



## BRIEFING PAPER

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# ESA and PIP reassessments

By Steven Kennedy

Since 29 September 2017, some Employment Support Allowance and Universal Credit claimants with the most severe health conditions and disabilities have been exempt from future reassessments. Claimants meet the “severe conditions criteria” if they have been assessed as having a “limited capability for work-related activity”; have a severe, lifelong disability, illness or health condition; and are unlikely to ever be able to move into work.

In August 2018 the Department for Work and Pensions also issued updated internal guidance to ensure that people receiving the highest level of support under Personal Independence Payment, and whose needs are unlikely to change or may get worse, will receive an “ongoing award” of PIP with a “light touch” review at the ten-year point (although such ongoing awards have been a feature of PIP since its introduction in 2013). The DWP is consulting with stakeholders to develop the light touch review process.

The DWP also announced on 5 March 2019 that it would no longer be undertaking regular reviews of PIP awards for claimants at or above State Pension age unless they report a change in their needs. The Department expects to implement this policy from late Spring 2019.

## 1. ESA and Universal Credit reassessments

Where an ESA or Universal Credit claimant has been assessed as having or treated as having a limited capability for work (LCW) or limited capability for work-related activity (LCWRA), social security law provides that the DWP may require them to undergo a further Work Capability Assessment (WCA) to determine whether-

- there has been a relevant change of circumstances in the claimant’s physical or mental condition; or
- the previous determination was made in ignorance of, or based on a mistake as to, some material fact<sup>1</sup>

ESA claimants may also be reassessed if it is at least three months since the previous determination of LCW/LCWRA.

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<sup>1</sup> Regulations 19 and 34 of the *Employment and Support Allowance Regulations 2008* (SI 2008/794 as amended); regulations 15 and 30 of the *ESA Regulations 2013* (SI 2013/379 as amended); regulation 14 of the *UC Regulations 2013* (SI 2013/376 as amended)

## 2 ESA and PIP reassessments

Beyond this, there are no rules on how often reassessments take place, but the DWP normally follows the recommendation of the Maximus<sup>2</sup> assessor (Healthcare Professional or “HCP”) on when it might be appropriate for the individual to be reassessed.

The DWP’s [Technical guide to the Work Capability Assessment](#) states:

The Work Capability Assessment will continue to be applied at regular intervals during the life of an award to ensure the conditions for entitlement are maintained.

The timing of further assessments is determined by the Jobcentre Plus decision maker. To assist the decision maker, the approved healthcare professional includes advice on the assessment report about when it is likely the claimant will be able to return to work. However, the assessment can be applied sooner if the decision maker considers there has been a significant change in the claimant’s health condition or disability.<sup>3</sup>

The internal guidance for Maximus assessors on a claimant’s prognosis at the examination and the appropriate interval before reassessment might be considered is in section 3.10 of the DWP’s [Revised WCA Handbook](#).<sup>4</sup>

The categories of prognosis that an assessor can advise are:<sup>5</sup>

I advise that work could be considered within:

- three months
- six months
- 12 months
- 18 months

I advise that work is unlikely:

- Within two years
- In the longer-term

The [Revised WCA Handbook](#) states (at p149; original emphasis)):

**In all cases your [i.e. the assessor’s] opinion on when engaging in work or there is likely to be an improvement in the persons condition could be considered must be fully and comprehensively justified. It is important to consider each case individually and to choose and justify the appropriate time period.**

An appeal Tribunal’s decision may include a recommendation on when the next WCA should take place following a successful appeal. Unless there is “strong justification” to do otherwise, the DWP should follow any such recommendation, but unless the Tribunal specifies explicitly a particular period following the decision date, the Department assumes that the clock starts ticking from date of the original decision that was appealed. There should also be a minimum period of eight months between the date of the appeal decision and a subsequent WCA, unless DWP has good grounds for believing that an earlier review is required.

Further information on the rules regarding fresh assessments of LCW/LCWRA and Tribunals’ recommendations can be found in [paragraphs 42290-42301 of the DWP Decision Maker’s Guide](#).<sup>6</sup>

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<sup>2</sup> Maximus operates as the [Centre for Health and Disability Assessments \(CHDA\)](#)

<sup>3</sup> ESA214, 7 July 2016, p16

<sup>4</sup> MED-ESAAR2011/2012HB-001, last updated 7 February 2019

<sup>5</sup> HC Deb 23 October 2013 c165w

<sup>6</sup> See also Simon Osborne, “[Repeat WCAs following appeal: new guidance](#)”, Welfare Rights Bulletin, Issue 243, December 2014

## 1.1 “Switching off” ESA reassessments

On 1 October 2016 the then Secretary of State for Work and Pensions, Damian Green, announced changes to the rules on repeat assessments for Employment and Support Allowance claimants.<sup>7</sup> All new ESA claimants would still have to undergo the Work Capability Assessment (WCA), but some ESA claimants with the most severe health conditions and disabilities would be exempt from future reassessments (at the time all ESA claimants, regardless of their condition, were reassessed periodically under the rules outlined above).

A subsequent written statement set out the Government’s plans:

When people claim Employment and Support Allowance (ESA) and/or Universal Credit (UC) due to a health condition or disability they are required to take part in Work Capability Assessments (WCA) on an ongoing basis to confirm their eligibility. This includes people with the most severe health conditions or disabilities, even though we already know from their initial WCA, and from healthcare professionals, that, short of medical advances, their condition is unlikely to improve.

On 1 October, I announced that that we will stop reassessing people with the most severe health conditions and disabilities. This change will apply to people who have already been placed in the ESA Support Group or UC Limited Capability for Work and Work Related Activity categories following a WCA and who have the most severe health conditions and disabilities (defined as claimants with severe, lifelong, often progressive and incurable conditions, with minimally fluctuating care needs, who are unlikely to ever be able to move closer to the labour market and into work). The IT changes needed are expected to be completed by the end of 2017. In the meantime, we will be working to ensure these people are not reassessed unnecessarily.

Over the coming months we will work with key stakeholders, including disabled people, disability charities, our health assessment provider, the Centre for Health and Disability Assessments, medical professionals and others to develop a set of criteria, set out in guidance, to switch off reassessments for those that are eligible.<sup>8</sup>

The change would only apply to claimants placed in the ESA Support Group and the equivalent group in Universal Credit.<sup>9</sup> Exemption from reassessment would not be based on medical condition. The Government stated:

Rather than a list of specific medical conditions, the criteria will be based on identifying claimants with the most severe health conditions or disabilities where it would be unreasonable to expect the individual to undertake any form or amount of work or work-related activity.<sup>10</sup>

## 1.2 The “severe conditions” criteria for switching off reassessments

On 29 September 2017, the DWP announced that ESA claimants in the Support Group and Universal Credit claimants with limited capability for work and work-related activity (LCWRA) will no longer need to be reassessed if they-

- have a severe, lifelong disability, illness or health condition; and
- are unlikely to ever be able to move into work

<sup>7</sup> “[ESA benefit payments: Re-tests axed for chronically ill claimants](#),” BBC News, 1 October 2016; see also Conservative Party, [Green: Speech to Conservative Party Conference](#), 4 October 2016

<sup>8</sup> HCWS174 [on Employment and Support Allowance], 10 October 2016

<sup>9</sup> PQ 49346 [on Employment and Support Allowance], 26 October 2016

<sup>10</sup> PQ 52657 [on Employment and Support Allowance: Chronic Illnesses], 16 November 2016

Claimants will be told if they will not be reassessed **following** their WCA.<sup>11</sup> This means that if a person has not undergone an assessment since September 2017, they will have to be reassessed for it to be determined whether they meet the “severe conditions” criteria for switching off future reassessments.

The severe conditions guidance is now in Appendix 8 of the DWP’s [Revised WCA Handbook](#). The Handbook explains that the principles behind the implementation of the severe conditions prognosis advice are to:

- Reduce any unnecessary disruption caused to claimants by a repeat assessment when we do not expect re-assessments to tell us anything new for the purposes of administering their benefit.
- Reduce the burden placed on claimants to continue to produce evidence confirming the impact of a health condition or disability
- Reduce the need for the Department or CHDA [i.e. Maximus] to conduct unnecessary assessments when resource could be better focused.<sup>12</sup>

The Handbook states that in addition to meeting the criteria for Limited Capability for Work-Related Activity, a claimant must satisfy four further criteria to avoid future reassessments.

The following table from Appendix 8 of the Handbook sets out the four criteria and gives examples of conditions that might – or might not – meet the criteria:

Criterion	Description	Examples of conditions that might meet the criteria	Examples of conditions that might <b>not</b> meet the criteria
<b>The level of function would always meet LCWRA</b>	The level of function would always meet LCWRA criteria	Motor Neurone Disease (MND), severe and progressive forms of MS, Parkinson’s, All dementias, All chromosomal conditions, Huntington’s, severe irreversible cardiorespiratory failure, severe acquired brain injury ...this list is not exhaustive	Conditions which might be severe at times but recovery of function might be present for substantial periods, such as recently diagnosed relapsing non-progressive forms of MS or some people with less severe mental health conditions with periods of reasonable function

<sup>11</sup> DWP, [Employment and Support Allowance and Universal Credit: changes to the Work Capability Assessment](#), 29 September 2017

<sup>12</sup> Para 3.10.1.3

<b>Lifelong condition, once diagnosed</b>	The condition will always be present. Some lifelong conditions are present from birth, but others will develop or be acquired later in life.	Conditions which might be cured by transplant / surgery / treatments or conditions which might resolve. This should be based on currently available treatment on the NHS and not on the prospect of scientists discovering a cure in the future	
<b>No realistic prospect of recovery of function</b>	Advice on this should be based on currently available treatment and not on the prospect of scientists discovering a cure in the future	As per criterion 1	A person within the first 12 months following a significant stroke who may recover function during rehabilitation , so whilst the condition is lifelong, function might improve
<b>Unambiguous condition</b>	They have been through relevant clinical investigation and a recognised medical diagnosis has been made		Non-specific symptoms not formally diagnosed or still undergoing investigation

Claimants must meet **all four** of the conditions listed in the first column.

The severe conditions criteria can **only** be met by claimants found to have a Limited Capability for Work-Related Activity (LCWRA). The change **does not therefore affect:**

- ESA claimants placed in the Work-Related Activity Group
- UC claimants who are only found to have a Limited Capability for Work

Links to further information on the severe conditions guidance can be found on Disability Rights UK’s website – see [Guidance on Work Capability Assessment reassessment published](#) (6 October 2017).

A parliamentary written answer on 12 March 2019 stated that, as of May 2018, 23,900 ESA claimants had been assessed as meeting the “severe conditions” criteria for switching

off assessments, of whom 9,500 had a mental or behavioural disorder as their primary medical condition, and 4,700 had diseases of the nervous system.<sup>13</sup>

### 1.3 Responses to the new rules

The umbrella group [Disability Rights UK](#) welcomed the new criteria as an improvement on the previous approach, but argued that they fail to resolve the problems of poor decision-making at the WCA stage, resulting in “eighty per cent of mandatory reconsiderations failing but with two thirds of independent appeals succeeding.”<sup>14</sup>

Disability Rights UK is also critical of the timing of reassessment determinations: claimants will be told if they will not be reassessed following their WCA. It states:

There is no need for an immediate decision to be made on whether someone should be exempt from further reassessment at the WCA itself. ESA could be awarded whilst, over a longer time period, a specialist opinion as to long term prognosis could be sought.

Such a procedure would lead to less unnecessary WCA future reassessments.<sup>15</sup>

## 2. Periodic reviews of PIP awards

All Personal Independence Payment awards are subject to periodic review – this is a key feature of the benefit. The Coalition Government argued that one of the problems with Disability Living Allowance was that there was “no system to check whether awards remain correct”, although disability organisations and others disputed this assertion.<sup>16</sup>

During the passage of the *Welfare Reform Bill 2010-12* the Coalition Government did not agree to exemptions from reassessment for people with particular disabilities, but said that decisions on the frequency of reassessments would take into account of the nature of the person’s disability and the likelihood of a change in their circumstances. It also said that, for some individuals, a face-to-face consultation might not be necessary for their award to be reassessed.<sup>17</sup>

A written answer from November 2013 sets out the then Government’s position on PIP reassessments for people with lifelong conditions:

**Helen Jones:** To ask the Secretary of State for Work and Pensions if he will make it his policy that people with long-term conditions are not subject to costly and stressful reassessments for personal independence payments when their condition is not likely to improve; and if he will make a statement. [141428]

**Esther McVey:** Personal independence payment is designed to assess people as individuals and ensure that decisions on entitlement, award lengths and timing of reviews are appropriate and evidence-based. While in some cases short-term awards of one or two years may be appropriate, we have been clear that longer term awards will be made in cases where the claimant’s needs are expected to remain relatively stable or change slowly. Ongoing awards will be made in some cases where significant change in the claimant’s needs is very unlikely.

All awards, regardless of duration, will be reviewed periodically to ensure that the individual continues to receive the correct amount of benefit. Awards will be reviewed

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<sup>13</sup> [PQ 216179](#)

<sup>14</sup> [DR UKs statement on the new WCA reassessment guidance](#), 6 October 2017

<sup>15</sup> Ibid

<sup>16</sup> See section 4.7 of Commons Library briefing 5869, [Disability Living Allowance reform](#)

<sup>17</sup> For further information on consideration of these issues during the Commons Committee Stage of the Bill see [pp45-47 Library briefing RP11/48](#)

in a proportionate way with consideration given to the circumstances of the individual.

While face-to-face consultations will be an important part of the assessment for most individuals, allowing an in-depth look at their circumstances, they will not be appropriate in every case. Where there is sufficient and robust factual information about the claimant and the impacts of their health condition or impairment on which to make a paper-based assessment, it would be inappropriate to require individuals to attend a consultation. However, these decisions need to be taken on a case-by-case basis, as impairments can affect people in very different ways.<sup>18</sup>

PIP may be awarded (by the DWP, or following the decision of a Tribunal) for a fixed period (e.g. one, two or five years) or on an “ongoing” basis. If a person thinks they should have been given a longer award, they can challenge the decision in the usual way – i.e. by requesting that DWP undertake a [Mandatory Reconsideration](#), and if DWP upholds its original decision, by [appealing to a Tribunal](#).

The DWP can however decide to reassess a person **at any time** after PIP has been awarded – they do not have to wait until the planned review/intervention is due – and **for any reason**.<sup>19</sup>

When a person is assessed for PIP, a Health Professional (HP) employed by Atos or Capita (the assessment providers) will make a **recommendation** on when it might be appropriate to review the award, based on the prognosis for the individual. How HPs should go about this is covered in sections 1.9-1.10 of the DWP’s [PIP assessment guide part 1: the assessment process](#).<sup>20</sup> The HP may recommend a specific review period, or alternatively indicate “no review required.” The guidance states that the latter option may be considered appropriate in the following circumstances:

- where the HP considers there to be no likely change to the functional impairment
- where the claimant has functional impairment which is not likely to substantially change in the long-term, allowing for short-term periods of functional change in the case of fluctuating conditions
- where the claimant has very high levels of functional impairment in both daily living and mobility components likely to reach the threshold for an enhanced/enhanced award, and in which their needs are only likely to increase, such as with progressive conditions<sup>21</sup>

The **decision** on the length of the award and on when the award should be reviewed is however taken by a DWP Decision Maker (also sometimes referred to as “Case Managers” or CMs).

The following extract from a DWP Decision Making Process guide – released in August 2014 in response to a Freedom of Information request<sup>22</sup> – gives details:

#### **Award period and reviews**

340. The CM decides the period of an award based on all the evidence including the advice from the HP [Health Professional]. The CM also decides if a review or ‘planned intervention’ will apply and when the review date should be set for. This should also be based on all the evidence including the claimant questionnaire, (PIP2) other evidence provided and advice from the HP.

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<sup>18</sup> HC Deb 4 February 2013 cc98-9w

<sup>19</sup> [Regulation 11 of the Social Security \(Personal Independence Payment\) Regulations 2013 \(SI 2013/377 amended\)](#)

<sup>20</sup> Last updated 5 November 2018

<sup>21</sup> Para 1.10.2

<sup>22</sup> See [https://www.whatdotheyknow.com/request/pip\\_renewal\\_process](https://www.whatdotheyknow.com/request/pip_renewal_process)



See: [Chapter P2 - Assessment for PIP](#) Advice for Decision Makers 'Duration of Award'

341. A review point or 'planned intervention' is an opportunity to look at entitlement at set intervals to ensure the claimant continues to get the right amount of PIP. The review point selected should be based on the claimant's individual circumstances.

342. If the CM decides a planned intervention is appropriate based on the evidence and advice they record the review date in PIPCS when the decision is made. The CM sets the end date of the award for a year after the planned intervention date this is to allow enough time for the intervention to take place.

343. The award period options for the CM to consider and decide are:

- Short fixed term award, (SFT) with or without a planned intervention, these can be for a minimum of 9 months and up to a maximum of two years.
- Longer fixed term award, (LFT) the CM decides the review (planned intervention) point and then sets the end date of the award for 12 months after the review date.
- Ongoing award, where any change is very unlikely and with a planned intervention date no more than 10 years from the award date.

See: ADM [Chapter P2 - Assessment for PIP](#) 'Duration of Award'

In relation to "ongoing awards", the guidance states:

370. Ongoing awards are appropriate where the claimant's restrictions on daily living and or mobility are unlikely to change significantly. If the HP considers no significant change is likely and no requirement for future review it indicates an ongoing award may be appropriate.

371. If the HP considers the claimant's restrictions will continue but are likely to deteriorate they would usually advise on an appropriate review period rather than no review - See: 'PIP Assessment Guide' – 'Prognosis' section.

372. If the CM considers all the evidence and advice and decides an ongoing award applies, they don't record an end date in PIPCS.

373. The planned intervention date will depend on the particular circumstances of the case and the CM will decide the most appropriate date based on the evidence and the advice from the HP. A date may be set for less than 10 years but in any case the planned intervention date should be no longer than 10 years - **See: Completing the assessment questionnaire in PIPCS**, the See: '[PIP Assessment Guide](#)', and '[Assessment Provider Process](#)' and '[Planned Interventions](#)' guidance.

Between the introduction of Personal Independence Payment in April 2013 and 31 January 2019, 375,550 PIP claimants were awarded an ongoing award at their initial decision. This includes both new PIP claims and former DLA claimants reassessed for PIP.<sup>23</sup>

## 2.1 June 2018 announcement

On 18 June 2018, the then Minister for Disabled People, Health and Work, Sarah Newton, announced that, after listening to feedback from organisations and from the public, the Government would be implementing changes so that PIP claimants with severe or progressive conditions requiring high level support under PIP would not face reassessment for 10 years.<sup>24</sup> On the timeframe for introducing the changes, the Minister said:

The government will be working with stakeholders to design the light touch review process so that it adds value for both our claimants and the department – for

<sup>23</sup> [PQ 242185 \[on Personal Independence Payment: Chronic Illnesses\]](#), 16 April 2019

<sup>24</sup> DWP Press release, [Government to end unnecessary PIP reviews for people with most severe health conditions](#), 18 June 2018



example, by providing information on services available and ensuring that contact or bank details have not changed.

We are still finalising details of the guidance and will publish it later this summer.<sup>25</sup>

The Minister issued a Written Statement in December 2018<sup>26</sup> which included a link to updated guidance for DWP Case Managers on ongoing awards with a light touch review at 10 years:

I would like to update the House on the improvements my Department is making in Personal Independence Payment (PIP). The guidance available to PIP Case Managers was updated in August 2018 to ensure those who are awarded the highest level of support whose needs are unlikely to improve or will deteriorate receive an ongoing award with a light touch review at the 10 year point. Following on from the introduction of that guidance in August, we have now commenced activity to review the claims of existing claimants on the top level of support to identify those individuals who, in light of the new guidance, should be receiving an ongoing award. This is still in the early stages and being dealt with in date order, prioritising claimants whose awards are coming up for an award review, but commencing this activity is a really important step to reducing the number of individuals having to undergo an unnecessary award review where their needs are only likely to deteriorate.

A copy of the guidance for Case Managers has been placed in the House of Commons Library and is available at:

[http://data.parliament.uk/DepositedPapers/Files/DEP2018-1113/UIN\\_174062\\_-\\_Award\\_period\\_guidance\\_10.10.18.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2018-1113/UIN_174062_-_Award_period_guidance_10.10.18.pdf)

The light touch review process and guidance itself has not yet been developed, but we aim to do so well in advance of the first such reviews taking place. We intend to consult with stakeholders as part of that process.

The guidance - [Setting an award period](#) – explains that “ongoing” PIP awards can be reached in one of two ways:

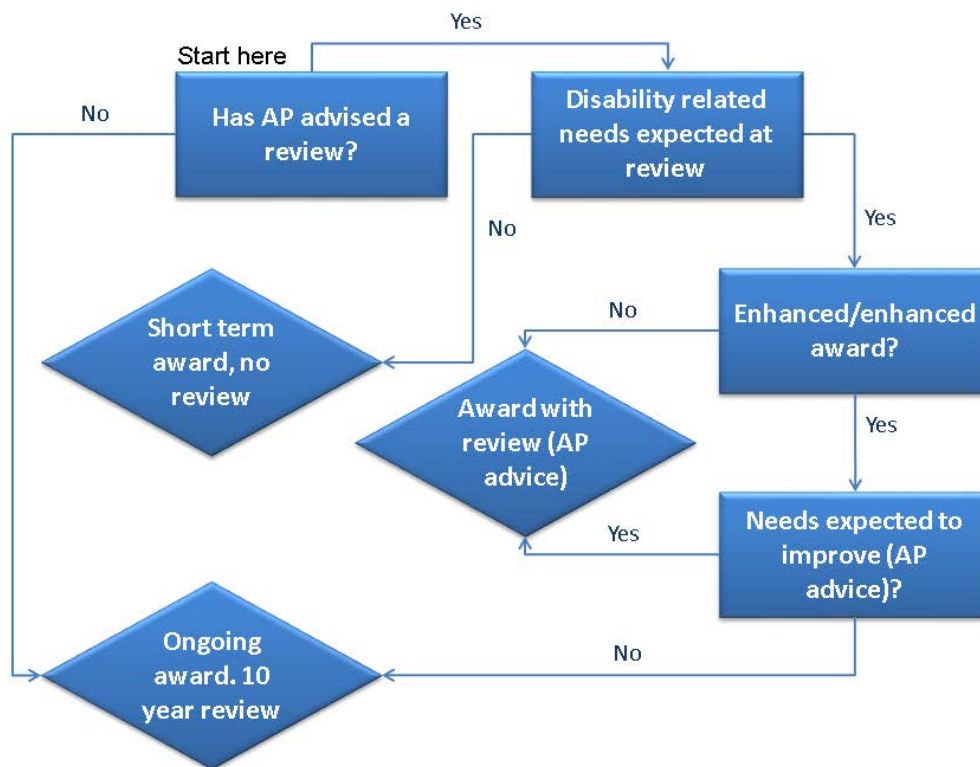
- following advice from the Assessment Provider (i.e. Atos or Capita) that no review is required and the claimant’s restrictions on Daily Living and/or Mobility are stable and unlikely to change significantly or they have very high levels of needs which will only deteriorate; **or**
- where the claimant is awarded the enhanced rate of both the Daily Living and Mobility components and their needs are not going to improve or would only deteriorate.

A flow chart in the guidance sets out the decision making process:

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<sup>25</sup> Ibid. In its [response](#) to the Work & Pensions Committee inquiry into PIP and ESA assessments, the Government indicated that the changes would be implemented by amending the Case Managers guidance. [HC 986](#), 23 April 2018 at p2

<sup>26</sup> [HCWS1224](#), 20 December 2018



## 2.2 Reassessing PIP claimants over State Pension age

In her Written Statement to the House on Health and Disability on 5 March 2019<sup>27</sup>, the Secretary of State for Work and Pensions, Amber Rudd, announced that, among other things-

We will improve and simplify the customer experience by no longer undertaking regular reviews of Personal Independence Payment (PIP) awards for claimants at or above State Pension age unless they tell us their needs have changed.

A written answer on 8 April said that the DWP was “working to implement this change as soon as possible and [we] expect this to occur by late spring 2019.”<sup>28</sup>

<sup>27</sup> [HCWS1376](#)

<sup>28</sup> [PQ 239302 \[on Pensioners: Personal Independence Payment\]](#), 8 April 2019

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