health Care Assessors often refused to take fully into account all relevant evidence to determine a claimant's capacity to work. We would not wish to see this situation arise in relation to the assessment of claims for PIPs. Indeed, the Commission is concerned by the Government's intention to continue to use Atos, given the findings and criticisms highlighted in the Harrington Report.
45. **The Commission seeks clarity as to how the criteria are considered against the views of the disabled claimant, the assessor and the decision maker.**
46. **The Commission asks Government to clearly outline the weightings will be allocated to independent medical evidence, information collated from other professionals familiar with the claimant and the views of the claimants.**

**Equality Commission for Northern Ireland
April 2012**

²² Equality commission for Northern Ireland – Evidence for “*The Independent Review of the Work Capabilities Assessment*” May 2011.
http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Disability_consultation+responses&cmsid=7_33_229&id=229

²³ Harrington M., “*An Independent Review of the Work Capability Assessment*” November, 2010 Department for Work and Pensions. <http://www.dwp.gov.uk/docs/wca-review-2010.pdf>

Annex 1

1. 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, equal pay, race, sexual orientation, age and disability.
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 of disabled in public life, under the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006) ("Disability Equality Duty").
3. The Commission and the Northern Ireland Human Rights Commission are jointly designated as the "Independent Mechanism" in Northern Ireland to promote, protect and monitor the implementation the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).