



2 August 2013

Ms Diane Clarke
Department for Social Development
Social Security policy and Legislation division
Level 1, James House
2- 4 Cromac Avenue
Gasworks Business Park
Ormeau Road
BELFAST
BT7 2JA

Dear Ms Clarke

Re: Consultation on the PIP assessment *Moving around* activity

The Commission welcomes the opportunity to further engage with the Department for Social Development on this aspect of the Personal Independence Payment (PIP) Regulations, specifically the proposal to apply the 20 metre distance criteria as the qualifying distance to meet the entitlement threshold for the enhanced rate mobility of PIP.

We are concerned that any decision to reduce the use of 50 metres currently used to assess people for entitlement to the high rate mobility component of the Disability Living Allowance (DLA) to 20 metres may have a significant adverse impact on the economic and social independence of disabled people.

The Commission is aware of concerns raised by various independent advice agencies e.g. as the Law Centre NI and the Citizens Advice Bureau as well as voluntary groups representing disabled people e.g. Disability Action and the MS Society that those disabled people who will lose their entitlement to the benefit as the result of the reduced distance proposed will automatically lose access to the Motability Scheme.

As the Department of Work and Pensions (DWP) has previously noted in its initial consultation on the PIP Regulations (January 2012), the likely outcome of the introduction of the change is to reduce the number of existing DLA claimants by 500,000 as a result of the new benefit. Their modelling suggests that the second draft would produce a 2015/16 caseload of 1.7 million people receiving Personal Independence Payment. Without introducing the new benefit DWP would expect the number of 16-64 year olds claiming Disability Living Allowance in 2015/16 to be 2.2 million.¹

¹ Department of Work and Pensions (January 2012) Personal Independence Payment: Assessment Thresholds and Consultation, Paragraph 1.7, page 3. Available at

The Department's consultation paper states that the benchmark of 20 metres is to enable a distinction to be made between those who are only able to move a short distance within their homes and those who have greater mobility and are able to walk a relatively short distance from their home. The consultation paper does not advance any evidential basis for the arbitrary reduction from 50 meters to 20 metres as the qualifying threshold for entitlement to the enhanced mobility rate. Conversely, we are aware that the existing 50 metres threshold has been established through the development of 20 years of case law.

In our role as part of the Independent Mechanism for Northern Ireland (IMNI) tasked to promote, protect and monitor the implementation (by Government) of the UNCRPD, we are convening a series of focus groups with disabled people and their representative organisations².

The feedback received by the Commission from focus groups to date was that the broad measures associated with the PIP Regulations are orientated to the medical model of disability and do not take sufficient account of the social and economic barriers faced by disabled people.

The current proposal also appears to be developed within the parameters of the medical model, as it does not take account of disability related costs, ability to access goods and service and live a reasonable quality of life.

The Commission wishes to reiterate the point made in our initial response to the consultation on the PIP Regulations (April 2012) that there is an obligation on Government to progressively realise the economic, social and cultural rights of disabled people, and in doing so, not to put in place retrogressive measures.

In particular, the Commission would like to draw to the Government's attention to the general obligation under Article 4 (2) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD):

"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."

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181178/pip-assessment-thresholds-and-consultation.pdf

² The Equality Commission for Northern Ireland hosted a series of evidence gathering workshops in March 2012 acting on behalf of the Independent Mechanism for Northern Ireland to assess what measures needed to be taken to address the states obligations under Article 27 the right to work and employment highlighted a range of concerns including the adverse impact of welfare reform taking into consideration a range of Convention articles including Article 7 the Rights of Children with Disabilities, Article 19 the Right to Independent Living, Article 20 Personal Mobility, Article 25 the Right to Health, Article 28 Adequate Social Protection, etc (Unpublished, March 2012).

We urged the Department for Work and Pensions (DWP) and the DSD to assure itself 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 CRPD.

The Commission concurs with the Joint Committee on Human Rights 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 measures³.” The Commission considers that there is a significant risk that the proposed measure may in practice represent a retrogressive measure affecting the right to an adequate standard of living and social protection (Article 28, CRPD).

The policy intent of DLA and PIP is to meet the costs associated with having a disability. The Department has not produced any evidence to indicate why the cost of having a disability should be any different on the basis of whether a person can walk 20 or 50 metres.

Access to most essential goods and services, employment, training and education opportunities is likely to involve a distance of more than 50 metres.

The Commission considers that there is an inherent assumption underpinning this measure that the ‘successful’ use of aids and adaptations makes people ‘independent’ and not eligible for support from the State which is instead reserved for those who are ‘dependent’ or who have the greatest need as highlighted in the initial PIP Consultation Paper.

It is our view that this assumption is integrally linked to the promulgation of the idea that an increase in the number of people receiving ‘disability’ benefits is a sign of increasing ‘welfare dependency’. However, the increase in disability-related benefits may also be a sign of an increasing number of people with impairments and of a society which makes resources available to attempt to create a level playing field⁴, to enabled disabled people to access an adequate standard of living and social protection to allow them economically and socially independent lives.

We would strongly urge the Department and the UK Government to reconsider the proposed approach taking fully into account the views of disabled people who will be adversely affected by this proposed measure and their representative organisations.

³ House of Lords, House of Commons Joint Committee on Human Rights (2012): *Implementation of the Right of Disabled People to Independent Living*, Twenty-third Report, page 16. Available at: <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/257.pdf>

⁴ Jenny Morris (November 2011): *Rethinking Disability Policy* Joseph Rowntree Foundation. Available at: <http://www.jrf.org.uk/sites/files/jrf/disability-policy-equality-summary.pdf>

On behalf of the Commission, I hope that you will take our comments into account and should you require any further information please do not hesitate to contact me.

Yours sincerely

Paul Noonan

Senior Policy Officer

☐☐028 90 500570



pnoonan@equalityni.org

Annex 1

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 and treatment, 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.