



BRIEFING PAPER

Number 7911, 13 April 2017

Changes to the Personal Independence Payment eligibility criteria

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Summary

Personal Independence Payment (PIP) is replacing Disability Living Allowance (DLA) for people of working age. Like DLA, PIP is non-means-tested and is intended to help with the extra costs arising from ill health or disability. It has two components: a mobility component, based on an individual's ability to get around; and a "daily living" component, based on ability to carry out other key activities necessary to be able to participate in daily life. Each component has two rates.

PIP was introduced for new claims from April 2013, and DWP expects that all existing working age DLA claimants will have been reassessed for PIP by 2019-20. The PIP assessment is intended to provide "a more holistic assessment of the impact of a health condition on an individual's ability to participate in everyday life." It covers sensory impairments, developmental needs, cognitive impairments and mental conditions, as well as physical disabilities. PIP is intended to target support more closely on those most in need, and significantly fewer people will qualify for PIP than would have qualified for DLA. The Office for Budget Responsibility estimates that savings from PIP will however be considerably less than the 20% savings originally expected.

On 23 February 2017, DWP laid before Parliament regulations to amend the PIP eligibility criteria from 16 March to "clarify the drafting and reverse the effect" of two recent Upper Tribunal judgments, which had interpreted the Schedule setting out the assessment criteria "in ways which the Government did not intend." The first judgment relates to the PIP daily living activity 3 ("managing therapy or monitoring a health condition"); while the second judgment relates to mobility activity 1 ("planning and following journeys"), specifically the assessment scores for those unable to undertake journeys due to psychological distress. An Equality Analysis accompanying the regulations estimates that around 3,000 claimants could ultimately be affected by reversing the effect of the judgment relating to daily living activity 3, while reversing the effect of the mobility activity 1 judgment could affect 336,500 claimants (with 282,500 no longer entitled to any mobility component). The latter changes could affect people with a wide range of conditions including learning disability, autism, schizophrenia, anxiety conditions, social phobias and early dementia.

The Government states that failure to reverse the effect of the judgments would have led to "substantial unplanned increases to public expenditure" totalling £3.7 billion cumulatively between 2016-17 and 2021-22, and that the changes are necessary "to restore the original aim of [PIP], making sure that we are giving support to those who need it most."

Disability organisations have called on the Government not to proceed with the changes. Some have questioned how the changes fit with the Government's stated commitment to "parity of esteem" between physical and mental health issues. Opposition parties are also seeking to revoke the regulations (which are subject to the negative procedure).

The regulations come less than 12 months since the Government abandoned controversial changes to the rules on how the PIP assessment takes account of the use of "aids and appliances", which were expected to save an additional £1.3 billion a year by 2019-20. Following the resignation of Iain Duncan Smith as Secretary of State for Work and Pensions on 18 March 2016, the Government announced that it would not be proceeding with these changes to PIP, would not be seeking alternative offsetting savings, and was not seeking further savings from the welfare budget.

1. What is PIP?

Personal Independence Payment (PIP) is replacing Disability Living Allowance (DLA) for people of working age. PIP was introduced for new claims from April 2013, and it is expected that by late 2017 remaining working age DLA claimants will have been “invited” to claim PIP.¹ At the end of October 2016, 1,091,200 PIP claims were in payment in Great Britain,² but by 2021-22 this is expected to rise to 2.6 million.³

Box 1: Personal Independence Payment key features

- non-means-tested, non-taxable benefit payable whether in or out of work, to help with the extra costs arising from ill health or disability
- It replaces Disability Living Allowance (DLA) for people of working age (16-64). People aged 65 or over on 8 April 2013 can continue to get DLA
- consists of two components – a mobility component, based on an individual’s ability to get around; and a “daily living” component, based on their ability to carry out other key activities necessary to be able to participate in daily life – each paid at two rates (“standard” or “enhanced”)
- weekly rates from April 2017: standard mobility £22.00, enhanced mobility £58.00; standard daily living £55.65, enhanced daily living £83.10
- no automatic entitlement for people with particular conditions (although the existing DLA rules for people with a terminal illness are carried over to the new benefit)
- entitlement determined by a “new, fairer, objective assessment of individual need” to ensure support is “targeted on those individuals whose health condition or impairment has the greatest impact on their day-to-day lives”
- Advice from an “independent healthcare professional” integral to the assessment process. In most cases, this will involve a face-to-face meeting with the claimant
- all PIP awards to be subject to periodic review

The *Welfare Reform Act 2012* provides the legislative framework for Personal Independence Payment (PIP). The 2010 Government believed that Personal Independence Payment would have certain advantages over Disability Living Allowance:

- It would target support more closely on those most in need of support
- It would be more responsive as claimants’ circumstances change
- It would be based on a fairer, more transparent and consistent assessment of need
- It would be easier for claimants, DWP staff and disability organisations to understand⁴

From the outset the 2010 Government also made it clear that a key aim for the new benefit was the need to make savings and reduce the working age caseload for disability benefits. PIP was originally expected to reduce working-age DLA caseloads and expenditure by 20 per cent, giving savings of around £1.5 billion a year by 2016-17. Revised estimates published by DWP in December 2012 suggested that, by 2018, around 607,000 fewer people would receive PIP than would have got DLA – a 28% reduction in the caseload. However, in its March 2016 *Economic and fiscal outlook* report, the Office for Budget Responsibility estimated that savings from PIP would be considerably lower

¹ DWP, [Timetable for PIP replacing DLA](#), updated 26 August 2015

² Starting from June 2016, PIP is also being introduced in Northern Ireland – see NI Department for Social Development, [Welfare Changes - Personal Independence Payment Information](#), 21 March 2016

³ DWP, [Personal Independence Payment: Official Statistics to October 2016](#), December 2016; DWP, [Benefit expenditure and caseload tables: Autumn Statement 2016](#), February 2017

⁴ National Audit Office, [Personal Independence Payment: early progress](#), HC 1070 2013-14, 27 February 2014, para 1.5. See also Commons Library briefing SN05869, [Disability Living Allowance reform](#)

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than originally expected. In December 2012, the OBR estimated savings from the introduction of PIP of £3.0 billion by 2017-18, but based on data on reassessment outcomes, it estimated that savings would be almost **90% lower at £0.4 billion**. This implies savings of around 5% rather than the original 20% savings sought by the Government.⁵

⁵ OBR, [Economic and fiscal outlook](#), Cm 9212, March 2016, para 4.116

2. PIP assessment

The 2010 Government said that the assessment for Personal Independence Payment was designed to provide “a more holistic assessment of the impact of a health condition on an individual’s ability to participate in everyday life.” It covers sensory impairments, developmental needs, cognitive impairments and mental conditions, as well as physical disabilities.

The Department for Work and Pensions is responsible for handling claims for PIP and making decisions on entitlement to benefit. Contracted assessment providers are however a key element in the claims process. Atos Healthcare holds the contracts for undertaking assessments in Northern England and Scotland; and in London and Southern England. Capita Business Services Ltd holds the contracts covering Wales and Central England; and Northern Ireland. These are separate from the DWP Medical Services contract, now held by Maximus.

The completed PIP questionnaire and any accompanying evidence submitted by the claimant are forwarded to the assessment provider, who decides whether a face to face consultation is necessary. The Government’s initial expectation was that around a quarter of PIP claims could be decided on the basis of the completed form and evidence submitted, without the person having to attend a face to face assessment.⁶

The assessment provider’s report is then forwarded to DWP, where a Decision Maker (now referred to as “Case Managers”) will review the report, along with all other evidence in the case, before making a decision about benefit entitlement.

2.1 Assessment criteria

The PIP regulations set out twelve different “activities” to be considered in determining entitlement to the benefit; ten relate to the “daily living” component and two relate to the mobility component:

Daily Living (10 activities):

- preparing food
- taking nutrition
- managing therapy or monitoring a health condition
- washing and bathing
- managing toilet needs or incontinence
- dressing and undressing
- communicating verbally
- reading and understanding signs, symbols and words
- engaging with other people face to face
- making budgeting decisions

⁶ HC 916 2012-13, Q14

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Mobility (2 activities):

- planning and following journeys
- moving around

For each activity there is a series of “descriptors” which define increasing levels of difficulty carrying out the activity (and therefore higher levels of need) – see for example the “preparing food” activity below.

Box 2: Activity 1: Preparing food

| Descriptor | Points |
|---|---------------|
| Can prepare and cook a simple meal unaided. | 0 |
| Needs to use an aid or appliance to be able to either prepare or cook a simple meal. | 2 |
| Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave. | 2 |
| Needs prompting to be able to either prepare or cook a simple meal. | 2 |
| Needs supervision or assistance to either prepare or cook a simple meal. | 4 |
| Cannot prepare and cook food. | 8 |

Claimants will be allocated a descriptor (and score) for each activity in the assessment. In determining which descriptor is appropriate, consideration should be given to a range of issues, including whether the person can complete the activity safely, repeatedly, within a reasonable time period; and whether the impact of their disability fluctuates.

Some of the activities (including Activity 1 in the box above) take into account the fact that, although the person may be able to undertake that activity, they can only do so by using aids or appliances. In the case of the “Preparing food” activity, aids and appliances could include, for example, prostheses, a perching stool, lightweight pots and pans, easy grip handles on utensils, single lever arm taps and spiked chopping boards.

The total scores for all of the activities related to each component are then added together to determine entitlement for that component. The entitlement threshold for each component is 8 points for the “standard” rate and 12 points for the “enhanced rate.”

Further information on the PIP assessment and how it should be applied is given in the DWP’s [PIP assessment guide](#) (updated September 2016).

2.2 Development of the PIP assessment

Development of the PIP assessment criteria was informed by consultations undertaken by the Department for Work and Pensions in 2011 and 2012. The first draft of the proposed assessment criteria for PIP was published in May 2011 and an informal consultation ran until August 2011. This was followed by a second draft in November 2011, and in January 2012 a final consultation began on the PIP assessment criteria, descriptor weightings and entitlement thresholds. This public consultation ran until 30 April 2012, and the final version of the assessment criteria was set out in the [Government’s response to the](#)

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[consultation on the Personal Independence Payment assessment criteria and regulations](#), published alongside the final draft PIP Regulations on 13 December 2012.

The following extract from the DWP's Equality Analysis for the current regulations gives an overview of the different stages in the consultation process, and links to relevant resources:

Development of the PIP assessment and the standardised descriptors

8. The Department consulted on PIP generally from December 2010 onwards [1] and the design of the PIP assessment was subject to extensive consultation between 2011 and 2012. As part of this process, the Department set up an independent Assessment Development Group ("the Group") to advise policy makers on the development of the PIP assessment activities and descriptors. Members were chosen to encompass a wide variety of relevant expertise and included individuals from the fields of occupational therapy, psychiatry, physiotherapy, social work, general practice and community psychiatric nursing, as well as representatives from RADAR (Royal Association for Disability Rights), an umbrella organisation working with and for disabled people, and Equality 2025, a non-departmental public body set up to advise the government on disability equality.

9. Selecting experts from a range of backgrounds was intended to ensure the assessment reflected a holistic view of the wide range of impacts that health conditions and impairments have on individuals in their daily lives.

10. Throughout the development of the assessment, the Department and the Group considered various options for determining entitlement, including whether it would be feasible to assess the actual extra costs incurred by individual claimants as a result of their health condition or impairment. As explained above this approach was not deemed to be fair or practical as it would not only lead to inconsistent outcomes but would also be expensive and difficult to administer. The Government therefore proposed a new assessment for PIP, looking at an individual's ability to carry out key day-to-day activities. The assessment was intended to meet "the aims of prioritising support to individuals who face the greatest challenges and expense". [2]

11. In May 2011 the Department published an initial draft of the assessment criteria, and over the summer of 2011 informally consulted on this draft [3], undertaking meetings and seeking written feedback, to hear the views of disabled people and their organisations on these early proposals. The Department published a second draft of the assessment criteria in November 2011 [4], and launched a 15-week formal consultation on it on 16 January 2012. [5] The consultation ran until 30 April 2012 and received over 1,000 responses, with the final assessment criteria and the thresholds for entitlement published on 13 December 2012 [6]. The assessment criteria were set out in Schedule 1 to the PIP Regulations, which were subject to affirmative resolution debate in the House of Commons on 5 February 2013 [7] and House of Lords on 13 February 2013. [8]

12. The assessment criteria are by no means able to perfectly predict an individual's exact needs and costs. An assessment into each individual's exact costs and needs would be prohibitively expensive. Instead, the criteria are used as proxy, providing an assessment that aims to be as accurate, fair and administratively feasible as possible.

1 www.gov.uk/government/consultations/disability-living-allowance-reform

2 www.gov.uk/government/uploads/system/uploads/attachment_data/file/181637/dla-reform-response.pdf – see summary of response to Question 3, paragraphs 8-11

3 <https://www.gov.uk/government/publications/personal-independence-payment-initial-draft-assessment-criteria>

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/153762/pip-second-draft-assessment-regulations.pdf

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

6 <https://www.gov.uk/government/consultations/personal-independence-payment-assessment-thresholds>

7

<https://www.publications.parliament.uk/pa/cm201213/cmgeneral/deleg11/130205/130205s01.htm>

8 <https://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/1302130002.htm#13021378000090>

Further background to the introduction of PIP is given in Commons Library briefing SN06538, [Draft Social Security \(Personal Independence Payment\) Regulations 2013](#).

3. The “aids and appliances” consultation and aftermath

As outlined in section 2, the PIP assessment looks at the extent to which the individual is capable of undertaking various activities. For some of the activities, a person can score points to help meet the threshold for PIP if they can only undertake that activity by using an “aid or appliance.” This could include things such as artificial limbs, colostomy bags, walking sticks; and non-specialist aids such as electric tin openers and long-handled sponges.

In December 2015 the Government launched a consultation on possible further changes to PIP.⁷ It highlighted that a significant proportion of PIP awards were on the basis of use of aids and appliances, many of which people might be expected to have already, or which could be obtained free of charge or at a one-off cost. It also argued that case law had expanded the scope of aids and appliances to include items which might not be reliable indicators of extra costs. The Government believed these developments were inconsistent with the original policy intent of focusing support on claimants with the greatest needs. It suggested a number of options for limiting payments to reflect actual costs incurred and for tightening the PIP eligibility criteria.

Disability organisations were strongly against the proposals, which they believed would reduce disabled people’s financial resilience and ability to live independently. They also questioned the evidence base for the changes and the Government’s reasoning concerning the role of the PIP assessment and consideration of the use of aids and appliances. They also criticised the short timescale for consultation responses.

On 11 March 2016 – four days before the Budget – the Government announced that, in the light of the consultation, the number points awarded in the PIP assessment would be halved for aids and appliances in relation to the “dressing and undressing” and “managing toilet needs” activities.⁸ As a result, 290,000 claimants would no longer receive the daily living component, and a further 80,000 would receive the standard rather than enhanced daily living component.⁹ Budget 2016 estimated savings from the aids and appliances changes at £15 million in 2016-17, rising to around £1.3 billion a year by 2020-21; or just under £4.4 billion cumulatively over the period 2016-17 to 2020-21.¹⁰

Coming only days after the Commons overturned Lords amendments to controversial provisions in the *Welfare Reform and Work Bill 2015-16* on the abolition of the Employment and Support Allowance Work-Related Activity Component for new ESA claims from April 2017¹¹, the response of disability and welfare rights groups to the announcement of the proposed PIP changes was strongly negative.¹²

⁷ DWP, [Consultation on aids and appliances and the daily living component of Personal Independence Payment \(PIP\)](#), 10 December 2015

⁸ [HCWS611 \[on Personal Independence Payment\]](#), 11 March 2016. See also DWP press release, [Personal Independence Payment consultation response announced](#), 11 March 2016

⁹ DWP, [The Government response to the consultation on aids and appliances and the daily living component of Personal Independence Payment](#), Cm 9194, March 2016

¹⁰ Budget 2016 Red Book, HC 901 2015-16, Table 2.1

¹¹ For details see Commons Library briefing CBP-7649, [Abolition of the ESA Work-Related Activity Component](#)

¹² For an overview of responses see “[Budget 2016: Charities Respond To Osborne’s Austerity Addiction](#)”, Welfare Weekly, 16 March 2016

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In the face of mounting political pressure, Government sources signalled a possible retreat on the PIP proposals.¹³ Speaking on BBC TV's Question Time on 17 March, the Education Secretary, Nicky Morgan, said that the PIP proposals were a "suggestion" and that they were still subject to consultation.¹⁴

On 18 March Iain Duncan Smith announced his resignation as Secretary of State for Work and Pensions.¹⁵ Following the resignation of Iain Duncan Smith as Secretary of State for Social Security on 18 March and the appointment of Stephen Crabb as his successor, the Government announced that it would not be proceeding with the PIP changes, would not be seeking alternative offsetting savings, and was not seeking further savings from the welfare budget.¹⁶

Further information on the background to the aids and appliances consultation, on what the Government proposed, on the circumstances surrounding Mr Duncan Smith's resignation and the reasons he gave for his decision, and on subsequent statements by the Government, can be found in Commons Library briefing CBP-7651, [Personal Independence Payment and the March 2016 Budget](#).

¹³ See for example "[Disability benefit cut: Tory backbenchers call for rethink](#)", *Guardian*, 16 March 2015; "[Wheelchair-bound Tory disability campaigner sabotages party's own website as he accuses George Osborne of 'destroying lives' with his Budget](#)", *Mail Online*, 16 March 2016; "[Budget 2016: George Osborne faces mass Tory rebellion over disability cuts](#)", *Telegraph*, 17 March 2016

¹⁴ "[Disability benefit cuts included in the Budget were just 'a suggestion', cabinet minister Nicky Morgan says](#)", *Independent*, 18 March 2016

¹⁵ See Laura Kuenssberg, "[IDS resignation 'undermines everything'](#)", BBC News, 18 March 2016; "[How the Iain Duncan Smith resignation crisis unfolded](#)", *Guardian*, 20 March 2016

¹⁶ See [HC 997-i 2015-16 Q5](#)

4. Announcement on 23 February

4.1 Written statement

In 23 February 2017 the Minister of State for Disabled People, Health and Work, Penny Mordaunt, made a [written statement](#) to the House of Commons announcing that the Department for Work and Pensions had laid before Parliament regulations amending the Schedule to the principal PIP regulations setting out the PIP eligibility criteria:

Social Security: Written statement - HCWS495

Department for Work and Pensions

Made on: 23 February 2017

Made by: [Penny Mordaunt](#) (Minister of State for Disabled People, Health and Work)

Today I am laying before Parliament amendments to the Personal Independence Payment (PIP) Regulations to restore the original aim of the benefit, making sure we are giving support to those who need it most.

PIP is a modern and dynamic benefit which contributes to the extra costs faced by people with disabilities and health conditions. It replaces Disability Living Allowance (DLA), which no longer properly took into account the needs of disabled people. Since PIP's introduction, greater support is going to the most vulnerable; over a quarter of those on PIP receive the highest level of support compared to just 15% of DLA's working-age claimants.

At the core of PIP's design is the principle that non-physical conditions should be given the same recognition as physical ones. That is why we developed the assessment criteria in collaboration with disabled people and independent specialists in health, social care and disability. Now, over two thirds of PIP claimants with mental health conditions get the higher Daily Living award, worth £82.30 per week, compared to 22% under DLA.

The Government continually monitors the effectiveness of PIP to ensure it is delivering its original policy intent and supporting those who face the greatest barriers to leading independent lives. Two recent Upper Tribunal judgments have broadened the way the PIP assessment criteria should be interpreted, going beyond the original intention. In order to make sure the initial purpose of PIP is maintained, we are making drafting amendments to the criteria which provide greater clarity. This will not result in any claimants seeing a reduction in the amount of PIP previously awarded by DWP.

The first judgment held that needing support to take medication and monitor a health condition should be scored in the same way as needing support to manage therapy, like dialysis, undertaken at home. Until this ruling, the assessment made a distinction between these two groups, on the basis that people who need support to manage therapy of this kind are likely to have a higher level of need, and therefore face higher costs.

The second held that someone who cannot make a journey without assistance due to psychological distress should be scored in the same way as a person who needs assistance because they have difficulties navigating. By way of example, the first group might include some people with isolated social phobia or anxiety,

whereas the second group might include some people who are blind. Until this ruling, the assessment made a distinction between these two groups, on the basis that people who cannot navigate, due to a visual or cognitive impairment, are likely to have a higher level of need, and therefore face higher costs.

If not urgently addressed, the operational complexities could undermine the consistency of assessments, leading to confusion for all those using the legislation, including claimants, assessors, and the courts. It is because of the urgency caused by these challenges, and the implications on public expenditure, that proposals for these amendments have not been referred to the Social Security Advisory Committee before making the regulations.

PIP is being devolved to the Scottish Government and I will continue to work closely with Scottish Ministers on the transfer of responsibilities.

The Social Security (Personal Independence Payment) (Amendment) Regulations 2017, Explanatory Memorandum and Equality Analysis will be available on legislation.gov.uk.

The Department also issued a [press release](#), which stated

This is not a policy change and will not result in any claimants seeing a reduction in the amount of PIP previously awarded by the Department for Work and Pensions (DWP). The purpose is to restore the original intention of the benefit which has been expanded by the legal judgments.

Spending on disability benefits has risen by more than £3 billion in real terms since 2010, and will remain higher in each year to 2020, than in 2010. Failing to reinstate the original intention of the policy would have led to substantial unplanned increases to public expenditure totalling £3.7 billion (between 2016 to 2017 and 2021 to 2022).¹⁷

4.2 The regulations

The [Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017 \(SI 2017/194\)](#) were laid before Parliament on 23 February and came into force on 16 March. The regulations are subject to the [negative procedure](#) – i.e. they automatically become law without debate unless there is an objection from either House. A [Liberal Democrat Early Day Motion](#)¹⁸ (with Labour and SNP support) “praying against” the regulations was tabled in the Commons.¹⁹ The EDM currently has 187 signatures. **A motion to revoke the regulations is due to be debated in the House of Commons on Wednesday 19 April.**

A motion was also presented in the Lords by the Liberal Democrat Work and Pensions spokesperson Baroness Bakewell of Hardington

¹⁷ [“Changes to Personal Independence Payment regulations,”](#) DWP press release, 23 February 2017

¹⁸ [EDM 985 2016-17](#)

¹⁹ A “prayer” is a particular type of EDM that is used, by convention, when MPs wish to object formally to a statutory instrument. If a motion ‘praying’ that an instrument ‘be annulled’ is tabled within 40 days of it being laid before Parliament, a debate may be arranged in a Delegated Legislation Committee or, more rarely, in the Chamber. See [What are Early day motions?](#) on the Parliament website.

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Mandeville, calling for the regulations to be annulled (see section 9 below).²⁰

In addition to an [Explanatory Memorandum](#)²¹ on the changes, the DWP published alongside the regulations and [Equality Analysis](#) which assesses the impact of the changes to the “managing therapy or monitoring a health condition” daily living activity and the “planning and following a journey” mobility activity.²²

Northern Ireland

On 30 March regulations were laid before Parliament making equivalent changes to the PIP rules in Northern Ireland.²³ The changes come into force in Northern Ireland on 20 April.

4.3 Consultation

In her written statement, the Minister said that the proposals to amend the regulations had not been submitted to the [Social Security Advisory Committee](#) (SSAC) before making the regulations because of the “urgency” caused by the challenges presented by the Upper Tribunal judgments, and the implications for public expenditure.

The Secretary of State is not required to submit draft social security regulations to SSAC if it is within six months of the commencement date of the relevant enabling provision in primary legislation. If this is not the case, proposals for regulations, “in the form of draft regulations or otherwise”, **must** be submitted to SSAC for them to comment on, **unless** “it appears to the Secretary of State that by reason of the urgency of the matter it is inexpedient so to refer them,” or if the Committee itself agrees that the proposals need not be referred. Where the Secretary of State makes regulations without having submitted proposals to SSAC on grounds of urgency, he must “refer the regulations to that body as soon as practicable after making them,” unless SSAC agrees this need not apply.²⁴

The [Explanatory Memorandum](#) accompanying the regulations gives further information on why the Department decided not to refer the proposed changes to SSAC:

8.1 The Secretary of State has decided pursuant to section 173(1)(a) of the Social Security Administration Act 1992 that, by virtue of the urgency of the matter, it is inexpedient to consult the Social Security Advisory Committee until after these Regulations are made. This is because of the need to ensure clarity for all users of the legislation (claimants and advisers, assessors and decision makers), and because of the estimated likely cost if the effect of the rulings is not reversed speedily. In the case of MH the annual costs (rounded to nearest £10 million) are estimated to be: £550m

²⁰ See also [Lib Dem Lords aim to kill new Tory restrictions on disability benefits](#), Liberal Democrat voice, 24 February 2017

²¹ DWP, [Explanatory Memorandum to The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#)

²² DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017

²³ [The Personal Independence Payment \(Amendment\) Regulations \(Northern Ireland\) 2017](#), SR 2017/69

²⁴ Section 173(1) [Social Security Administration Act 1992](#)

for 2017/18; £640m for 2018/19; £750m for 2019/20; £820m for 2020/21; and £900m for 2021/22. In the case of LB [the Upper Tribunal case relating to PIP Daily living activity 3] the annual costs (rounded to nearest £10 million) are estimated to be: £10m for 2017/18; £10m for 2018/19; £10m for 2019/20; £10m for 2020/21; and £10m for 2021/22.⁵ However, LB involves much greater complexities and so there is a significant risk that these costs could be much higher than estimated, posing a substantial fiscal risk. There is also an urgent need to restore clarity; the interpretation of the judgments affects not only the outcome for claimants but also the assessment process carried out by the Department's contracted healthcare providers. If not urgently addressed, the complexities involved could undermine the consistency of assessments, leading to confusion for all concerned, increased requests for mandatory reconsideration, and increased numbers of appeals.

8.2 The two judgments were first received by the Department for Work and Pensions on 8 and 9 December. This instrument has been made as soon as reasonably practicable after that, bearing in mind that careful consideration and analysis was required by the Department and Ministers to understand the implications and impacts fully before making any decision on whether to reverse the effect of the judgments.

The Explanatory Memorandum highlights the "extensive consultation" on the PIP assessment over the course of 2011 and 2012, culminating in the publication of the final assessment criteria in December 2012²⁵ and the debates in Parliament on the draft PIP regulations in February 2013²⁶, adding-

8.7 Bearing in mind this history of extensive consultation, the fact that the present instrument is intended purely to reinstate the original policy intention, and the urgency as explained at paragraph 8.1 above, the Secretary of State decided not to undertake further public consultation before making the present instrument.

In response to the Urgent Question on Personal Independence Payment on 28 February, the Secretary of State for Work and Pensions said that he had spoken to the Chair of the Social Security Advisory Committee and explained why he was invoking the urgency procedure. The Secretary of State added that "He and his committee still have the power to look at these regulations and make recommendations."²⁷

Statement by the chair of the Social Security Advisory Committee

On 2 March the Chair of the Social Security Advisory Committee, Paul Gray, [issued a statement](#) relating to the PIP regulations:

The Personal Independence Payment (Amendment) Regulations 2017: statement by Paul Gray

This statement clarifies the role of the Social Security Advisory Committee (SSAC) and its chair in the scrutiny of the proposals.

²⁵ See DWP, [Government's response to the consultation on the Personal Independence Payment assessment criteria and regulations](#), 13 December 2012

²⁶ [DLC Deb 5 February 2013 cc1-18](#); HL Deb 13 February 2013 cc

²⁷ [HC Deb 28 February 2017 c181](#)

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In view of the considerable interest in the [Personal Independence Payment \(Amendment\) Regulations 2017](#), and specifically the role of the Social Security Advisory Committee (SSAC) in the scrutiny of those proposals, I wanted to provide some clarity of the position insofar as it concerns SSAC.

As a courtesy, the Secretary of State for Work and Pensions contacted me last week to inform the committee that he intended to lay these regulations on 23 February 2017. His judgement was that the urgency of the matter meant it would be inexpedient to refer the legislation to the committee before doing so. The [Social Security Administration Act 1992](#) enables the Secretary of State to make such a judgement.

That same legislation makes clear that when the 'urgency' procedure is invoked, the regulations will be subject to the usual SSAC scrutiny process as soon as practicable after they have been made.

Accordingly, the Department for Work and Pensions will present the regulations to the committee for scrutiny at its next meeting on 8 March 2017. We will consider at that meeting whether or not we wish to take the regulations on formal reference or to comment further. The outcome of that meeting will be published on our website in the usual way.

Finally I wanted to place on record that, as I have been appointed to lead the [second independent review of the Personal Independence Payment](#), I shall take no part in the scrutiny of these regulations to avoid any potential – or perceived – conflict of interest. As with all items of committee business, other members will consider whether similar conflicts arise for them.

I hope this clarification is helpful. The committee will not be commenting further until such time as it has completed its scrutiny of the regulations.

SSAC's comments following its consideration of the regulations, and the Government's response, are covered in section 8 below.

4.4 What effect will the regulations have?

The regulations make amendments to the Schedule to the principal PIP regulations²⁸ setting out the PIP eligibility criteria "in order to clarify the drafting and reverse the effect" of the two Upper Tribunal judgments, which had "interpreted that Schedule in ways which the Government did not intend."²⁹ The first judgment relates to the PIP daily living activity 3 ("managing therapy or monitoring a health condition"); while the second judgment relates to mobility activity 1 ("planning and following journeys"), specifically the assessment scores for those unable to undertake journeys due to psychological distress. The DWP's [Equality Analysis](#) accompanying the regulations estimates that **around 3,000 claimants** could ultimately be affected by reversing the effect of the judgment relating to **daily living activity 3**, while reversing the effect

²⁸ [The Social Security \(Personal Independence Payment\) Regulations 2013](#); SI 2013/377

²⁹ DWP, [Explanatory Memorandum to The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#), para 2.1

of the **mobility activity 1** judgment could affect **336,500 claimants (with 292,500 no longer entitled to any mobility component)**.³⁰

The table below gives the Department's estimates of the additional expenditure that would have resulted from the two Upper Tribunal decisions over the next five years (and therefore the amounts it expects to save from reversing them). The Department estimates that the decisions would have led to an increase in spending totalling **£3.7 billion cumulatively between 2016-17 and 2021-22**. Of this, the Upper Tribunal decision in relation to the Daily living activity accounts for only around £60 million, or less than 2% (although the Department comments that "the impact of [the Daily Living judgment] is complex to predict and so there is a significant risk that these costs could be much higher than estimated, posing a substantial fiscal risk."³¹

Savings from reversing the Upper Tribunal judgments in relation to PIP Daily Living activity 3 and Mobility activity 1, Great Britain, 2017/18 to 2022/22

| Year | Savings from reversing Daily living activity 3 judgment | Savings from reversing Mobility activity 1 judgment | Savings from reversing both judgments |
|---------|---|---|---------------------------------------|
| | (£million) | (£million) | (£ million) |
| 2017/18 | 10 | 550 | 560 |
| 2018/19 | 10 | 640 | 650 |
| 2019/20 | 10 | 750 | 760 |
| 2020/21 | 10 | 820 | 830 |
| 2021/22 | 10 | 900 | 910 |

Source: DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, paras 43, 70 and 71

More detailed information on the Upper Tribunal judgments, on the claimants affected and the Government's stated reasons for reversing the effect of the decisions is given in sections 5 and 6 below.

4.5 Initial responses

Disability organisations are deeply concerned about the proposed changes to PIP and about their impact on disabled people. In a statement in response to the Government's announcement, Rob Holland, Public Affairs Manager at Mencap and the **Disability Benefits Consortium's** Parliamentary Co-Chair, said:

³⁰ DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017

³¹ [Equality Analysis](#), para 43

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"We are concerned by these changes to the criteria for Personal Independence Payment (PIP). These risk further restricting access to vital support for thousands of disabled people. Last year, MPs strongly opposed restrictions to PIP and the Government promised no further cuts to disability benefits. Other changes have already had a devastating impact on thousands and in far too many cases people have had to rely on tribunals to access the support they need.

We are deeply disappointed as a coalition of over 80 organisations representing disabled people that we were not consulted about these proposals and their potential impact. The Government must ensure the views of disabled people are properly considered before they proceed with these changes."³²

Mark Atkinson, chief executive of disability charity **Scope**, said:

"It's worrying that the government intends to tighten up access to the Personal Independence Payment (PIP). We're concerned this could lead to disabled claimants missing out or facing a reduction in the vital financial support they rely on to live independently.

"Life costs more if you're disabled – Scope research shows disabled people spend on average £550 a month on disability-related costs. PIP plays an important role in helping disabled people meet some of those extra costs.

Mr Atkinson added:

"Many disabled people will now be anxiously waiting to hear as to whether or not these tighter rules will affect their current PIP award. The government must offer clarity and reassurance that these new measures will not negatively affect the financial support that disabled people receive now or in the future, and that they stand by their commitment to making no further changes to disability benefits in this Parliament."³³

In a blog on 27 February, Liz Sayce, CEO of **Disability Rights UK**, said that the proposed changes to PIP were "bad news for disabled people", both because of the financial cost and the knock-on effects on other outcomes that the Government was explicitly aiming to address. Looking at the wider context, she observed:

Disabled people have a right, under the UN Convention on the Rights of Persons with Disabilities, to participate in the community on an equal basis with others. We need policies that consistently, across Government, support disabled people to participate socially and economically. Restricting the very investments that support people to live independent lives, to manage their own health conditions, to go out and contribute to their communities – is a false economy. And it restricts disabled people's rights to equal participation.³⁴

Ms Sayce called for the proposals to be "urgently reconsidered."

On BBC 5 live's [Pienaar's Politics programme](#) on 26 February, the Conservative Member and Chair of the Prime Minister's Policy Board

³² [DBC response to Government announcement on changes to PIP regulations](#), 24 February 2017

³³ [Scope responds to proposed changes to the Personal Independence Payment \(PIP\)](#), 26 February 2017

³⁴ [Why restrictions on Personal Independence Payment should not go ahead](#), Disability Rights UK blog, 27 February 2017

George Freeman emphasised the Government's commitment to supporting disabled people, describing the measures as "tweaks" which were "...actually about rolling back some bizarre decisions by tribunals that now mean benefits are being given to people who are taking pills at home, who suffer from anxiety," adding "We want to make sure we get the money to the really disabled people who need it."³⁵

Mr Freeman's comments provoked a strong response from disability organisations and Opposition spokespersons.³⁶ In a [series of tweets](#) on Monday 27 February, Mr Freeman expressed regret for the language he had used:

Having experienced myself traumatic anxiety as a child carer living w alcohol I know all too well the pain anxiety + depression causes....

which is why as a former Health Minister and Policy Adviser I am passionate about supporting Mental Health and Disability, and hugely regret if my comment about the need to prioritise the most 'serious disabilities' inadvertently caused any offence which was not intended.

For **Labour**, the Shadow Chancellor John McDonnell called on the Chancellor of the Exchequer not to go ahead with the PIP changes, accusing the Prime Minister of using "the cover of the [Copeland and Stoke] by-elections to sneak out this announcement hurting so many vulnerable disabled people." Referring to the forthcoming Budget, Mr McDonnell said:

"Next week the Tories will make out that the economy and the public finances are doing better, however, they are planning to go ahead with a £3.7 billion cut to the disabled.

"This time last year when the economy and public finances were not doing as well, and the then Chancellor George Osborne tried to cut PIP, Labour stopped him. And in his u-turn he claimed that he could "absorb" the cost of reversing this cut.

"Hammond can't hide from these PIP cuts in his Budget. He needs to explain why he can't absorb them like his predecessor while he is still going ahead with tax giveaways to the very wealthiest in our country."³⁷

In a press release issued on 24 February, the **Liberal Democrat** Work and Pensions Spokesperson Baroness Bakewell of Hardington Mandeville said:

The Government is using its recent losses in court as an excuse to severely restrict disability benefits. Rather than listening to the ruling they are using it to make matters worse for disabled people – that is utterly outrageous.

³⁵ See also "[Disability benefits: PIPs should be for 'really disabled'](#)", BBC News, 26 February 2017

³⁶ See for example National Association of Voluntary Sector Mental Health Providers, [MHPF response to MP George Freeman's comments on disability benefits](#), 28 February 2017; "[Debbie Abrahams MP responds to comments by George Freeman, Head of No.10 Policy Unit, regarding sick and disabled people](#)," Labour Party press release, 26 February 2017

³⁷ "[Hammond can't hide from disability cuts in the Budget](#)," Labour Party press release, 26 February 2017

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What makes things even worse is that they have sneaked this announcement out under the cover of by-elections. These decisions impact the lives of vulnerable people, Liberal Democrats will not allow the Conservatives to get away with treating people with disabilities with such total contempt.³⁸

A Liberal Democrat Early Day Motion³⁹ (which has Labour and SNP support) “praying against” the regulations has been tabled in the Commons.⁴⁰

³⁸ See also [Lib Dem Lords aim to kill new Tory restrictions on disability benefits](#), Liberal Democrat voice, 24 February 2017

³⁹ [EDM 985 2016-17](#)

⁴⁰ A “prayer” is a particular type of EDM that is used, by convention, when MPs wish to object formally to a statutory instrument. If a motion 'praying' that an instrument 'be annulled' is tabled within 40 days of it being laid before Parliament, a debate may be arranged in a Delegated Legislation Committee or, more rarely, in the Chamber. See [What are Early day motions?](#) on the Parliament website.

5. PIP Daily living activity 3

Daily living activity 3 covers “Managing therapy or monitoring a health condition” and is one of 10 activities in the PIP assessment which, taken together, are intended to assess the extent of an individual’s daily living needs. The current wording of the “descriptors” for Daily living activity 3, and their associated scores,⁴¹ is given below.

3. Managing therapy or monitoring a health condition

| Descriptor | Points |
|--|---------------|
| a. Either – | 0 |
| (i) Does not receive medication or therapy or need to monitor a health condition; or | |
| (ii) can manage medication or therapy or monitor a health condition unaided. | |
| b. Needs either – | 1 |
| (i) to use an aid or appliance to be able to manage medication; or | |
| (ii) supervision, prompting or assistance to be able to manage medication or monitor a health condition. | |
| c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week. | 2 |
| d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week. | 4 |
| e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week. | 6 |
| f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week. | 8 |

The regulations further define some of the terms used in the descriptors:

- “assistance” means physical intervention by another person and does not include speech;
- “manage medication or therapy” means take medication or undertake therapy, where a failure to do so is likely to result in a deterioration in C's [i.e. the claimant's] health;
- “medication” means medication to be taken at home which is prescribed or recommended by a registered –
 - (a) doctor;
 - (b) nurse; or

⁴¹ As set out in Schedule 1 of [The Social Security \(Personal Independence Payment\) Regulations 2013](#), SI 2013/377 as amended

- (c) pharmacist;
- “monitor health” means –
 - (a) detect significant changes in C's health condition which are likely to lead to a deterioration in C's health; and
 - (b) take action advised by a –
 - (i) registered doctor;
 - (ii) registered nurse; or
 - (iii) health professional who is regulated by the Health Professions Council,without which C's health is likely to deteriorate;
- “prompting” means reminding, encouraging or explaining by another person;
- “supervision” means the continuous presence of another person for the purpose of ensuring C's safety;
- “therapy” means therapy to be undertaken at home which is prescribed or recommended by a—
 - (a) registered –
 - (i) doctor;
 - (ii) nurse; or
 - (iii) pharmacist; or
 - (b) health professional regulated by the Health Professions Council;
- “unaided” means without –
 - (a) the use of an aid or appliance; or
 - (b) supervision, prompting or assistance.

5.1 Upper Tribunal judgment

The Upper Tribunal judgment in [Secretary of State for Work and Pensions v LB \(PIP\) \[2016\] UKUT 530 \(AAC\)](#)⁴² was delivered on 28 November 2016. In his decision, Judge Mesher commented that the appeal raised “difficulty questions” about the proper interpretation of the descriptors under two of the Daily living activities in the context of the conditions affecting the claimant, adding-

It illustrates once again the gaps left in the drafting of that Schedule, requiring a large expenditure of effort to render its provisions coherent and thus making it ineffective as a simple day-to-day test of disability needs to be applied by non-lawyers.⁴³

Judge Mesher highlighted what he saw as an anomaly with Daily living activity 3, in that a claimant needing, for example, regular prompting and assistance throughout the day and night to manage medication could only score 1 point (under descriptor 3(b)(ii)), whereas a claimant needing no medication but some brief assistance with setting up

⁴² Also numbered [CPIP/721/2016](#)

⁴³ Ibid. para 1

equipment to use for their own therapy, or prompting to start such therapy, would score at least 2 points under descriptor 3(c).⁴⁴

After exploring various alternative ways of interpreting the descriptors to address the anomaly, Judge Mesher concludes:

33. The upshot is that no potential interpretation is without its problems. The least worse has to be chosen. I doing so I am acutely aware that other cases will throw up circumstances and difficulties that I have not thought of and which may not be catered for in a ruling made in the context of the circumstances of the present case. But that is so whatever interpretation I adopt. On balance I have concluded that what I have labelled alternative interpretation A (paragraphs 25 – 30 above) does the least damage to the intended structure of the descriptors under activity 3. It maintains some practical operation for the whole of descriptor 3(b)(ii) and substantially reduces the anomaly of claimants with more needs qualifying for fewer points than claimants with fewer needs.

34. The essence of alternative interpretation A, in line with what is said in paragraph 25 above, is that descriptor 3(b)(ii) does not apply if supervision, prompting or assistance is needed for both managing medication and monitoring a health condition and only applies if it is needed for one only of those alternatives. It also does not apply if the supervision etc is needed for elements of what would ordinarily be regarded as therapy that go beyond either managing medication or monitoring a health condition within the meaning of descriptor 3(b)(ii). In both those circumstances in which descriptor 3(b)(ii) does not apply, the case would potentially fall within the therapy provisions in descriptors 3(c) – (f), depending on how far the supervision etc relates to something that can properly be called undertaking therapy and with the scale of points depending on the time for which the supervision etc is needed. All elements of therapy in its ordinary meaning could then be considered, including any taking of medication or monitoring of a health condition. If the need for supervision etc is limited to one or other of those alternatives in descriptor 3(b)(ii), then in order to allow the descriptor to have any practical application the application of descriptors 3(c) – (f) would be excluded.

The DWP's Explanatory Memorandum accompanying the amending regulations summarises the effect of the decision as follows:

...the Upper Tribunal held that supervision, prompting or assistance to manage medication or monitor a health condition (which scores 1 point) may amount to supervision, prompting or assistance to manage therapy (which scores 2 to 8 points, depending on the number of hours support required), and in particular will do so where a claimant needs supervision, prompting or assistance both to manage medication and to monitor a health condition.⁴⁵

5.2 The Government's response

The Department for Work and Pensions contends that the Upper Tribunal's decision in *Secretary of State for Work and Pensions v LB* is

⁴⁴ Ibid. para 24

⁴⁵ DWP, [Explanatory Memorandum to The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#), para 7.5

“contrary to the intention of the Department when developing and consulting on the PIP assessment.”⁴⁶ It adds:

...the descriptors are a proxy for overall need and the policy was based on the judgement that someone who is receiving support in order to manage medication, monitor a health condition, or both combined, is likely to have a lower level of need across all daily living activities than someone who needs support with therapy. For that reason it was intended that support with managing medication or monitoring a health condition (or both) should only be relevant to descriptor b and should only ever score a maximum of 1 point. The difference between being awarded 1 point, or being awarded 2 or more points, may in some cases (depending on how any points the claimant has scored on other daily living activities) determine whether an individual claimant is entitled to the PIP daily living component at the enhanced rate, or at the standard rate, or is not entitled to it at all.⁴⁷

The DWP’s Explanatory Memorandum accompanying the amending regulations explains:

Regulations 2(2) and (3) clarify the drafting of Schedule 1 to the PIP Regulations to reverse these aspects of the ruling and more clearly reinstate the Government’s originally intended meaning. They do so by separating out the definitions of “manage medication” and “monitor therapy” and making it clear that “monitor therapy” does not include receiving or administering medication (by any means), or any action which (in the case of the particular claimant being assessed) falls within the definition of “manage medication” or “monitor a health condition”. They also make it clear that the 1 point score applies even if two or more elements of the descriptor are met.⁴⁸

Responding to an Urgent Question on 28 February (see section 7 below), the Secretary of State for Work and Pensions, Damian Green, said that as well as introducing regulations to reverse the effect of the Upper Tribunal Judgment in *LB*, the Government would be appealing the judgment itself.⁴⁹

5.3 Impact

The DWP’s [Equality Analysis](#) gives the Department’s estimates of the numbers likely to be affected by reversing the Upper Tribunal’s judgment relating to Daily living activity 3:

⁴⁶ DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, para 24

⁴⁷ Ibid.

⁴⁸ DWP, [Explanatory Memorandum to The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#), para 7.6

⁴⁹ [HC Deb 28 February 2017 c172](#)

Estimated change in awards from reversing the Upper Tribunal judgment on Daily living activity 3

| Change in PIP daily living component | Change in weekly amount | Estimated % affected (out of PIP caseload) | Estimated no. of current caseload (nearest 500) | Estimated no. of 2020/23 caseload (nearest 500) |
|--------------------------------------|-------------------------|--|---|---|
| Enhanced to Standard | -£27.20 | <1% | 500 | 1,000 |
| Enhanced to Nil | -£82.30 | <1% | <500 | 500 |
| Standard to Nil | -£55.10 | <1% | 500 | 1,500 |
| No change | £0 | 100% | 1,166,000 | 2,504,000 |

Source: DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, Table 3

The [Equality Analysis](#) states that while it is not possible to provide precise data on the disabilities and health conditions of those who would be affected by the judgment (and its reversal), it expects that it would predominantly affect claimants with health conditions such as diabetes, epilepsy and dizziness.⁵⁰ Claimants with other conditions could however be affected – Table 1 on page 12 of the [Equality Analysis](#) gives a more detailed list.

5.4 Responses

In a blog on 27 February, Liz Sayce, CEO of **Disability Rights UK**, commented:

If someone has a health condition - like diabetes or epilepsy (both potentially serious, even life-threatening) - or if they have challenges in monitoring their condition and managing medication, for instance because of dementia - then the most likely thing to happen if arrangements go wrong is that the person ends up in A and E. Government is rightly very focused on enabling people to live at home and manage their own conditions wherever possible, and to reduce unnecessary hospital admissions.

In light of this, she states that a key question for the Government to answer is:

What analysis has been done of the impact on people's health, and demand for health services, of restricting PIP in relation to people who need supervision, prompting or assistance to take medication and monitor a health condition?⁵¹

⁵⁰ Ibid. para 34

⁵¹ [Why restrictions on Personal Independence Payment should not go ahead](#), Disability Rights UK blog, 27 February 2017

Epilepsy Action is “deeply concerned” with the proposed changes which, it believes, will penalise people with epilepsy, who may rely on support or supervision to take medication and monitor their health. It argues that the Government must urgently reconsider making their planned changes to PIP.⁵² A news story in its online magazine Epilepsy Today quotes a statement issued by the charity:

Epilepsy Action’s statement said that the charity has “long felt that the current assessment process is failing people with epilepsy”. The charity believes many people with epilepsy, who need this extra support, have already missed out on this benefit because of its strict assessment process. This is before the government changed the law to make the assessment measures even stricter.

Epilepsy Action criticised the PIP assessment, calling it “ineffective and inadequate”, and saying that it “does not accurately assess or reflect what it is like to live with the condition.”

Epilepsy Action stressed that the DWP has failed to recognise people with epilepsy may require emergency medicine to be administered, which they cannot do themselves.

The charity added that the government has failed to consider that without emergency medicine, a prolonged seizure could turn into status epilepticus. This could result in damage to the brain, cause other health problems or even be life-threatening.

The statement concluded: “We do not believe enough progress has been made in improving benefits assessment processes for people with fluctuating or hidden conditions, like epilepsy. Further review and assessment is desperately needed to make sure claimants can be confident that the outcome is fair and accurate.

“The government decision to make these changes, making eligibility rules tighter, is likely to cause even more worry, stress and uncertainty for people with epilepsy. Epilepsy Action believes the government must immediately halt the proposed changes, which further discriminate against people with epilepsy, and uphold the ruling made by the Upper Tribunal.”⁵³

⁵² [“Government changes to PIP laws against tribunal rulings could be a hit to people with conditions like epilepsy,”](#) Epilepsy Today, 1 March 2017

⁵³ Ibid.

6. PIP Mobility activity 1

While eligibility for the Daily living component is determined by looking at 10 activities, only two activities determine whether a person is eligible for the Mobility component – “Planning and following journeys” and “Moving around.”

The “Moving around” activity considers a claimant’s physical ability to move around without severe discomfort, such as breathlessness, pain or fatigue. This includes the ability to stand and then move up to 20 metres, up to 50 metres, up to 200 metres and over 200 metres. Further details of the “Moving around” activity and related controversies can be found in section 2.3 of Commons Library briefing SN00473, [Motability scheme](#).

The descriptors and associated points scores for the “Planning and following journeys” activity are listed below. The DWP’s [Equality Analysis](#) explains that “This activity was designed to assess the barriers to mobility that individuals may face, which are associated with mental, cognitive, intellectual or sensory ability, as opposed to physical ability – looking at whether people can plan and follow the route of a familiar or unfamiliar journey.”⁵⁴

1. Planning and following journeys

| Descriptor | Points |
|--|---------------|
| a. Can plan and follow the route of a journey unaided. | 0 |
| b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant. | 4 |
| c. Cannot plan the route of a journey. | 8 |
| d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid. | 10 |
| e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant. | 10 |
| f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid. | 12 |

The regulations further define some of the terms:

- “assistance dog” means a dog trained to guide or assist a person with a sensory impairment;
- “orientation aid” means a specialist aid designed to assist disabled people to follow a route safely;

⁵⁴ DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, para 44

- “prompting” means reminding, encouraging or explaining by another person;
- “psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment;
- “unaided” means without –
 - (a) the use of an aid or appliance; or
 - (b) supervision, prompting or assistance.

6.1 Upper Tribunal judgment

The [Upper Tribunal’s decision](#) – delivered on 28 November 2016 – was by a panel of three judges and concerned three linked cases.⁵⁵

The judgment is complicated and addresses a number of interrelated questions, but the key issue was whether someone who had to be accompanied on journeys, in order to avoid suffering overwhelming psychological distress, could satisfy higher scoring mobility descriptors 1(d) or 1(f) (resulting in a score of 10 or 12 points); or whether, as the Government contends, psychological distress should be relevant only to descriptors 1(b) or 1(e) (scoring 4 of 10 points) which expressly refer to “overwhelming psychological distress.” (In an earlier case – [HL v SSWP \(PIP\) \[2015\] UKUT 694 \(AAC\)](#) – DWP had in fact conceded that overwhelming psychological distress **could** be relevant to descriptors 1(d) and 1(f), but had subsequently sought to resile from that concession.)

Surveying previous case law, the three-judge panel noted that there had been a “difference of opinion within the Upper Tribunal as to the effect of some of the descriptors for mobility activity 1.”⁵⁶ Looking at relationship between the descriptors, at the way the regulations were structured and statements made in the Government’s final response to the consultation on the PIP assessment, the panel rejected the Government’s submission that overwhelming psychological distress could only be relevant to descriptors 1(b) and 1(e). It concluded that the Secretary of State had been right in *HL v SSWP* to concede that overwhelming psychological distress could have the effect that a person is unable to follow the route of a journey because they may be unable to navigate or make progress, and that there was a potential overlap between the descriptors.⁵⁷

The Upper Tribunal also made it clear that in order to score under descriptors 1(d) or 1(f) the psychological distress experienced by the claimant would have to be “overwhelming” and that the threshold is a very high one:

In cases where claimants suffer from severe anxiety, descriptors 1d and 1f must be applied in the light of descriptors 1b and 1e with due regard being had to the use of the term “overwhelming psychological distress”. Only if a claimant is suffering from overwhelming psychological distress will anxiety be a cause of the

⁵⁵ [CPIP/1347/2015, UK/508/2015 and CPIP/636/2016](#)

⁵⁶ para 8

⁵⁷ See in particular paras 44-47 of the judgment

claimant being unable to follow the route of a journey. Although regulation 4(2A) applies so that the question is whether, if unaccompanied, the claimant can follow a route safely, to an acceptable standard, repeatedly and within a reasonable time period, the fact that a claimant suffers psychological distress that is less than overwhelming does not mean that the claimant is not following the route safely and to an acceptable standard. The threshold is a very high one. Thus, the facts that the claimant was "anxious" and "worried" in *DA* and was "emotional" in *HL* were not sufficient for those claimants to satisfy the terms of descriptors 1d or 1f because they could in fact complete journeys unaccompanied without being overwhelmed. In *RC*, further findings were required.⁵⁸

Other matters

In the section of the judgment on "The issues and how we resolved them", the Upper Tribunal noted:

25. On the matter of interpretation Mr. Royston [counsel for two of the claimants] relied, we think it is fair to say quite heavily, upon a document headed "the Government's response to the consultation on the Personal Independence Payment Assessment Criteria and Regulations" of 13 December 2012 (the "consultation response"). He suggested that the document was an important part of the enacting history of the 2013 Regulations, because it deals explicitly with a range of questions and concerns about the legislative text.

The judgment itself includes a quite lengthy quote from the [Government's response to the consultation on the Personal Independence Payment assessment criteria and regulations](#) of December 2012.⁵⁹ On the significance of the Government's consultation response as an aid to interpreting the legislation, the panel stated:

34. This consultation response can, in our judgment, properly be used as an aid to the construction of the 2013 Regulations because it represents the considered view of the Secretary of State after he had taken into account the representations made by consultees and immediately before he, as legislator, made those Regulations. In those circumstances, we consider it would be unrealistic not to place some weight on it. Nonetheless, the only sensible starting point for us can be the actual wording used in the relevant descriptors, because it was that language that was before Parliament when it allowed the Regulations to take effect.

6.2 The Government's response

The DWP's [Equality Analysis](#) summarises the Upper Tribunal's decision and its implications as follows:

...the UT decided that a claimant who has to be accompanied on journeys, in order to avoid suffering overwhelming psychological distress, can satisfy higher scoring mobility descriptors d or f (resulting in a score of 10 or 12 points), whereas the Department's intention when developing and consulting on the assessment was that psychological distress should be relevant only to descriptors b or e (scoring 4 of 10 points) which expressly refer to overwhelming psychological distress (whereas descriptors d and

⁵⁸ para 48

⁵⁹ See para 33, pp12-13

f were focused on cognitive or sensory impairments affecting a claimant's navigational ability). By analogy, the UT judgment may leave open the possibility that psychological distress is also a basis on which to award 8 points under descriptor c, which again was not the Department's intention. The difference between being awarded 4 points and 8 or 10 points, or between being awarded 10 points and 12 points, may in many cases (depending on how many points the claimant has scored for mobility activity 2) determine whether an individual claimant is entitled to the PIP mobility component at the enhanced rate, or at the standard rate, or is not entitled to it at all.⁶⁰

The Government contends that the Upper Tribunal's decision is inconsistent with the Department's intentions as indicated from the start of the consultation on the draft PIP assessment. The [Equality Analysis](#) states (original emphasis):

49. Throughout each draft and final version of the assessment criteria, the Department was clear that mobility activity 1 was designed to assess the impact of mental, intellectual, cognitive and sensory impairments on the ability to plan and follow a journey. When talking about this activity (which was known as activity 10) the [consultation on the initial assessment criteria](#) stated:

"For those descriptors which refer to overwhelming psychological distress, there must be evidence of an enduring mental health condition...."

50. This illustrates that overwhelming psychological distress was intended to be considered only within those descriptors which expressly referred to it. PIP is not intended to compensate claimants for specific costs, such as the costs involved with having support to go on a journey. Instead the assessment considers activities that are likely to be associated with varying levels of need and attempts to quantify this. Psychological distress fluctuates and may be amenable to treatment. Conditions such as visual impairment, learning disability and developmental disorders, where the impairment is severe and enduring, are much less likely to fluctuate as significantly. In addition, the needs associated with psychological distress are likely to relate to reassurance and prompting whilst conditions such as a severe learning disability can lead to the need for supervision, physical intervention and support above and beyond simply reassurance or prompting and are therefore likely to be higher. This is what the assessment seeks to differentiate between and making a distinction in this area has been a core part of the assessment since planning and following a journey was first proposed by the assessment development group [6th meeting of the development group on 10.1.2014].

51. In the case of mobility activity 1, the assessment targets support on those claimants who, with respect to getting around as a core component of participating in day to day life, have the greatest need, by considering their ability to undertake a journey. It recognises that for many of those suffering from overwhelming psychological distress the effects are more likely to fluctuate, the type of need lower and therefore the overall level of need is likely to be similarly lower. Overwhelming psychological distress is still therefore recognised within the assessment but afforded a lower score. The point's scores and thresholds were consulted on and,

⁶⁰ DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, para 48

as above, the assessment was tested and found to be both a reliable and valid indicator.

The regulations seek to overturn the effect of the Upper Tribunal's decision by stipulating that a claimant can only score points for Mobility descriptors 1(c), 1(d) and 1(f) "for reasons **other than** psychological distress."⁶¹

As with the judgment in *LB* (see section 5.2 above), in addition to seeking to reverse the effect of the Upper Tribunal judgment in relation to Mobility activity 1 the Government has said that it will be appealing the decision itself.⁶²

6.3 Impact

The Department expects that reversing the Upper Tribunal judgment will predominantly affect people with whose conditions make it too stressful for them to plan and follow a journey, who cannot go out unless they are accompanied. The [Equality Analysis](#) states that these are "mainly psychiatric disorders such as schizophrenia, anxiety conditions, social phobias and early dementia, and make up just under 25% of claims", but it gives a more detailed list of the conditions most likely to be affected. These include:⁶³

- Mood disorders - Other / type not known
- Psychotic disorders - Other / type not know
- Schizophrenia
- Schizoaffective disorder
- Phobia - Social
- Panic disorder
- Learning disability - Other / type not know
- Generalized anxiety disorder - mixed
- Agoraphobia
- Alcohol misuse
- Anxiety and depressive disorders - mixed
- Anxiety disorders - Other / type not know
- Autism
- Bipolar affective disorder (Hypomania / Mania)
- Cognitive disorder due to stroke
- Cognitive disorders - Other / type not known
- Dementia

⁶¹ Regulation 2(4) [The Social Security \(Personal Independence Payment\) Regulations 2013](#); SI 2013/377

⁶² [HC Deb 28 February 2017 c172](#)

⁶³ DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, Table 6

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- Depressive disorder
- Drug misuse
- Stress reaction disorders - Other / type not known
- Post-traumatic stress disorder (PTSD)
- Phobia – Specific
- Personality disorder
- Obsessive compulsive disorder (OCD)

The [Equality Analysis](#) also includes estimates of the impact of the change on award rates – showing how many people would move award as a result of the changes, and by how much.

Estimated change in awards from reversing the Upper Tribunal judgment on mobility activity 1

| Change in mobility | Change in weekly amount | Estimated % affected (out of PIP caseload) | Estimated No. of current caseload (nearest 500) | Estimated No. of 2020/23 caseload (nearest 500) |
|----------------------|-------------------------|--|---|---|
| Enhanced to Standard | -£35.65 | 2% | 21,000 | 44,000 |
| Enhanced to Nil | -£57.45 | 6% | 71,500 | 146,500 |
| Standard to Nil | -£21.80 | 6% | 71,500 | 146,000 |
| No change | £0 | 86% | 1,003,500 | 2,171,000 |

Source: DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017, Table 8

6.4 Responses

The Government's announcement that it intended to reverse the effect of the Upper Tribunal's judgment in relation to PIP Mobility activity 1 has resulted in some forceful responses from disability organisations.

Mark Atkinson, chief executive of disability charity **Scope**, said that it was "unhelpful to make crude distinctions between those with physical impairments and mental health issues, because the kind of impairment someone has is not a good indicator of the costs they will face."⁶⁴

⁶⁴ [Scope responds to proposed changes to the Personal Independence Payment \(PIP\)](#), 26 February 2017

Ayaz Manji, Policy and Campaigns Officer at **Mind**, said that the Government's plan "flies in the face of its commitment to tackle the 'burning injustice' of mental health", adding-

We know that people who struggle to leave the house because of anxiety, panic attacks and other mental health problems face extra costs in their everyday lives. People need access to these benefits, to get by, to do the things that help them stay well, to see friends and family, and to live independent lives.⁶⁵

In a separate statement **Mind's Chief Executive**, Paul Farmer said:

"People who find it difficult to leave the house because of anxiety, panic attacks, and other mental health problems are as restricted in their independence as many people with physical mobility problems, and face just as many higher costs in their daily lives as other disabled people do. The Government's changes to Personal Independence Payment (PIP) would affect over 160,000 people with mental health problems - both in and out of work - who have extra costs related to their disability.

"These proposed changes could prevent people accessing the financial support they need to get to health or job appointments, get out to pay for fuel and heating, take their children to school or see friends and family – things essential to their daily lives and recovery, things essential to preventing isolation. The Government says that it is committed to treating mental health as seriously as physical health, but these proposals call this commitment into question. These misguided proposals must be reversed.⁶⁶

Mind subsequently published a more detailed Parliamentary briefing on [Changes to Personal Independence Payment](#).⁶⁷

In the response from **Rethink Mental Illness** to the Government's announcement, its Director of External Affairs, Brian Dow, said:

"The Government has spoken forcefully about the importance of parity esteem between physical and mental health, yet when presented with the chance to make this a reality, and make real improvements to the lives of people affected by mental illness, it has passed on the opportunity. People affected are bound to feel that this promise, in this instance, was an empty one.

"A tribunal had said that personal independence payments (PIP) claimants with psychological problems who cannot travel without help must be treated like those who are blind. Instead of listening to this ruling the Government's amendment seeks to undermine it. The decision to bypass the Social Security Advisory Committee also sets a dangerous precedent."⁶⁸

The **National Autistic Society** is "deeply concerned" by the proposed changes to PIP. It states that "Many autistic people already feel that the PIP assessment doesn't recognise their difficulties and struggle to access this essential benefit" and believes the changes could make this even harder. It comments:

⁶⁵ [Government plan to restrict Personal Independence Payment](#), Mind blog, 27 February 2017

⁶⁶ [Mind responds to proposed changes to Personal Independence Payments](#), 27 February 2017

⁶⁷ February 2917

⁶⁸ Rethink Mental Illness, [Our response to the Government's announcement about Personal Independence Payment \(PIP\)](#), 27 February 2017

Many autistic people can find it difficult to make new and unfamiliar journeys because it makes them very anxious. They might worry about the route, or unexpected changes. PIP Mobility provides people with some extra money to help them with alternative transport, or a support worker for the journey.

The impact of this proposal could be very significant and lead to autistic people not being able to get out and about. As a result they could become socially isolated, unable to visit family or get to work.⁶⁹

The National Autistic Society is concerned that the proposed change would put autistic people at a significant financial disadvantage and could put their independence at risk. Its Head of Policy and Public Affairs, Sarah Lambert, said:

"This is a backwards step which will not help people with hidden disabilities to get the support they need to live fulfilling and independent lives. The Government must think again.

"PIP is a lifeline for many autistic adults, including those who struggle with the unpredictability, noises, lights, smells and crowds on public transport. This can be overwhelming for autistic people, who find it difficult to deal with changes and may have extreme sensory sensitivities. PIP is meant to be there to help mitigate this impact by meeting some of the extra costs being disabled might involve – like using a taxi.

"The Government should halt this proposal, which would put autistic people at a significant financial disadvantage, by making them try to meet this cost themselves or face giving up their independence."

"The Government said in its statement announcing this change that non-physical conditions should be given the same recognition as physical ones. Yet this proposal acts in complete contradiction to that principle. We believe the government should take this chance to step back from this retrograde step."⁷⁰

In her blog on 27 February, Liz Sayce, CEO of **Disability Rights UK**, said that, in the light of the Prime Minister's recent speech on mental health, the proposals raised a number of "key questions" (original emphasis):⁷¹

Planning and following a journey

"For too long mental illness has been something of a hidden injustice in our country, shrouded in a completely unacceptable stigma and dangerously disregarded as a secondary issue to physical health. Yet left unaddressed it destroys lives, it separates people from each other and deepens the divisions within our society" (Theresa May, speech, 9 January 2017)

Yet Government now proposes that people who would experience 'overwhelming psychological distress' without someone to accompany them on a journey (for instance someone with severe agoraphobia or fears linked to schizophrenia) would not be eligible for enhanced PIP; whereas someone who needed

⁶⁹ "[Government must halt proposed changes to PIP](#)," National Autistic Society press release, 27 February 2017

⁷⁰ Ibid.

⁷¹ [Why restrictions on Personal Independence Payment should not go ahead](#), Disability Rights UK blog, 27 February 2017

someone to accompany them because of a visual impairment could qualify.

This raises key question no 1: How does this fit with the Government's commitment to 'parity of esteem' between physical and mental health issues?

In 2011, Government justified changing PIP criteria so you had to demonstrate you could not walk 20 metres – rather than 50 – by saying that this would enable better coverage for people across the spectrum of impairments (including mental health issues and learning disabilities as well as physical impairments). It would, Government proposed, ensure that those whose ability to get around is severely impacted by either physical or non-physical ability could receive the Mobility component at the enhanced rate.

This leads to key question no 2: How can Government now justify restricting PIP for those disabled people with severe mental health problems who cannot go out unless accompanied?

It is not what impairment you have that matters, but the impact of that impairment. And we are not here talking about a little anxiety – but about 'overwhelming' psychological distress, for instance people who literally cannot leave the house because of severe agoraphobia or schizophrenia. Of course, someone might respond that supporting people with mental health problems to go out is the responsibility of the NHS – but in the real world the NHS only offers treatment, not day to day support; and where would this support rank against the myriad of priorities currently impacting on the NHS?

Key question no 3 is: What will be the impact on social isolation?

We know that adults living with impairments are more likely to say they have seen only one or two people, or nobody, they are close to in the last week (Office for National Statistics 2015 [1]). Isolation is worse for your health than obesity, lack of exercise or excessive drinking [2] – so anyone concerned about public health should be deeply concerned about disabled people's low levels of social contact. Having the support you need to go out makes good policy sense.

[1] <http://www.ons.gov.uk/ons/rel/los/life-opportunities-survey/wave-three--final-report--october-2012-to-september-2014/index.htm>

[2] Holt-Lunstad, J Smith, TB and Layton, JB (2010) Social relationships and mortality risk: a meta-analytic review. Plos Medicine 7(7): e1000316. doi:10.1371/journal.pmed.1000316

7. Urgent Question, 28 February

In response to an Urgent Question tabled by the Labour Member Stephen Timms, the Secretary of State for Work and Pensions, Damian Green, made a statement to the House of Commons on 28 February.⁷²

Mr Green said:

I want to be clear about what this is not. It is not a policy change, and nor is it intended to make new savings. I reiterate my commitment that there will be no further welfare savings beyond those already legislated for. This will not result in any claimant seeing a reduction in the amount of PIP previously awarded by the Department for Work and Pensions.

Mental health conditions and physical disabilities that lead to higher costs will continue to be supported, as has always been the case. The Government are committed to ensuring that our welfare system provides a strong safety net for those who need it. That is why we spend about £50 billion to support people with disabilities and health conditions, and we are investing more in mental health than ever before, spending a record £11.4 billion a year.

Personal independence payments are part of that support, and they provide support towards the additional costs that disabled people face. At the core of PIP's design is the principle that support should be made available according to need, rather than a certain condition, whether physical or non-physical. PIP is also designed to focus more support on those who are likely to have higher costs associated with their disability. PIP works better than disability living allowance for those with mental health conditions. For example, there are more people with mental health conditions receiving the higher rates of PIP than there were under the old DLA system.

This is about restoring the original intention of the benefit, which has been expanded by the legal judgments. It is entirely appropriate for the Government to act to restore clarity to the law, as Governments have done before and will no doubt continue to do in the future.⁷³

For Labour, the Shadow Work and Pensions Secretary Debbie Abrahams said:

The regulations will come into force in just over two weeks' time, but they were issued without any consultation with the Social Security Advisory Committee. The Government have said that this is because of the urgency of the issue.

The Government are in effect overturning two tribunal rulings that allow chronic "psychological distress" to be included in the PIP assessment. However, if the Secretary of State was so unhappy with the tribunal rulings, why did he not use his powers under sections 25 and 26 of the Social Security Act 1998 and regulations 21 and 22 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 to challenge those rulings in the courts?

The Secretary of State's actions not only undermine the judicial process, but reduce eligibility to PIP support for over 164,000

⁷² [HC Deb 28 February 2017 cc170-181](#)

⁷³ *Ibid.* c170

people with debilitating mental health conditions, including those not able to go outside their own homes. What discussions has the Secretary of State had with disabled people's organisations ahead of bringing forward these regulations? What is his assessment of the effects on the health and wellbeing of the people affected by the cuts? Given that disabled people are twice as likely to live in poverty as non-disabled people as a result of the extra costs they face, how many disabled people will be driven into debt or face poverty as a result of these cuts? What is the cumulative effect of these cuts along with the employment and support allowance work-related activity group cuts that are due to come into effect in April, which will affect 500,000 disabled people? Finally, why are the Government contradicting their earlier argument in the 2015 upper tribunal case of *HL v. the Secretary of State for Work and Pensions* in which they argued that "psychological distress" should be included in PIP assessments?

We have been arguing for parity of esteem for mental health with physical health for some time now. Indeed, the Prime Minister famously said that people with mental health conditions need more support. Why will the Government not honour that?⁷⁴

In response, Mr Green confirmed that the Government was also appealing both the Upper Tribunal judgments:

...we are appealing the judgments, but because of the lack of clarity that would be caused by leaving the current regulations in limbo following the upper tribunal's decisions, it is better to move quickly.⁷⁵

Mr Green added:

The hon. Lady talked about the effect on disabled people. I absolutely agree with her that that is the central core of what we are trying to do. I point out to her that over two thirds of PIP recipients with a mental health condition get the enhanced rate daily living component, compared with just 22% who used to receive the highest rate of DLA care. That is why PIP is a better benefit than DLA. That happened previously under the existing regulations, and I am now restoring that situation.

The hon. Lady's questions were predicated on this being a cut. It is simply not a cut; it is not entirely honest of her to say that it is a cut. If she looks at the facts of the case, she will recognise that people claiming PIP—specifically those with mental health conditions—have been and are better off with PIP. We are making the benefit clear. We are making the change so that the benefit is paid as it has been since it was first introduced, which is better for people, particularly those with mental health conditions.⁷⁶

Responding to David Winnick, the Secretary of State reiterated that the decision was "not a cut":

I am happy to assure them and the hon. Gentleman that what I am talking about today is not a cut. We are not going to have any new welfare cuts in this Parliament, apart from those that have already been legislated for. The decision we have taken is not—not—a cut.⁷⁷

⁷⁴ Ibid. cc171-2

⁷⁵ Ibid. c172

⁷⁶ Ibid. c172

⁷⁷ Ibid. c174

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The amending regulations may not restrict eligibility further compared with the situation **before** the Upper Tribunal judgments. However, as the regulations do not provide for any “transitional protection”, claimants who have become entitled to PIP or any component of it as a result of the Upper Tribunal’s decisions will be affected by the new rules when the regulations come into force.

The impact of the changes on existing claimants was also raised during the Commons Urgent Question on 15 March (see section 8.3 below).

8. SSAC observations and responses

8.1 Letter to DWP Ministers

Following the statement issued by the Chair of the Social Security Advisory Committee on 7 March (see section 4.3 above), DWP officials gave a presentation to SSAC and answered questions on the regulations at its meeting which took place the following day. On 13 March the Vice Chair of the Committee, Colin Godbold⁷⁸, wrote to the Minister for Disabled People, Health and Work, Penny Mordaunt.⁷⁹

The letter explained that the Committee had decided, after careful consideration, not to take the regulations on a “formal reference” (which would normally involve a public consultation), but set out a number of observations and recommendations.

In relation to Mobility activity 1 and psychological distress, SSAC noted that there had been “some confusion regarding the policy intent” and said that the Department “must be clearer in its articulation of policy intent in the future.” It also recommended that, given that it was possible that some claimants will have been awarded the mobility component on the basis of the Upper Tribunal’s decision, DWP “should explore further the impact of these regulations on existing awards, where there is a risk that previous decisions may not be consistent with the original policy intent.”

SSAC was also concerned that the changes to the descriptors as a result of the regulations could in fact go beyond simply returning decision making practice to the “status quo” before the Upper Tribunal’s decision. It observed (original emphasis):

While officials suggested to us that the amendments to the regulations would simply reinforce current guidance and practice, it is not clear how tribunals, decision makers, or health care professionals conducting assessments will respond to changes in descriptors to exclude “psychological distress” altogether where this is a symptom of a condition, for example an intellectual or cognitive impairment which would generally result in a higher level of need.

It seemed to us that where multiple factors made it impossible for someone to follow a journey without help, it would be difficult in practice to strip out the element of psychological distress from the other factors when making a decision. As a result it may well be that it is not consistently treated in these circumstances.

⁷⁸ In light of his position leading the second independent review of the PIP assessment, the SSAC Chair, Paul Gray, had stepped aside for the consideration of the amendment regulations, in order to keep a “transparent separation” between his two roles

⁷⁹ [The Personal Independence Payment \(Amendment\) Regulations 2017: SSAC correspondence](#), GOV.UK

We therefore recommend that the Department considers:

- a) testing the proposed changes with health care professionals and decision makers to ensure the policy intent behind the regulation is clearly understood; and**
- b) reviewing the descriptors to make sure they are clearly defined and remove ambiguity, for example making explicit reference to “for reasons such as psychological distress alone”.**

In relation to the changes to Daily living activity 3 (“Managing therapy or monitoring a health condition”), SSAC noted that the Department’s acknowledgment that the impact of the separate Upper Tribunal judgment was complex to predict was “a clear indication that a better understanding to impact is needed.” It added however that as the number of cases and projected costs were so significantly lower (when compared with the Mobility component judgment), “the case for invoking the urgency procedures seems less obvious.” The SSAC letter continued (original emphasis):

We therefore recommend that the Department should both (a) consult more widely with representative bodies and health care professionals; and (b) improve the estimate of likely impact before the changes are introduced.

SSAC’s letter concludes by recommending the Department consider what lessons can be learned for the future, including for example:

- a) establishing a clear definition of the intended policy principles behind the design of the PIP assessment;**
- b) strengthening the data available to the Department so it has a better understanding of the potential impacts of future changes.**

The letter includes extracts from the minutes of SSAC’s meeting on 8 March covering the DWP’s presentation on the regulations and questions from Committee members.

8.2 Response from the Minister for Disabled People

The Minister for Disabled People, Health and Work, Penny Mordaunt, replied to the SSAC in a letter dated 15 March.⁸⁰ In response to the Committee’s concerns about the changes to the Mobility activity 1 descriptors, the Minister said “...we are confident that Health Care Professionals understand how to assess people effectively even where their conditions impact them in both physical and psychological ways.” However, the Minister added:

In response to your recommendations I have asked my officials to ensure that Health Care Professionals are clear about what these amendments mean and that, if necessary, we further clarify policy intent in the next version of the PIPAG [PIP Assessment Guide for Health Care Professionals] which is scheduled for the Spring.

⁸⁰ [The Personal Independence Payment \(Amendment\) Regulations 2017: SSAC correspondence](#), GOV.UK

In response to the Committee's observations and recommendations relating to the changes to Daily living activity 3, the Minister said that she had considered the case for the urgency procedure carefully in relation to each of the Upper Tribunal judgments. She continued:

My decision to use the urgency procedures in both cases, despite the difference in financial impact, was not based solely on financial considerations but also on the practical reasons I have previously explained. DWP has engaged with officials from the Department of Health, NHS England and the Devolved Authorities. These discussions confirmed there is generally a wide range of state-funded support available to those with long-term health conditions, particularly those who need support to manage their medication or monitor a health condition.

We did not consult further before amending these Regulations as the PIP assessment criteria were consulted on extensively prior to their introduction. Having carefully considered the Committees' comments, we still believe that the decision we made was correct and have no plans to consult.

The Government plans to respond to SSAC's wider points about lessons for the future in its response to the second Independent Review of Personal Independence Payment.

8.3 Urgent question, 15 March

In response to an Urgent Question from Debbie Abrahams on the Social Security Advisory Committee's report, the Secretary of State for Work and Pensions, Damian Green, told the House of Commons on 15 March that he welcomed SSAC's "careful consideration" of the regulations and said that his Department was "looking closely at its suggestions." He added:

Let me be clear. The SSAC decided that it did not require the regulations to be formally referred to it and would therefore not consult publicly on them. I believe it was right to move quickly to clarify the criteria, and it is clear that the SSAC is not challenging that decision.⁸¹

The Secretary of State denied that the PIP rules treated people with mental health conditions unfairly, adding "The truth is that PIP is a much better benefit for people with such conditions than its predecessor, disability living allowance." He explained:

The facts are these: 65% of PIP recipients with a mental health condition received the enhanced-rate daily living component, whereas 22% used to receive it under DLA. As for the specific mobility aspect, to which the hon. Lady referred. 27% of PIP recipients with a mental health condition receive the enhanced-rate mobility component, whereas 9% received it under DLA. It is perfectly clear from the facts that the regulations restore PIP to its original policy intent, and that that policy intent is better for people with mental health conditions than earlier benefits were.⁸²

⁸¹ [HC Deb 15 March 2017 c397](#)

⁸² [HC Deb 15 March 2017 cc398-9](#)

Labour's Kate Green asked the Secretary of State to clarify a statement he had made on the effect of the regulations on PIP claimants who had previously benefited from the Tribunal judgments:

Kate Green (Stretford and Urmston) (Lab)

I want to understand exactly what the Secretary of State said a few moments ago when he said that nobody would face a cut in their benefit. Did I understand him correctly when he said that, while people would not see their initial DWP benefit award cut as a result of these regulations, they could see their benefit reduced to the original award level when the benefit has been increased by a tribunal and these regulations now supersede the judgement of that tribunal?

Damian Green

That is indeed what I said. We think that there may be a handful of people whose appeals have gone through the courts in this very small period, and that money will not be clawed back from them. That is what I said earlier on.⁸³

Further written answer on the impact on existing awards

In a written answer in the Lords on 4 April, the DWP Minister Lord Henley gave further information on the impact of the regulation on existing PIP awards:

Personal Independence Payment: Written question - HL6211

Asked by [Baroness Hollins](#)

Asked on: 21 March 2017

To ask Her Majesty's Government what estimate they have made of the number of people currently receiving the enhanced mobility rate of Personal Independence Payment who will move to the standard rate following their next reassessment, following changes brought forward in the Social Security (Personal Independence Payment) (Amendment) Regulations 2017; and what assessment they have made of the impact of that change on those individuals.

Answered by: [Lord Henley](#)

Answered on: 04 April 2017

No Personal Independence Payment (PIP) claimants will see a reduction in the amount of PIP previously awarded by the Department for Work and Pensions as a result of the regulations being introduced, including the point at which their claim is next reviewed.

We are aware of a small number of cases, where people may have been awarded a higher level of PIP by a tribunal. This could occur if their case was heard at appeal and a tribunal made a higher award, applying the rulings of the Upper Tribunal. We will not be claiming back the money these individuals received during the period before the new regulations came into force and are considering whether to adjust their payments to bring them in line with the amended PIP regulations.

⁸³ [HC Deb 15 March 2017 c402](#)

I will place a copy of the Equality Impact Assessment in the House Library.

Grouped Questions: [HL6212](#) | [HL6213](#)

9. Lords debate, 27 March

On 27 March the House of Lords considered two motions relating to the PIP regulations: a motion to annul the regulations tabled by the Liberal Democrats' Baroness Bakewell of Hardington Mandeville; and a non-fatal "motion to regret" tabled by Labour's Baroness Sherlock.⁸⁴

The debate followed a [report from the Lords Secondary Legislation Scrutiny Committee](#) that drew special attention to the regulations "on the ground that they give rise to issues of public policy likely to be of interest to the House."⁸⁵ The Committee received submissions from a number of organisations pointing out the likely negative effect of the changes on claimants, particularly those with mental health conditions. Noting the DWP's statement that the legislation would not result in any claimants seeing a reduction in the amount of PIP previously awarded, the Committee observed (original emphasis):

31. However, as the submissions received point out, while this change may not result in an immediate 'cut' for people currently receiving PIP, they may lose out in future (despite no change to their condition), if they are reassessed under the new criteria. The submissions see DWP's own Equality Analysis evaluation as demonstrating that the Government have no firm idea of the long-term impact of these changes but indicative that many will lose benefit. **We believe the Government need to make the long-term impact of these changes clear to the House.**

The Committee also questioned DWP's claim that no changes need be made to the guidance for Healthcare Professionals undertaking PIP assessments, following the regulations (original emphasis):

32. We note with particular concern that DWP states at section 9.2 of the [Explanatory Memorandum] that "since this instrument clarifies the PIP Regulations so as to reverse the effect of the two Upper Tribunal judgments and reinstate the originally intended meaning, no changes are required to [the PIP Assessment] guidance". This seems illogical. The existing guidance has led to two significant Upper Tribunal decisions because the interpretation of the current descriptors was inconsistent or misunderstood. The wording of the descriptors has been changed, which suggests that, as a minimum, those making the assessments should be provided with revised guidance to ensure that they take proper account of the distinctions made. The response from DWP at paragraph 28 above which indicates that the assessors do not have either the ability or the capacity to implement the Upper Tribunal decisions "in a safe and consistent manner" also indicates a need for review.

33. DBC [Disability Benefits Consortium] make the point that in the process of conversion from Disability Living Allowance to PIP, 48% have received a lower level of award or no award at all and, of those who have appealed, 60% have been successful. The high level of successful appeals also appears to indicate that the guidance and the assessors' interpretation of it is not yet sufficiently robust.

⁸⁴ [HL Deb 27 March 2017 cc431-457](#)

⁸⁵ [Lords Secondary Legislation Scrutiny Committee Twenty Seventh Report](#), HL 126 2016-17, 9 March 2017

34. When we considered the initial PIP Regulations in 2013 we said that the House should examine the guidance carefully. In our view it would be equally prudent, now that the DWP has some experience in the operation of the system and a body of case law, to review all the descriptors and the guidance to ensure that they are delivering the policy intention and being correctly interpreted.

Introducing the motion to annul the regulations, Lady Bakewell of Hardington Mandeville said:

In 2012 the Government made a clear commitment that people who experience psychological distress would be eligible, but they are now changing the criteria. The Government further said that a person with a cognitive impairment alone would still be eligible for the highest mobility rate. Cognitive impairments are not the same as mental health problems. Specifically excluding psychological distress undermines the stated purpose of PIP as a benefit which treats disabled people as individuals rather than labelling them by their condition. The proposed changes create a legal distinction between mental health problems and other kinds of impairment when it comes to benefit assessments, again demonstrating discrimination.⁸⁶

Lady Bakewell said that the change “out of step” with previous Government statements and would undermine, rather than restore, the original intent of the legislation. She added:

The original intention behind the PIP assessment was to take a holistic view of the impact of disability, fairly taking into account the full range of impairments. The Upper Tribunal judgments do not undermine this approach, rather they ensure that functional impact is assessed accurately regardless of the symptoms of the condition causing it.⁸⁷

For Labour, Baroness Sherlock said that the Government should withdraw the regulations “to enable proper scrutiny and consultation”, adding:

If they will not, the Minister should commit here and now to conducting a review of the impact of the regulations on those with mental health conditions, as my Motion demands.⁸⁸

Lady Sherlock explained that Labour could not however support a “fatal” motion to annul the regulations:

If the noble Baroness, Lady Bakewell, decides to push her fatal Motion to a vote, she will be well aware that we on these Benches cannot support her and neither will most of the House. There is a reason that the Lords has voted down secondary legislation only five times since 1945. It is because, unlike with primary legislation, if we vote against secondary legislation, it is dead, irrespective of the will of the elected House. The Cunningham convention sets out quite clearly the exceptional circumstances in which the House may do that and we are not in that territory. Even if the fatal Motion somehow passed, I presume that the Government would simply bring back something in a Finance Bill or in other financially privileged legislation on which we could have no impact. I regret that having on the table a

⁸⁶ [HL Deb 27 March 2017 cc431-2](#)

⁸⁷ [HL Deb 27 March 2017 cc432](#)

⁸⁸ [HL Deb 27 March 2017 cc436](#)

Motion such as that must inevitably raise expectations that this House can do something that it could or would never have done.⁸⁹

The Crossbencher Baroness Campbell of Surbiton said that it was a “fundamental tenet” of the Equality Act that there was no hierarchy of disability and that Members of the Lords had welcomed the Prime Minister’s commitment to parity of esteem between mental and physical health. She continued:

The amended regulations, sadly, completely depart from these vital principles. They state, in effect, that disabled people may be equal but, just like in Orwell’s *Animal Farm*, some disabled people have become more equal than others.⁹⁰

Lady Campbell observed:

This Motion [to annul the regulations] could pause the regulatory change until the Government properly consult disabled people and their organisations: Scope, Mind, Disability Rights UK and the Disability Benefits Consortium—in fact the majority of disability charities in this country, which are absolutely appalled at this regulatory change. They support the prayer of annulment, thinking this change a step too far for people with mental health disabilities. Yes, such a Motion is an exceptional circumstance, and I do not care that they have been debated and voted on only five times within a hundred years or whatever. I will gladly support it now.⁹¹

Concerns voiced by many Members of the House were encapsulated by the Bishop of Winchester, who said that he was also speaking on behalf of the Bishop of Durham and a number of other bishops. He said:

Our understanding is that the introduction of PIP was intended to create parity of treatment for people with mental and physical health problems by basing the assessment on a person’s ability to carry out certain tasks, irrespective of the nature of their disability. This is a fundamental principle that we strongly support, which has helped counter a long-standing bias within the benefits system against people who suffer from severe mental health problems, such as schizophrenia, anxiety disorders and autism. Explicitly limiting access to the enhanced rate of the mobility component for those who experience psychological distress undermines this fundamental aim by reintroducing an unhelpful distinction between people with physical and mental health conditions.

Crucially for this debate, this change appears to be inconsistent with the primary legislation, which makes it clear, as the Explanatory Notes underline, that people should be entitled to the higher rate of mobility component if,

“a person’s ability is severely limited by their physical or mental condition”.

Furthermore, it appears to be inconsistent with Ministers’ public statements at the time. People who find it difficult to leave the house because of anxiety, panic attacks and other mental health problems can be as restricted in their independence as people with physical mobility problems. They face the same additional

⁸⁹ [Ibid.](#)

⁹⁰ [HL Deb 27 March 2017 c437](#)

⁹¹ [HL Deb 27 March 2017 c438](#)

barriers and costs as other disabled people, and should be scored accordingly against the same criteria. The amended regulations, however, would mean that people with these conditions would be assessed against only two of the six criteria for “planning and following journeys”, even though they may be unable to make familiar or unfamiliar journeys without the support of another person.⁹²

Replying for the Government, the DWP Minister Lord Henley said that it was “entirely appropriate for the Government to act to restore clarity to the law,” reiterating that the Government was “not making any changes whatever to the original policy intent.” He added:

Our approach in developing PIP and the amendments we have made is not about the Government attaching a higher value to one condition over another—again, I go back to that parity of treatment—nor is it, as the noble Baroness’s Motion suggests and as some noble Lords have suggested today, discriminatory or in conflict with our support for people with mental health conditions over those with physical conditions. PIP will continue to ensure parity between mental and physical conditions by looking at the impact of all conditions on an individual and their level of overall need, and not at what conditions they have.⁹³

Winding up the debate, Lady Bakewell of Hardington Mandeville said:

Naturally, I am disappointed that the Government are reluctant to move their position so as to support people whose lives are blighted by psychological and anxiety disorders. That was not the original intention of the coalition Government’s move from disability living allowance to the personal independence payment, and I do not believe that the changes bring either clarity or parity.⁹⁴

She added:

The Minister may have spoken to charities but clearly he did not convince them, as Scope, the Disability Benefits Consortium, Sense, Citizens Advice, Rethink Mental Illness and Mind have all said the same—that this decision should be reversed.⁹⁵

The **motion to annul** the regulations was defeated by 164 votes to 75.

Baroness Sherlock’s separate **“motion to regret”** the regulations was agreed by 162 votes to 154. The motion states:

That this House regrets that Her Majesty’s Government is implementing the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 without formal referral to the Social Security Advisory Committee; and that the Regulations discriminate against people with mental health problems, and could put vulnerable claimants at risk; and calls on Her Majesty’s Government to allow proper scrutiny of these proposals, including a review of the changes that the Regulations make and their specific impact on those with mental health conditions, within two years of their coming into force.

⁹² [HL Deb 27 March 2017 c446](#)

⁹³ [HL Deb 27 March 2017 cc450-1](#)

⁹⁴ [HL Deb 27 March 2017 c452](#)

⁹⁵ [Ibid.](#)

10. Commons emergency debate, 29 March

Following an application by the Shadow Secretary of State for Work and Pensions Debbie Abrahams on 28 March⁹⁶, the Speaker agreed to an emergency Commons debate on the PIP regulations, to take place the next day.

Introducing the debate – on a motion “That this House has considered changes to Personal Independence Payment Regulations” – Ms Abrahams said that it was “highly regrettable that the Government have had to be dragged to the House to be held to account for this nasty piece of secondary legislation.”⁹⁷ She continued:

As the House will know, the Government have ignored two urgent questions on this matter, an early-day motion signed by 179 Members calling for these punitive regulations to be annulled, and a 38 Degrees petition, signed by more than 185,000 people, asking them not to make the changes. When pushed at business questions on Thursday, the Leader of the House said there would be a debate, but could not say when. Only late last night did it become clear that the debate has now been hastily scheduled for 19 April. What particular kind of arrogance or disregard for democracy are the Government revealing? This does not bode well for their accountability to this place in the future negotiations.

For the record, we should note that today’s debate does not allow for a substantive vote on the regulations. As the Government have failed to allow a debate before the EDM praying-against period comes to an end on 3 April, the regulations will not be automatically revoked, should the House vote against them on 19 April. I would be grateful to the Minister for Disabled People, Health and Work if she explained why, given that we have risen early twice this week, the Government have been incapable of finding time for such a debate before the Easter recess. The Government are hoping that because they have delayed the debate, the objection to the regulations will be kicked into the long grass, but it will not be.⁹⁸

Ms Abrahams commented:

In a letter to me last week, the Secretary of State for Work and Pensions said that he became aware of the [Upper Tribunal] rulings on 8 December. Two and a half months later, the Government laid their emergency legislation before Parliament. I am sure that the irony of something taking two and a half months in an “emergency” has not been lost on you, Mr Speaker. During those two and a half months, not only were the Government unable to bring the regulations before the House, but they also bypassed their own Social Security Advisory Committee. They have ignored SSAC’s recommendations on wider engagement, testing or piloting changes, and the analysis of impacts.⁹⁹

⁹⁶ [HC Deb 28 March 2017 cc145-6](#)

⁹⁷ [HC Deb 29 March 2017 c308](#)

⁹⁸ [Ibid.](#)

⁹⁹ [HC Deb 29 March 2017 c309](#)

Ms Abrahams described the regulations as “nothing more than a shameful cut.”¹⁰⁰

For the SNP, Corri Wilson said it was “a shame that the House has had to drag a Minister to the Dispatch Box so that the Government can be held to account on this matter after weeks of their refusing to debate it.” She continued:

As we have heard, 179 Members from eight different parties signed an early-day motion to annul the statutory instrument that implements the changes. The truth is that the Government have been shying away from accountability for the regulations from the start. They initially refused to comply with the upper tribunal ruling by bringing forward these changes in the first place, and then they did not even have the decency, nor the courtesy, to refer a draft of the regulations to their own Social Security Advisory Committee. If the Government are so confident that the regulations will hold up to any kind of scrutiny, why have they avoided due process by trying to sneak the changes in through the back door?¹⁰¹

Stephen Timms (Labour) said that the changes to the Mobility descriptors “explicitly carve out people who cannot plan and follow a journey because of psychological distress.” He went on:

The Secretary of State has said not to worry, because people with cognitive impairments can still qualify for the highest rate of the mobility component. That may well be the case, but that is a different group of people. The changes explicitly carve out people whose mobility impairment arises from psychological distress. Was that the original intention? On 7 February 2012, the right hon. Member for Basingstoke (Mrs Miller)—if I remember rightly, she was the predecessor but two of the hon. Member for North Swindon (Justin Tomlinson)—said in a written answer that

“when considering entitlement to both rates of the mobility component we will take into account ability to plan and follow a journey, in addition to physical ability to get around. Importantly, PIP is designed to assess barriers individuals face, not make a judgment based on their impairment type.”—[Official Report, 7 February 2012; Vol. 540, c. 232W.]

That is a clear statement of the original intent of this benefit. If the Secretary of State has been advised that the original intention was something different, he simply needs to check the record.

The changes in the regulations are different from the original intention. They introduce an explicit judgment based on impairment type; the original intention was to have no such distinction. The regulations introduce a distinction that was not in the benefit’s original intention. They say that someone is in if they struggle to plan and follow a journey, but if their problem is because of psychological distress, they are out. It is an explicit judgment, it is explicitly contingent, and it carves out a large group of people with mental health problems.¹⁰²

Replying in the debate for the Government, the Minister for Disabled People, Health and Work, Penny Mordaunt, said:

¹⁰⁰ [HC Deb 29 March 2017 c312](#)

¹⁰¹ [HC Deb 29 March 2017 c317](#)

¹⁰² [HC Deb 29 March 2017 cc322-3](#)

It is entirely appropriate for the Government to act to restore clarity to the law, as Governments have done before and will no doubt continue to do in the future. Indeed, Labour, when in government back in 2000, introduced a change to the rules for disability living allowance that overturned a commissioner's decision holding that telephone conversations with someone with severe depression and chronic anxiety should count as qualifying attention for the care component of DLA. That decision was seen to have significantly widened the gateway not only to DLA, but to attendance allowance, and the then Government took a similar decision to the one we have taken to restore the original policy intent.¹⁰³

The Minister added:

Several Members have concluded that if someone is suffering from psychological distress, that would not count towards their score and they would somehow be prevented from scoring the maximum on the descriptors. That is not the case. As time is tight, perhaps I could place some case studies in the Library if that is in order, Mr Speaker. As has been pointed out, if someone is suffering from autism, PTSD, depression or a similar condition, they can score 12 points on that descriptor.¹⁰⁴

¹⁰³ [HC Deb 29 March 2017 cc331-2](#)

¹⁰⁴ [HC Deb 29 March 2017 cc333-4](#)

11. Can people with mental health conditions still qualify for enhanced rate mobility?

On 31 March the Joint Committee on Statutory Instruments published its [26th report](#) of the session which looks at, among other things, the *Social Security (Personal Independence Payment) (Amendment) Regulations 2017*.¹⁰⁵

Regulation 2(4) reverses the Upper Tribunal's decision on the planning and following journeys activity by amending descriptors c, d and f to make it clear that they cannot be satisfied for reasons of "psychological distress." The Committee wondered whether the cumulative effects of regulation 2(4) and the Upper Tribunal's finding on the Moving around activity "might be that a person with a mental condition could **never** be entitled to the mobility component at the enhanced rate" (emphasis added). Accordingly, the Committee asked the DWP to explain-

Whether that was so and-

- if it was, whether that was consistent with section 79(2)(b) of the *Welfare Reform Act 2012* (which states that person is entitled to the enhanced rate PIP mobility component if their "ability to carry out mobility activities is severely limited by the person's physical **or mental** condition"); and
- if it was not, in what sorts of circumstances such an entitlement could arise.

The Department's response is in [Appendix 10 of the Committee's report](#). It states:

3. The Department confirms that the amendments made by regulation 2(4) do not have the effect that a person with a mental condition (unaccompanied by a physical condition) can never be entitled to the mobility component of personal independence payment ("PIP") at the enhanced rate. Examples are given at paragraph 5 below.

4. In order to standardise assessments across different health conditions that are not easily compared, a claimant's entitlement to PIP is assessed by reference to their functional impairments, and not according to whether the source of those impairments is a physical or a mental condition. As a result, the PIP assessment enables a more accurate, objective, consistent and transparent consideration of individuals, to identify those with the greatest need. It also avoids the practical difficulty that it may not always be straightforward to determine whether particular limitations that a claimant faces stem from a physical condition or a mental condition (or a combination of the two). For example, some conditions, such as Chronic Fatigue Symptom (CFS), also known as myalgic encephalomyelitis (ME), have complex causes which are still not well understood, but which may involve both physical and psychological factors. Distress is not itself a "mental condition",

¹⁰⁵ [HC 93-xxvi 2016-17](#), 31 March 2017

but rather a symptom which may come and go at different times and with varying frequency or causes depending on the individual.

5. The following is a non-exhaustive list of examples of situations where a person with a mental condition (unaccompanied by a physical condition) could receive the mobility component of PIP at the enhanced rate:

- A person (person A) with a cognitive impairment who cannot, due to their impairment, work out where to go, follow directions or deal with unexpected changes in their journey, even when the journey is familiar, would score 12 points under descriptor f in mobility activity 1 (“planning and following journeys”), and hence be entitled to the enhanced rate of the mobility component. Examples of such conditions could include dementia, or a learning disability such as Down’s Syndrome. (Some people covered by this example may experience psychological distress as well, and may also meet descriptor b, requiring “prompting” – i.e. reminding, encouraging or explaining – from another person in order to be able to undertake a journey. They will still receive 12 points under descriptor f and be entitled to the enhanced rate.)
- A person (person B) with a developmental disorder could qualify on a similar basis to person A if the disorder affects their ability to work out where to go, follow directions or deal with unexpected changes in their journey. If their disorder results in them having difficulty assessing and responding to risks, or in impulsivity, then they could also score 12 points under descriptor f on the basis that they need to be accompanied for their own safety. Examples of developmental disorders which could have these effects include Autistic Spectrum Disorder and Attention Deficit Hyperactivity Disorder (ADHD).
- A person (person C) who suffers psychosomatic pain could qualify for the enhanced rate through satisfying descriptors e or f in mobility activity 2 (“moving around”). The case of *NK v SSWP* [2016] UKUT 146 (AAC) concerned a claimant who suffered significant pain when moving around, but the pain resulted from a mental condition rather than any physical impairment. The Upper Tribunal found that the claimant could score points towards an award of the mobility component under mobility activity 2, even though her pain did not have a physical cause.
- A person (person D) who has chronic fatigue syndrome (CFS) and experiences symptoms including significant fatigue following physical exertion, muscular and joint pain and balance problems, together with psychological difficulties which manifest as depression and panic attacks, could qualify for the enhanced rate under mobility activity 2, or by scoring points on a combination of mobility activity 1 (4 points under descriptor b, for requiring prompting to avoid psychological distress when undertaking any journey) and mobility activity 2 (8 points under descriptor c, for being able to stand and then move unaided more than 20m but no more than 50m). As explained above, Chronic Fatigue Symptom (CFS), also known as myalgic encephalomyelitis (ME), has complex causes which are still not well understood, but which may involve both physical and psychological factors.

The Joint Committee's report states:

10.8 The Committee is grateful for that explanation and the examples and notes that on that basis (which will now be a matter of public record as a result of the publication of the memorandum in this report) that the provision made by regulation 2(4) does not automatically secure that a person with a mental condition cannot ever be entitled to the mobility component at the enhanced rate, whether by accruing 12 points for meeting descriptor f relating to the planning and following up journeys activity or a combination of points under another descriptor relating to that activity and points relating to the moving around activity. Although the change prevents someone acquiring that entitlement because of the effects of psychological distress, the Committee accepts on the basis of the distinction drawn by the Department that the change does not entirely negate the effect of the reference to a "mental condition" in section 79(2)(b) because there are circumstances where a person suffering from a mental condition may be entitled to the mobility component at the enhanced rate. The Department's explanation therefore satisfies the Committee's technical concerns as to whether the changes made are in the reasonable legislative contemplation of the enabling powers; whether the policy that they achieve is desirable is not a matter for the Committee and can be considered elsewhere should Parliament so wish. **The Committee accordingly reports regulation 2(4) as requiring the elucidation set out in the Department's memorandum.**

Prompted by the DWP memorandum to the Joint Committee on Statutory Instruments, **Disability Rights UK** has written to the Department stressing that it should "urgently issue new guidance" to highlight the pointers it gives. The letter states:

"We would like to take up as a priority is the lack of clear and detailed Decision Maker's Guidance in relation to the new rules limiting awards of the enhanced PIP mobility component.

Following the March 2017 rule changes, the Department did issue guidance last month in relation to PIP Mobility Activity 1 - [DWP Memo ADM 3/17](#) -

However, this amounts to less than half a page and centres on a single case study of someone who experiences severe anxiety and is said to be entitled to only four PIP Mobility points.

In contrast, in [responding to a request by the Joint Committee on Statutory Instruments](#) to clarify whether regulation 2(4) of the [Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#) means that a person with a mental condition could never be entitled to the mobility component at the enhanced rate, the DWP set out a 'non-exhaustive' list of situations where a person with a mental condition (unaccompanied by a physical condition) could meet the necessary criteria.

... "Overwhelming psychological distress" can be one symptom of a number of different mental health conditions.

We believe that PIP Decision Makers should be given far more extensive guidance to ensure that disabled people are not refused PIP just on the grounds that they experience "overwhelming psychological distress".

In addition, advice workers often access DWP Guidance – that is published online – to better understand the assessment of benefit eligibility and to make a case on behalf of clients who they feel have wrongly been refused benefit under the Department’s own guidance.

The Department maintains that the amendments made by regulation 2(4) do not have the effect that a person with a mental condition (unaccompanied by a physical condition) can never be entitled to the mobility component of PIP at the enhanced rate.

If this is the case, then it has a responsibility to ensure that the amendments are fully understood by its decision-making staff, advice professionals and disabled people so that those who are properly entitled to PIP are made awards without the need for reconsideration or appeal.

We hope that, given the inappropriate brevity of the guidance issued so far, you will accept the points we have made and consider issuing as a priority more detailed guidance.”¹⁰⁶

¹⁰⁶ Disability Rights UK, [People with mental health conditions can still get enhanced PIP mobility component says DWP](#), 4 April 2017

12. Media coverage

[“Disabilities minister quietly ‘blocks PIP benefit payments to 160,000 people’”, Independent, 25 February 2017](#)

'Life costs more if you're disabled – on average £550 a month,' says policy and research director Anna Bird

[“Liberal Democrats to try to kill Government's bill to restrict disability benefits”, Independent, 25 February 2017](#)

Baroness Cathy Bakewell says Conservatives are treating disabled people 'with total contempt'

[“Disability benefit changes criticised”, BBC News, 25 February 2017](#)

Opposition parties have criticised moves to cut £3.7bn from the benefits bill by reducing the number of people eligible for disability benefit

[“No 10 policy head George Freeman says disability payments should go to the 'really disabled'- not those who suffer from anxiety,” Telegraph, 26 February 2017](#)

[“Welfare funds must serve 'really disabled' people, says MP,” Guardian, 26 February 2017](#)

Tory policy head George Freeman argues for 'tweaks' to stop benefits ruling entailing £3.6bn bill and PIP eligibility for 'anxiety'

[“Disability benefits: PIPs should be for 'really disabled’”, BBC News, 26 February 2017](#)

Disability benefits should go to "really disabled people" not those "taking pills at home, who suffer from anxiety", a key Theresa May aide says.

[“Theresa May adviser 'regrets' saying benefits should 'only go to really disabled people' and not people with anxiety,” Independent, 27 February 2017](#)

Conservative MP George Freeman said he had not meant to cause offence

[“Disability benefits: Number 10 defends changes to PIPs,” BBC News, 27 February 2017](#)

Downing Street has defended plans to change access to disability benefits, saying that "nobody is losing out".

[“Heidi Allen becomes first Tory MP to join revolt over cuts to disability benefits,” Telegraph, 27 February 2017](#)

[“Jeremy Corbyn urges rethink over 'nasty' disability benefit review,” BBC News, 1 March 2017](#)

Jeremy Corbyn has urged Theresa May to rethink a "shameful" review of who is eligible for disability benefits.

[“Theresa May admits Government’s social security experts were not consulted about disability benefits cuts,”](#) Independent, 1 March 2017

But The Independent can reveal the Social Security Advisory Committee will consider the new Personal Independence Payments regulations next week

[“Billions of pounds of PIP cuts ‘will put lives at risk’,”](#) Disability News Service, 2 March 2017

[“Disabled peer says Mordaunt was ‘spinning like crazy’ over PIP cuts,”](#) Disability News Service, 9 March 2017

[“DWP ‘tells disability benefits assessors to discriminate against people with mental health conditions’,”](#) Independent, 14 March 2017

[“Government welfare experts slam ministers for denying PIP disability benefits to 160,000 vulnerable people,”](#) Independent, 15 March 2017

[“PIP investigation: MPs warn of ‘broken’ system and distressed claimants,”](#) Disability News Service, 16 March 2017

[“‘Shabby’ Labour fails again on disability rights, after abstaining on PIP cuts vote,”](#) Disability News Service, 30 March 2017

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