

Personal Independence Payment: second draft of assessment regulations

November 2011

1. Purpose of this document

- 1.1. This paper contains a second draft of regulations on the assessment and required period condition for Personal Independence Payment. These relate to Part 4 of the Welfare Reform Bill and are intended to inform debate on the Bill in the House of Lords.
- 1.2. The regulations remain a working draft and amendments will be made at a later stage. All regulations, when finalised, will be subject to Parliamentary scrutiny in the normal way.

Note: This is a second draft of regulations intended to highlight the Government's current thinking. They will be subject to further development and consultation.

DRAFT

Draft Regulations laid before Parliament under section [91(6)] of the Welfare Reform Act 2011, for approval by resolution of each House of Parliament.

201X No XXXX

SOCIAL SECURITY

Social Security (Personal Independence Payment) (Assessment) Regulations 201X

Made ...

Coming into force...

The Secretary of State for Work and Pensions, in exercise of the powers conferred by [add in powers] of the Welfare Reform Act 2011^(a), makes the following Regulations:

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section [91(6)] of that Act.

Part 1 Introduction

1. Citation and commencement

These Regulations may be cited as the Social Security (Personal Independence Payment) (Assessment) Regulations 201X and shall come into force on [add in].

2. Interpretation

(1) In these Regulations –

“the Act” means the Welfare Reform Act 2011;

“aid or appliance”-

- (a) means a device to improve, provide or replace a physical or mental function;
- (b) includes a prosthesis; and
- (c) does not include an aid or appliance ordinarily used by a person without a physical or mental condition which limits that person's ability to carry out daily living or mobility activities;

^(a) 2011 c. XX.

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“claimant” means a person who has made a claim for personal independence payment;

“component” means the daily living component or the mobility component of personal independence payment;

“daily living activities” means the activities prescribed in regulation [3(1)];

“descriptor” means a descriptor in column 2 of [the Schedule] to these Regulations;

“mobility activities” means the activities prescribed in regulation [3(2)];

“negative determination” has the meaning given in section [78](6) of the Act; and

“personal independence payment assessment” means the assessment referred to in regulation 4(2).

Part 2

Personal Independence Payment Assessment

3. Daily living activities and mobility activities

(1) For the purposes of section [76(4)] of the Act, daily living activities are activities set out in paragraph 2 of the Schedule to these Regulations.

(2) For the purposes of section [77(4)] of the Act, mobility activities are activities set out in paragraph 3 of the Schedule to these Regulations.

4. Determination of limited and severely limited ability to carry out activities

(1) For the purposes of Part [4] of the Act, whether a claimant has limited or severely limited ability to carry out daily living or mobility activities shall be determined on the basis of a personal independence payment assessment in accordance with this regulation and regulation [5].

(2) The personal independence payment assessment is an assessment whether -

(a) a claimant's ability to carry out daily living activities, mobility activities, or both is limited or severely limited by the claimant's physical or mental condition; and

(b) the claimant meets the required period condition in accordance with regulations [12 to 14].

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(3) For the purposes of this regulation, the claimant has -

- (a) limited ability to carry out daily living activities where the claimant obtains a score of at least x points in relation to daily living activities;
- (b) severely limited ability to carry out daily living activities where the claimant obtains a score of at least y points in relation to daily living activities;
- (c) limited ability to carry out mobility activities where the claimant obtains a score of at least x points in relation to mobility activities; and
- (d) severely limited ability to carry out mobility activities where the claimant obtains a score of at least y points in relation to mobility activities.

(4) For the purposes of paragraph [(3)](a) to (d)-

- (a) the score the claimant obtains in relation to daily living activities is determined by adding together the points listed in column [3] of the table in paragraph 2 of the Schedule to these Regulations against any descriptor listed which applies to the claimant either singly or in a combination of descriptors;
- (b) the score the claimant obtains in relation to mobility activities is determined by adding together the points listed in column [3] of the table in paragraph 3 of the Schedule to these Regulations against any descriptor listed which applies to the claimant either singly or in a combination of descriptors;
- (c) the descriptor which is applicable to the claimant shall be –
 - (i) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;
 - (ii) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which applies for the greatest proportion of time; and
 - (iii) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors are satisfied for periods which, when added together are satisfied on over 50% of the days of the required period, the descriptor which is satisfied for the greatest proportion of time.
- (d) in assessing the claimant's ability to carry out an activity, the claimant is to be assessed as if wearing or using any aid or appliance which –
 - (i) is normally worn or used; or
 - (ii) the claimant could reasonably be expected to wear or use. and

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(e) a claimant who has severely limited ability to carry out daily living activities or mobility activities is not to be treated as also having limited ability in relation to that component.

(5) In this regulation, "required period" means the period referred to in regulation 12(1) and (2) (required period condition: daily living component) and 13(1) and (2) (required period condition: mobility component).

5. Information required for determining limited or severely limited ability to carry out activities

(1) Subject to paragraph (2), the information or evidence required to determine whether a claimant has limited or severely limited ability to carry out activities is –

- (a) any information relating to a claimant's capability to perform the activities referred to in [the Schedule] as may be requested by the Secretary of State; and
- (b) any such additional information as may be requested.

(2) Where information is requested under paragraph (1), the information shall be provided to the Secretary of State within one month of being required to do so or such longer period as the Secretary of State may consider reasonable.

6. Failure to provide information in relation to ability to carry out activities

Where a claimant fails without good reason to comply with the request referred to in regulation [5](1)(a) or (b), a negative determination shall be made.

7. Claimant may be called for a consultation to determine whether the claimant has limited or severely limited ability to carry out activities

(1) Where it falls to be determined whether a claimant has limited or severely limited ability to carry out activities, that claimant may be called by or on behalf of a person approved by the Secretary of State to-

- (a) attend for and participate in a consultation in person;
- (b) participate in a consultation by telephone; or
- (c) both (a) and (b).

(2) Subject to paragraph (3), where the claimant fails without good reason to attend for or participate in a consultation referred to in paragraph (1), a negative determination shall be made.

(3) Paragraph (2) does not apply unless written notice of the date, time and place for, and manner of, the consultation, as the case may be, was sent to the claimant at least 7

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days in advance, or unless that claimant agreed to accept a shorter period of notice, whether given in writing or otherwise.

(4) In paragraph (3), reference to written notice includes notice sent electronically where the claimant has agreed to accept correspondence in that way. _

8. Matters to be taken into account in determining good reason in relation to regulations 6 and 7

The matters to be taken into account in determining whether a claimant has good reason under regulations [6] (failure to provide information in relation to ability to carry out activities) or [7] (failure to attend or participate in a consultation to determine limited or severely limited ability to carry out activities) include –

- (a) the claimant's state of health at the relevant time; and
- (b) the nature of any disability the claimant has.

9. Re-determination of ability to carry out activities

Where a claimant has been determined to have limited or severely limited ability to carry out activities, the Secretary of State may determine afresh in accordance with these Regulations whether a claimant has such a limited or severely limited ability.

10. Definition

In this Part, references to 'activities' means daily living or mobility activities, as the case may be.

Part 3 Required Period Condition

11. Required period condition: daily living component

(1) The claimant meets the required period condition for the purposes of section [76](1) (daily living component at standard rate) where –

- (a) if the claimant had been assessed at every time in the 6 months ending with the date prescribed by regulation [13] ("the relevant date"), it is likely that the Secretary of State would have determined at that time that the claimant had limited ability to carry out daily living activities; and
- (b) if the claimant were to be assessed at every time in the 6 months beginning with the day after the relevant date, it is likely that the Secretary of State would determine at that time that the claimant has limited ability to carry out daily living activities.

(2) The claimant meets the required period condition for the purposes of section 76(2) (daily living component at enhanced rate) where –

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(a) if the claimant had been assessed at every time in the 6 months ending with the date prescribed by regulation [13] ("the relevant date"), it is likely that the Secretary of State would have determined at that time that the claimant has severely limited ability to carry out daily living activities; and

(b) if the claimant were to be assessed at every time in the 6 months beginning with the day after the relevant date, it is likely that the Secretary of State would determine at that time that the claimant has severely limited ability to carry out daily living activities.

(3) In paragraphs (1) and (2) "assessed" means assessed in accordance with regulation [4].

12. Required period condition: mobility component

(1) The claimant meets the required period condition for the purposes of section 77(1) (mobility component at standard rate) where –

(a) if the claimant had been assessed at every time in the 6 months ending with the date prescribed by regulation [13] ("the relevant date"), it is likely that the Secretary of State would have determined at that time that the claimant had limited ability to carry out mobility activities; and

(b) if the claimant were to be assessed at every time in the 6 months beginning with the day after the relevant date, it is likely that the Secretary of State would determine at that time that the claimant has limited ability to carry out mobility activities.

(2) The claimant meets the required period condition for the purposes of section 77(2) (mobility component at enhanced rate) where –

(a) if the claimant had been assessed at every time in the 6 months ending with the date prescribed by regulation [13] ("the relevant date"), it is likely that the Secretary of State would have determined at that time that the claimant has severely limited ability to carry out mobility activities; and

(b) if the claimant were to be assessed at every time in the 6 months beginning with the day after the relevant date, it is likely that the Secretary of State would determine at that time that the claimant has severely limited ability to carry out mobility activities.

(3) In paragraphs (1) and (2) "assessed" means assessed in accordance with regulation [4].

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13. The prescribed date

(1) Subject to paragraph (2), the prescribed date for the purposes of regulations [11](1) and (2) and [12](1) and (2) is -

- (a) the date on which a claim is made for personal independence payment; or
- (b) if later, the first date on which the required period condition is met or is likely to be met.

(2) Where –

- (a) the claimant has previously been entitled to personal independence payment; and
- (b) paragraph (3) applies,

the prescribed date for the purposes of regulations [11](1) and (2) and [12](1) and (2) is the date on which the claimant was last entitled to personal independence payment.

(3) This paragraph applies if –

- (a) the date mentioned in paragraph (2) falls not more than 1 year before the date on which a new claim for personal independence payment is made;
- (b) the previous entitlement referred to in paragraph (2)(a) was to the same component as the one to which the claimant is entitled (or would be entitled if the claimant met the required period condition) under the new claim; and
- (c) the Secretary of State determines that the entitlement referred to in paragraph (2)(a) and the entitlement under the new claim result from substantially the same mental or physical condition.

(4) Where paragraph (3) applies, in regulations [11](1)(b) and (2)(b) and [12](1)(b) and (2)(b), for the words 'the relevant date' there shall be substituted 'the date on which the new claim for personal independence payment is made'.

Signed by authority of the Secretary of State
for Work and Pensions

[insert name]
[insert title]
Department for Work and Pensions

[insert date]

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Regulation 4

SCHEDULE

PERSONAL INDEPENDENCE PAYMENTS ASSESSMENT

Interpretation

1 In this Schedule, -

“aid or appliance” has the meaning given in regulation 2(1);

“assistance” means physical intervention by another person;

“bathe” means clean one's torso, face, hands and underarms;

“cook” means heat food at or above waist height;

“communicate” means convey and understand information in the claimant's native language;

“communication support” means-

- (a) support from a person trained to communicate with people with specific communication needs; or
- (b) support from someone experienced in communicating with the claimant;

“complex financial decisions” means –

- (a) calculating household and personal budgets;
- (b) managing and paying bills; and
- (c) planning future purchases;

“dress and undress” includes put on and take off socks and slip-on shoes;

“engage socially” means-

- (a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships;

“groom” means-

- (a) comb or brush one's hair;
- (b) wash one's hair; and
- (c) clean one's teeth;

“manage incontinence” means manage evacuation of the bowel or bladder including using a collecting device or self-catheterisation;

“manage medication or therapy” means take medication or undertake therapy, where a failure to do so is likely to result in a deterioration in the claimant's health;

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“medication” means medication prescribed or recommended by a registered doctor, nurse or pharmacist;

“monitor health” means –

- (a) detect significant changes in the claimant's health condition; and
- (b) take action advised by a healthcare professional,

without which the claimant's health is likely to deteriorate;

“overwhelming psychological distress” means distress caused by an enduring mental health condition or an intellectual or cognitive impairment;

“prepare”, in the context of food, means the activities required to make food ready for cooking or eating;

“prompt” means remind or encourage and references to prompting are to prompting by another person;

“simple financial activities” means –

- (i) calculating the cost of goods; and
- (ii) calculating change required after a purchase;

“simple meal” means a cooked, one course meal for one using fresh ingredients;

“social support” means support from a person trained or experienced in assisting people to engage in social situations;

“supervision” means the continuous presence of another person for the purpose of ensuring the safety of the claimant;

“support dog” means a dog trained to guide or assist a person with a sensory impairment;

“take nutrition” means-

- (a) cut food into pieces;
- (b) convey food or drink to one's mouth; and
- (c) chew and swallow food or drink; or
- (d) take nutrition by using a therapeutic source;

“therapeutic source” means parental or enteral tube feeding using a rate limiting device such as a delivery system or feed pump;

“therapy” means long-term therapy which is –

- (a) undertaken at home; and
- (b) prescribed or recommended by a registered doctor, nurse, pharmacist or healthcare professional regulated by the Health Professions Council;

“toilet needs” means-

- (a) get on and off the toilet; and
- (b) clean oneself after using the toilet; and

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“unaided” means without-

- (a) the use of an aid or appliance; or
- (b) assistance, prompting or supervision.

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