



## Disability Living Allowance reform

Standard Note: SN/SP/5869  
Last updated: 14 February 2011  
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Section: Social Policy Section

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Disability Living Allowance (DLA) is a non-means-tested benefit introduced in 1992 to help with the extra costs of disability. It has a care component and a mobility component. Around 3.2 million people in Great Britain receive DLA, and total expenditure in 2010-11 is estimated at over £12 billion.

The June 2010 Budget announced that a new “objective medical assessment” would be introduced for both new and existing working age DLA claims from 2013-14, saving over £1 billion a year by 2014-15 and reducing the DLA caseload by 20%. On 6 December the Government published a consultation paper, *Disability Living Allowance reform*, which sets out plans for an entirely new benefit – the “Personal Independence Payment” – to replace DLA, starting from 2013-14. Responses “will inform secondary legislation on the detailed design of the benefit, including requirements for the new assessment.” Concerns have been voiced about the truncated consultation period and about how this fits in with the timetable for the *Welfare Reform Bill*. The consultation was to have ended on 14 February but has now been [extended to 18 February](#) due to DWP IT problems.

While some aspects of the proposals have been welcomed by disability groups, there is concern about the possible impact on disabled people, following spending cuts already announced. Targeting support on those with the greatest needs could, it has been suggested, affect up to 750,000 people, putting additional strain on NHS and social services budgets. Disability organisations report that the proposals are already causing considerable anxiety for disabled people and their families.

There is little detail on the new assessment, but there is concern that a focus on the functional impact of disability may not reflect accurately the additional costs faced by disabled people. The proposal that it should take into account the use of aids and adaptations is also controversial. Other areas of concern include the increased “qualifying period” for the benefit, the removal of automatic entitlement for people with certain serious conditions, and the proposal for penalties for failure to report changes in circumstances.

Proposals to remove the DLA mobility component from people in care homes are covered in a separate Library [standard note](#).

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# 1 Disability Living Allowance: an overview

## 1.1 The introduction of DLA

Disability Living Allowance (DLA) was introduced in April 1992 by the merger and extension of two existing benefits: Mobility Allowance (MobA) and Attendance Allowance (AA). DLA has a mobility component and a care component. The mobility component – for help with walking difficulties – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels. Although DLA can be paid indefinitely, there is an upper age limit for the first claim. Claims must be made before a person's 65<sup>th</sup> birthday. Otherwise, Attendance Allowance may be claimed instead. AA has no mobility component, but the disability tests are the same as for the middle and higher rate care components of DLA.

The following extract from a report of the former Social Security Committee in 1997-98 gives historical background to the introduction of DLA:

### *The history and purpose of DLA*

4. After the second world war, the main provision for disability was through sickness benefits and the compensation schemes for war or industrial injury. The modern DLA has its origins in the 1970s when Attendance Allowance (AA) and Mobility Allowance (MobA) were introduced for severely disabled people.

### *Attendance needs*

5. The AA was introduced in 1970 for those requiring attention or supervision during both day and night. The original intention was to help people whose disability was so severe that they needed 'attendance' from another person. Originally flat rate, a lower rate was added two years after its introduction to cover cases where attendance was required during either the day or the night.

### *Mobility*

6. Assistance with mobility needs was provided more in kind than in cash before the 1970s, beginning with invalid tricycles ("trikes") for war pensioners in 1921 and gradually extended under NHS legislation to civilian disabled people. Initially the three-wheeler was available irrespective of employment status to drivers who either had lost both legs, or were unable to walk because of locomotion, lung or heart problems. Three-wheelers were also available to help the work prospects of those with a less severe disability but whose walking ability was seriously limited and who required transport to enable them to get to and from work. A 1974 report recommended that the dangerous trikes should be replaced by a small car, and help restricted largely to drivers. The Labour government instead decided on a flat-rate, non-contributory cash allowance. In 1976, the MobA became payable. Trikes were phased out in favour of the allowance, and the Motability scheme set up.

### *The introduction of DLA*

7. DLA was introduced in 1992 in recognition of the limitations of AA and MobA in not meeting the needs of some groups of disabled people, e.g. people with learning disabilities and people with visual impairments. Targeted on severity categories 5 and 6, some 140,000 people were expected to claim the new lower rate of care, and 150,000 the lower rate of mobility. DSS research showed that the lower rates have been well-targeted on the intended groups, but that people receiving lower rate awards were scarcely less severely disabled than people on the higher rates, and that a

majority of lower rate recipients were more severely disabled than anticipated. Although intended to be simpler, the new DLA comprised eleven different levels of benefit with nine different criteria. A major objective of the 1992 changes was the introduction of 'self-assessment', enabling disabled people to describe the impact of their disability rather than relying on routine medical assessments as was the case with AA and MobA.<sup>1</sup>

A recent impact assessment produced by the Department for Work and Pensions set out the rationale for DLA (and Attendance Allowance) as follows:

The purpose of Disability Living Allowance and Attendance Allowance is to provide a financial contribution towards the generality of extra costs experienced by severely disabled people as a direct result of their disabilities. The benefits are part of the wider package of help available to support disabled people and help maintain their independence.

...Both benefits were introduced as a policy response to the evidence that disabled people and their families suffered greater disadvantage and poverty than their non-disabled peers and preceded the opening up of the disability rights framework, including the introduction of measures to tackle discrimination against disabled people.<sup>2</sup>

## 1.2 Conditions for entitlement

Entitlement to DLA depends on the effects that a particular condition has on a person's need for personal care and/or ability to walk, and not on particular disabilities or diagnoses (although people with certain serious conditions, and people with a terminal illness, may qualify automatically) There is no requirement for the assessment of a claimant's income, capital or National Insurance contributions. Furthermore, DLA is non-taxable.

The current conditions for entitlement to the different DLA components are as follows.

### **Care component**

The person's care needs must ultimately stem from disability (either physical or mental).

*Lowest rate (currently £18.95 a week):*

- for people who need attention with bodily functions for a significant portion of the day; or
- if aged 16 or over, are unable to prepare a cooked main meal.

*Middle rate (£47.80 a week):*

- for people who need frequent attention with bodily functions throughout the day; or
- need continual supervision throughout the day to avoid substantial danger to themselves or others; or
- need prolonged or repeated attention at night in connection with bodily functions; or
- need someone to be awake during the night for a prolonged period or at frequent intervals in order to avoid substantial danger to themselves or others; or

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<sup>1</sup> Social Security Committee, *Disability Living Allowance*, HC 641 1997-98, 13 May 1998, v-vi, paras. 4-8

<sup>2</sup> DWP, *Attendance Allowance, Disability Living Allowance and Carer's Allowance: Retrospective equality impact assessment*, September 2010, paras 2.1-2.2

- regularly use a kidney machine at home or in a self-care unit at least twice a week, and this means they need attendance or supervision by another person. If renal dialysis is provided for them as a hospital outpatient under the NHS scheme, and with assistance from hospital staff, this will not normally entitle them to receive DLA.

*Highest rate (£71.40 a week):*

- for people who satisfy both a day-time and a night-time conditions which apply to the middle rate.

### **Mobility component**

*Lower rate (£18.95 a week):*

- for those aged 5 or over who are able to walk but are so disabled physically or mentally that, disregarding any ability to use familiar routes, they need someone with them to provide guidance or supervision for most of the time when they are outdoors.

*Higher rate (£49.85 a week):*

- for those aged 3 or over; and
- who are unable or virtually unable to walk due to a physical disability; or
- have no legs or feet, either from birth, through amputation at or above the ankle, or a combination of both; or
- are both deaf and blind and need someone with them outdoors; or
- are severely mentally impaired, with severe behavioural problems and qualify for the highest rate of the care component; or
- who suffer from physical disablement, and by making the effort required to walk would endanger their life or cause deterioration in their health.

In addition, as a result of a Government concession during the passage of the *Welfare Reform Bill 2008-09*, people with severe visual impairment will be able to claim the higher rate mobility component from April 2011.

Further information on DLA can be found at the [Directgov website](#).

For both DLA and Attendance Allowance, entitlement depends on the amount of help needed, not the amount actually received, so it is not affected by whether a person lives alone or has someone residing with them.

In the case of DLA, neither component is payable until a person has needed help for three months (the “qualifying period”), and the person must be expected to need help for a further six months (the “prospective test”).<sup>3</sup> For Attendance Allowance, the qualifying period is six months, but there is no prospective test.<sup>4</sup> For both benefits, there are however special rules which exempt from these requirements those who are not expected to live more than six

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<sup>3</sup> Sections 72 and 74 *Social Security Contributions and Benefits Act 1992*

<sup>4</sup> Sections 64 and 65 *Social Security Contributions and Benefits Act 1992*

months because of a terminal illness. Such people automatically qualify for the highest rate DLA care component or the higher rate of Attendance Allowance, even if no help is needed.<sup>5</sup>

The rationale behind qualifying periods for “extra costs” benefits was explained by the then Social Security Minister, Nicholas Scott, during the Committee Stage of the *Disability Living Allowance and Disability Working Allowance Bill* in 1990. He explained that qualifying periods were a way of distinguishing people with long-term needs from those with acute but short-term needs:

As with its predecessor benefits [i.e. AA and Mob A], disability living allowance will be a long-term benefit aimed at those people whose disabilities will have a considerable and continual impact on their lives. It is not intended for people with acute but short-term conditions. People with short-term needs should be screened out.<sup>6</sup>

Further background on the qualifying period for DLA is given in a separate Library standard note.<sup>7</sup>

### 1.3 Assessing entitlement to DLA

People making a claim for DLA must complete a self-assessment questionnaire giving details of their health conditions and the needs arising from them.<sup>8</sup> Claims are considered by DWP officials known as “decision makers”. In making the decision on entitlement, the decision maker may consult a detailed guide – the *A-Z of Medical Conditions*<sup>9</sup> – which describes the care and mobility needs likely to arise from various illness or conditions. If the claimant’s situation does not match the description in the guidance, or if the guidance in relation to their particular condition suggests that further medical evidence should be sought, the decision maker may ask the claimant’s GP, or another medically qualified person treating the claimant, to complete a factual report (the claim form asks the claimant to provide contact details for their GP and/or person treating them). If, on receipt of the factual report, the decision maker decides that they still do not have enough information, they can require the claimant to attend a medical examination carried out by a healthcare professional employed by Atos Healthcare, the DWP Medical Services contractor. Atos Healthcare carried out 46,312 DLA assessments in the period October 2009 to September 2010.<sup>10</sup>

DLA awards may be for either a fixed period or for an open-ended period.<sup>11</sup> 71 per cent of current DWP recipients were awarded benefit for an indefinite period, although this will include people over pension age with long-term conditions.<sup>12</sup> The proportion of new DLA claims resulting in an indefinite award will be considerably lower.<sup>13</sup>

Fixed period awards may be for months or for a few years. For fixed period awards, the letter giving the decision on the claim will specify the date when payment starts and when it ends. The length of the award will depend on the DWP decision maker’s judgment when the original claim was made about how long the person’s needs are likely to last for.

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<sup>5</sup> Sections 66, 72 and 72 *Social Security Contributions and Benefits Act 1992*

<sup>6</sup> SC Deb (E) 11 December 1990 c 53

<sup>7</sup> SN/SP/1057, *Disability Living Allowance for people aged 65 and over*, 19 January 2005, pp6-8

<sup>8</sup> The form can be downloaded from the [Directgov website](#)

<sup>9</sup> Available at the [DWP website](#)

<sup>10</sup> HC Deb 4 November 2010 c929w

<sup>11</sup> Sections 72-73 *Social Security Contributions and Benefits Act 1992*

<sup>12</sup> HC Deb 19 January 2011 c796w

<sup>13</sup> Of the 229,500 awards made in the 12 months to November 2006 for example, 163,500 (71 per cent) were fixed-period awards; HC Deb 5 July 2007 c1188w

The fact that someone may have been given an indefinite award of DLA does not mean that they will not have to undergo a further assessment at some point. Between 1999 and 2007 existing claims were reassessed under the “periodic enquiry” process. Since 2007 the DWP’s “Right Payment Programme” (RPP) has been checking the correctness of existing awards by examining a sample of around 12,000 DLA cases each year. Those selected by RPP are sent a form to complete which is then considered by a special team of decision makers. As part of the check on their award, the claimant may be asked to provide further information and/or attend a medical examination. Claimants are only exempt from reassessment under RPP if they are terminally ill, or if their award was made within the previous 12 months.<sup>14</sup>

The following written answer from January 2009 gives further information on the RPP and other procedures in place to verify and monitor the accuracy of Disability Living Allowance award entitlement decisions:

The Pension, Disability and Carers Service (PDCS) has in place a number of procedures to verify and monitor the accuracy of disability living allowance (DLA) award entitlement decisions. PDCS has a dedicated national checking team that continuously monitors a randomly selected sample of DLA outcome decisions and appeal submissions. In addition to this, DLA Operations have their own Quality Improvement Support Team that performs random checks on a sample of all recent DLA outcome decisions from each operational unit. Local operational managers also have technical checking teams who target areas of known difficulty before decisions are issued. Each year, PDCS also performs 12,000 random case interventions under the Right Payment Programme, to ensure the accuracy and correctness of the DLA live load. To encourage consistency of approach and better quality decisions, PDCS has introduced Customer Case Management (CCM), which provides comprehensive medical guidance for decision makers on the effects of disability, and guidance on focused further evidence gathering including more direct contact between decision makers and customers. To complement the existing checking regime, work is underway to introduce post decision checks targeted at those decisions that do not appear to conform to the medical guidance.<sup>15</sup>

Estimates of the incidence of fraud and error in relation to DLA claims are low in comparison with other benefits. The latest DWP estimate is that around £220 million (1.9% of total expenditure on DLA) was overpaid due to fraud and error in 2009-10. This compares with 5.7 per cent of expenditure on Income Support overpaid due to fraud and error, 5.2% for Jobseeker’s Allowance, 4.4% for Housing Benefit and for Pension Credit, and 3.3% for Incapacity Benefit. Of the £220 overpaid, £60 million was due to fraud, £70 million was due to “customer error”<sup>16</sup> and £90 million was due to “official error”.<sup>17</sup> There is no official estimate of the amount of DLA that is unclaimed because people eligible for the benefit do not claim it, but looking only at those already getting DLA, the DWP estimates that in 2009-10 claimants were *underpaid* a total of £290 million.<sup>18</sup>

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<sup>14</sup> Further information on the Right Payment Programme is given in a [Disability Alliance factsheet](#)

<sup>15</sup> HC Deb 22 January 2009 c1681w

<sup>16</sup> Where the claimant provided inaccurate or incomplete information, or failed to report a change in their circumstances, but there is no fraudulent intent on their part

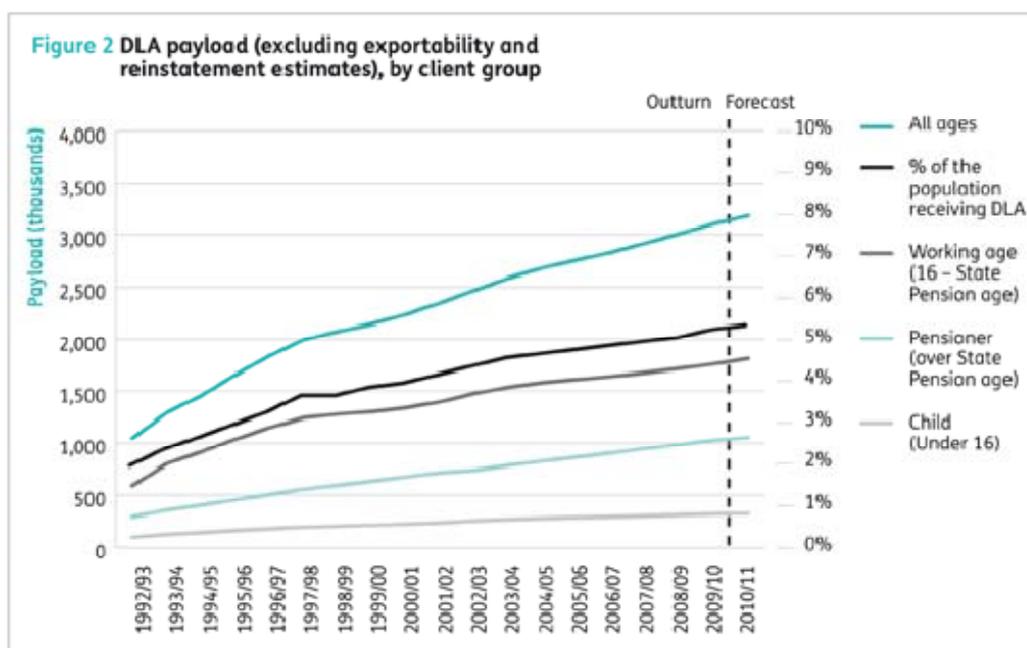
<sup>17</sup> Benefit was paid incorrectly due to inaction, delay or a mistaken assessment by the DWP, a local authority or HM Revenue and Customs

<sup>18</sup> DWP, [Fraud and Error in the Benefit System: October 2008 to September 2009](#)

## 1.4 Statistics and expenditure

At May 2010, 3.2 million people were receiving DLA in Great Britain, of whom 2.7 million received a care component and 2.7 million a mobility component. 2.3 million received both a care and a mobility component.<sup>19</sup> The DWP estimates that total expenditure on DLA will be in excess of £12 billion in 2010-11.<sup>20</sup>

The number of people claiming DLA has increased steadily since its introduction in 1992, as the following chart from the DWP consultation paper indicates:<sup>21</sup>



Over a million DLA claimants (33% of the total caseload) are over State Pension Age, but nearly 1.8 million (57%) were of working age.

The growth in the DLA caseload is frequently remarked on, but there is surprisingly little recent research evidence on why it has continued to grow, year on year. In a written answer in February 2010 the then Minister for Disabled People, Jonathan Shaw, said:

The Disability Living Allowance caseload has grown for a number of reasons, including the maturing of the benefit, which was introduced in its current form in 1992, demographic factors and increased awareness of the benefit. We currently forecast that expenditure will grow by a further 2.3 per cent. between 2009-10 and 2010-11. By convention the Treasury does not publish a projection of Annually Managed Expenditure beyond the current spending review period.<sup>22</sup>

A 2009 study by the Centre for Regional Economic and Social Research at Sheffield Hallam University for the Department for Work and Pensions noted that there was a considerable overlap between the working age DLA population and the population in receipt of incapacity

<sup>19</sup> DWP [Tabulation Tool](#)

<sup>20</sup> DWP [Benefit Expenditure Tables](#)

<sup>21</sup> DWP, *Disability Living Allowance reform*, Cm 7984, December 2010

<sup>22</sup> HC Deb 2 February 2010 c257w

benefits (Nearly three quarters of working age DLA claimants at February 2008 were also getting Incapacity Benefit or Severe Disablement Allowance), suggesting that the rise in the DLA caseload could be linked, at least in part, to the increase in IB caseloads.<sup>23</sup>

For a discussion of the reasons for the growth in the IB caseload, see Part 1.B of Library Research Paper 06/39, [The Welfare Reform Bill 2005-06](#).<sup>24</sup>

## 2 Announcement in the June Budget

The June Budget Red Book announced:

1.103 The Government will reform the Disability Living Allowance (DLA) to ensure support is targeted on those with the highest medical need. **The Government will introduce the use of objective medical assessments for all DLA claimants from 2013-14** to ensure payments are only made for as long as a claimant needs them.

The Government expected additional savings of over £1 billion a year by 2014-15, implying that some people currently in receipt of the benefit would not be entitled to it under the new regime. The policy costings document for the June Budget published by the Treasury stated:

### Measure description

This measure will introduce an objective medical assessment and revised eligibility criteria for both new and existing working-age claims for Disability Living Allowance, to be rolled out from 2013/14. The assessment will follow a similar process to the Work Capability Assessment (WCA) used for claims to Employment and Support Allowance, with a points based system to assess eligibility to the different rates of the benefit.

[...]

Drawing on the evidence of the impact of the WCA, the central assumption for this policy is that it will result in a 20 per cent reduction in caseload and expenditure once fully rolled out. It is assumed that existing claimants would be reassessed over three years, with 25 per cent of the caseload reassessed in the first year, 75 per cent by the end of the second year and 100 per cent by the end of the third year.<sup>25</sup>

A statement issued by the DWP following the Budget explained:

Disability Living Allowance (DLA) was originally designed to give those with severe disabilities extra help so they could live with dignity and independence in their own homes. While we are absolutely committed to supporting vulnerable disabled people, over the last decade the system has become open to abuse and the numbers claiming has steadily increased. In just eight years the numbers claiming DLA have risen by more than half a million.

DLA awards can be decided on the basis of self-reporting of need and, although medical assessments are sought for certain awards, these are not mandatory. We believe support must be offered on the basis of genuine need.

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<sup>23</sup> Christina Beatty, Steve Fothergill and Deborah Platts-Fowler, *DLA claimants – a new assessment: The characteristics and aspirations of the Incapacity Benefit claimants who receive Disability Living Allowance*, DWP Research Report 585, 2009

<sup>24</sup> See also Christina Beatty and Steve Fothergill, *Incapacity benefits in the UK: an issue of health and jobs?*, Centre for Regional Economic and Social Research, Sheffield Hallam University

<sup>25</sup> *Budget 2010 policy costings*, p36

That's why we're taking the decision to reassess everyone of working age on DLA, and ensure everyone in the future goes through a proper gateway to claim the benefit.<sup>26</sup>

In a written answer on 14 September, the Minister for Disabled People, Maria Miller, said that the new assessment would be “transparent, objective and simple”, adding:

The Department is currently in the process of developing options for the new assessment in consultation with an independent group of experts comprising of disabled people, relevant health professionals and others with expertise in this area. As part of this process we will consider what evidence will be required to support that new assessment and how that evidence will be gathered.

We will begin a consultation process on our plans to reform DLA, Later this year, ensuring disabled people and representative organisations are involved.<sup>27</sup>

In response to a question from Caroline Lucas on 18 October, Maria Miller confirmed that the need to make savings worth 20% of expenditure was a factor when considering options for reform of the assessment:

The new assessment, which we are developing with the help of specialists in the fields of health and disability and representatives of disabled people, is being designed to assess more accurately, objectively and consistently those disabled people who would benefit from support to reduce the barrier they face to participating in society as a result of their disability. One factor being considered in developing options for the new assessment is the need for reform of disability living allowance to deliver savings of 20% of working age expenditure.<sup>28</sup>

The Budget referred to an “objective *medical* assessment” for DLA. However, during topical questions on 18 October Maria Miller said that there was “no intention to introduce a medical assessment for DLA”:

**Jenny Willott (Cardiff Central) (LD):** How will the Minister ensure that lessons are learned from the review of the new work capability assessment, including, as discussed earlier, from the use of more medical information from claimants' doctors, and how will those lessons inform the design of the medical assessment process for disability living allowance claimants when that is introduced?

**Maria Miller:** I thank my hon. Friend for her question. I should like to set the record straight on that. There is no intention to introduce a medical assessment for DLA. The work capability assessment, which, after all, tests people's ability to get into work, is very different. DLA is a benefit that is paid to disabled people to make up the additional costs that they incur for being disabled; it is not linked to their ability to work.<sup>29</sup>

## 2.1 Responses

Organisations working with disabled people expressed concern following the announcement of a new assessment for DLA.

While acknowledging that the Budget contained some positive measures for disabled people, such as additional housing benefit to cover the costs of a live-in carer, the **Disability**

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<sup>26</sup> [Fairness and reform at the heart of Budget settlement](#), 22 June 2010

<sup>27</sup> HC Deb 16 September 2010 cc1153-1154w

<sup>28</sup> HC Deb 18 October 2010 c452w

<sup>29</sup> HC Deb 18 October 2010 c627

**Benefits Consortium**<sup>30</sup> was concerned that overall the Budget would have a disproportionate impact on disabled people. In a press release it said:

In particular the DBC regrets the decision made by the Government to introduce reforms to Disability Living Allowance (DLA) for working age adults that will result in a reduction in spending on this vital benefit. According to the Government's own 'State of the nation' report, spending on working age DLA currently stands at just over £6 billion and their own Budget predictions see this fall by over £1 billion by 2014/15. These changes are likely to leave thousands of working age disabled people unable to meet the additional costs many face as a result of their disability and can be expected to increase the number of people living in disability poverty.

Mark Baker, Head of Social Research and Policy at RNID and co-chair of the DBC policy group said "We are concerned that the introduction of the new medical test for working age DLA will create additional stress and anxiety for disabled people claiming this benefit. It will create unnecessary bureaucracy as well as increasing those costs associated with both the assessment and appeals process."<sup>31</sup>

**Disability Alliance**<sup>32</sup> noted Government reassurances that the "ill-performing Work Capability Assessment" would not be the new "medical assessment" for DLA:

Whilst this is a small relief, DA is concerned that the new test will be used to restrict access to much needed financial support for disabled people and will introduce considerable additional costs to administering this essential disability benefit at a time of financial constraint.

DWP have also confirmed that the medical assessment of current DLA recipients will not – for the foreseeable future – include people over the age of 65 or under 18. The new assessment will be for working age disabled people.

DA is seeking further information on the new assessment and will be working with MPs and peers as well as our members to examine the DLA and other proposals in more detail and to ensure the Government provides answers at an early opportunity.<sup>33</sup>

### 3 The DLA reform consultation paper

The DWP consultation paper, *Disability Living Allowance reform*, was published on 6 December 2010.<sup>34</sup> Launching the consultation, the Minister for Disabled People, Maria Miller, said in a Written Ministerial Statement that the Government remained "steadfast in our support for the principles of DLA, as a non-means-tested cash benefit contributing to the extra costs incurred by disabled people."<sup>35</sup> She went on:

However, DLA has not been fundamentally reformed since it was introduced in 1992. We now have a disability benefit which is confusing for individuals to understand, based on unclear criteria and often results in inconsistent awards, and since 1992, both the case load and the cost of DLA have grown to a level that is unsustainable.

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<sup>30</sup> The [Disability Benefits Consortium](#) (DBC) is a national coalition of over 30 charities and other organisations concerned with support for disabled people

<sup>31</sup> [Response to the budget by the Disability Benefits Consortium](#)

<sup>32</sup> [Disability Alliance](#) is a UK charity, comprising over 250 member organisations, which works to relieve the poverty and improve the living standards of disabled people

<sup>33</sup> Disability Alliance, [New medical test for DLA](#), 5 July 2010

<sup>34</sup> [Cm 7984](#)

<sup>35</sup> HC Deb 6 December 2010 cc9-10WMS

Changes to DLA are long overdue and must address questions of fairness and value, while supporting disabled people to lead independent lives. We must ensure DLA better reflects the needs of disabled people today, rather than in the 1990s, and that it enables support to be targeted to those with the greatest need.

This is why I want to bring disability benefits into the 21st century by replacing DLA with a new benefit-personal independence payment. This is an opportunity to improve the support for disabled people and enable them to lead full, active and independent lives. Personal independence payment will maintain the key principles of DLA, but it will be delivered in a fairer, more consistent and sustainable manner. It is only right that support should be targeted at those disabled people who face the greatest challenges to leading independent lives and this reform is required to enable that, along with a clearer assessment process.<sup>36</sup>

The consultation paper states:

We will introduce a Bill that will set out the high-level legal framework underpinning the new benefit, with the detailed requirements set out in secondary legislation. Responses to this consultation will be used to inform secondary legislation on this detailed design, including the new assessment process. Where possible, and in particular on the new assessment, we will be publishing draft regulations during the passage of the Bill.<sup>37</sup>

The consultation period began on 6 December 2010 was to have ended on 14 February 2011. This is shorter than the recommended 12-week minimum period for public consultations. The Government believes that the shorter period is justified since it is consulting on “general principles only” and that it will “consult on specific details as these are developed”.<sup>38</sup>

There is widespread concern among disability organisations about the timing and length of the consultation.

The **Disability Benefits Consortium** is “disappointed” with the short consultation period – spread over the Christmas holiday – which, it believes, will “significantly reduce opportunities for individuals to add their views.” It notes that many disabled people have communications needs and that the timeframe for the consultation “prevents adequate and effective engagement of a significant number of the people it will directly affect.” DBC is also disappointed that the *Welfare Reform Bill* is likely to be introduced before the Government will have had the chance to take consultation responses into account.<sup>39</sup>

These concerns are also shared by the **Disability Alliance**. Its interim response states:

The timeframe permitted for consultation and the plans for welfare reform risks heightening accusations that the Government has approached DLA reform without due diligence – and with a limited understanding of the potential impact the proposals on disabled people and their families. This considerably undermines Government statements that reforms are fair and that disabled people are protected.<sup>40</sup>

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<sup>36</sup> HC Deb 6 December 2010 cc9-10WMS

<sup>37</sup> Cm 7984 p12

<sup>38</sup> *Ibid.* p33

<sup>39</sup> *Consultation response by the Disability Benefits Consortium*, 12 January 2011, p1

<sup>40</sup> *Disability Alliance: Interim consultation response*, 3 February 2011, p21

**Scope** also believes the consultation period is too short. It adds:

Rushing through significant reforms will be problematic and create a false economy by pushing people into further poverty and reducing their chances of living independently. This may end up costing the government more, not less, in the long-term - a concern that has also been voiced by the Office for Budget Responsibility.<sup>41</sup>

**RNIB** is concerned that “too many important issues are being left to secondary legislation (regulations) thereby avoiding thorough Parliamentary scrutiny.”<sup>42</sup>

DWP has now announced an [extension of the deadline for responses to 18 February](#), but only because of IT problems affecting its online feedback facility.

### 3.1 The case for reform

The consultation paper states that reform of Disability Living Allowance is needed for four reasons:<sup>43</sup>

- “The benefit caseload and expenditure is increasing at a rate never envisaged”
- “The current system is too complex and the benefit is not understood”
- “There is no system to check that awards remain correct”
- “The benefit can act as a barrier to work”

With regard to the growth in DLA claims, the paper comments that “the complexity and subjectivity of the benefit has led to a wider application than intended” but gives no further analysis of the reasons for the increase.

As regards complexity, the paper states that the claim form is difficult for people to understand, and that people are unclear about whether they are likely to qualify for the benefit and about what the benefit is for. The complicated benefit structure also means it is complex to administer. There is also, it says, a common misconception that DLA is an out-of-work benefit and that people will lose it if they start work.

On checking whether awards remain correct, the consultation paper states:

Currently, people are not always aware of how changes to their impairment or condition might affect their award. There is no straightforward way of reviewing people’s entitlement to DLA on a regular basis to ensure that they receive the right level of benefit. Two-thirds of people currently on DLA have an indefinite award, which means that their award may continue for life without ever being checked to see if it still reflects their needs. This is not in line with other benefits, where we check for changes in individuals’ circumstances. We will rectify this to ensure that the new system easily identifies if an individual’s condition has deteriorated or improved.

Information on current arrangements for reviewing DLA awards is given in part 1.3 of this note.

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<sup>41</sup> [Disability Living Allowance reform – a response from Scope](#), p11

<sup>42</sup> [Disability Living Allowance review: RNIB’s key issues](#), para 2.14

<sup>43</sup> [Cm 7984](#) pp7-10

On 8 February the Co-Chair of the **Disability Benefits Consortium** Policy Group, Mark Baker, wrote to the Minister for Disabled People, Maria Miller, regarding the release of briefing material which prompted press articles including an item in the *Daily Mail* on 3 February, '[The great disability benefit free-for-all: Half of claimants are not asked to prove eligibility](#)'. The letter states:

The articles have stated that half of all DLA claimants have never provided 'proof' of impairment/health condition with the overall misleading conclusion that DLA is over-claimed and under-scrutinised. The implication has also been that DLA should be time-limited. It is extremely worrying that the DWP campaign information has been used to suggest a person's impairment or health condition and related higher costs somehow disappear over time. This undermines one of the original intentions behind introducing DLA which was intended to help disabled people and their families with higher costs of living.

It adds:

The DBC wishes to work as closely and constructively with DWP as possible but the launch of these figures immediately prior to the publication of the Welfare Reform Bill is deeply unhelpful. The DWP campaign information has led to significant alarm for people requiring support who are already fearful of DLA cuts and the broader context of public service contraction.

At recent meetings you have highlighted the need for more informed media coverage of disability benefit issues. Can you please assure us that your Department has challenged the Mail and other inaccurate media coverage; and that DWP will ensure future information releases are unlikely to generate such hostility towards some of our most disadvantaged citizens?<sup>44</sup>

**Disability Alliance** argues that the statement in the consultation paper that "there is no system to check that awards remain correct" is misleading, noting that DWP is currently able to review awards and take into account other evidence to ensure payments are accurate. It is also concerned that the loss of DLA might actually result in fewer disabled people being able to work.<sup>45</sup>

## 4 The Personal Independence Payment

The consultation paper sets out proposals for a new benefit - the "Personal Independence Payment" - to replace Disability Living Allowance from 2013/14. New claimants will be assessed for the new benefit from the outset. Existing claimants will remain on DLA until they are reassessed for the Personal Independence Payment. There is to be a "managed programme to reassess the existing caseload and transfer people to the new benefit, starting with those of working age".<sup>46</sup>

The paper states that the Government is "considering whether to reassess children and people aged over 65".<sup>47</sup>

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<sup>44</sup> See DBC web pages, [DBC urges the DWP to use statistics with caution](#), 9 February 2011

<sup>45</sup> [Disability Alliance: Interim consultation response](#), 3 February 2011, pp17, 19

<sup>46</sup> [Cm 7984](#) p22

<sup>47</sup> [Cm 7984](#) p3

Many organisations are critical of the lack of clarity in the consultation paper over whether children and those over 65 will be reassessed. The **MS Society**, for example, says that the uncertainty is causing “extreme concern” to a large number of DLA recipients, and calls on the Government to “clarify its position as a matter of urgency.”<sup>48</sup>

#### **4.1 Main features**

The main features of the proposed new benefit are as follows:

- It will consist 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 component will have two rates.
- Claimants must satisfy the conditions for six months before they can receive the benefit, and must be expected to satisfy the conditions for at least a further six months.
- No automatic entitlement for people with particular conditions (although the existing DLA rules for people with a terminal illness will be carried over to the new benefit).
- Entitlement will be 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” is to be integral to the assessment process. In most cases, this will involve a face-to-face meeting with the claimant.
- The assessment will take into account the extent to which the use of aids and adaptations (e.g. a wheelchair) affects a person’s ability to participate in everyday life.
- All awards to be subject to periodic review.
- There will be a new penalty for those who knowingly fail to report a change in their circumstances that would have reduced their benefit.
- Claimants may be “signposted” to other forms of support, or meetings arranged with “appropriate professionals” to enable discussion of their health condition or impairment. The consultation paper states that the DWP “could potentially explore making elements of this part of the requirements of the benefit, where appropriate”.<sup>49</sup>

#### **4.2 General responses**

Responses to the consultation paper from selected organisations are summarised below. Many organisations have not yet put their responses in the public domain, and the consultation is still open. The views below should not therefore be interpreted as being fully representative of all organisations that have submitted responses, or will be submitting a response, to the consultation.

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<sup>48</sup> [Disability Living Allowance reform: A response from the MS Society](#), February 2011

<sup>49</sup> Cm 7984 p20

The **Disability Benefits Consortium** believes that while the consultation paper outlines some positive proposals about simplification of DLA, reducing bureaucracy and a better understanding of the additional costs faced by disabled people, further clarification of certain aspects of the proposed reforms is needed. It has “significant concerns” about the impact of the changes on disabled people, particularly in the context of wider benefits changes already announced, with some estimates suggesting that disabled benefit claimants are set to lose £9 billion in support over the course of the current Parliament.

DBC does not support the target of reducing DLA expenditure and caseload by 20%, noting that there is uncertainty about exactly how many people will lose benefit or have their benefit cut as a result of the reforms. It argues that focusing on those with “greatest need” will exclude many disabled people currently on the lowest rates of DLA, who are unlikely to be able to access support elsewhere. It also believes that cuts could lead to unsustainable pressure on social care and NHS budgets. DBC also has concerns about the longer qualifying period for the benefit, the assessment process, the impact on carers, and about the lack of clarity on whether children and those over 65 will be affected by the changes.<sup>50</sup>

In its interim response to the consultation, **Disability Alliance** echoes the DBC in welcoming proposals aimed at simplification and reducing bureaucracy, but believes the risks of cutting expenditure on DLA by 20% outweigh any improvements a new assessment might bring. It states:

Had the Government announced a new assessment and improved personalisation alone we may have been more supportive of reform. However, the underlying objective of reform remains to cut expenditure by 20% – which Disability Alliance believes will exacerbate the link between poverty and disability.<sup>51</sup>

The overriding target of 20% savings, it argues, makes all other considerations, including the nature of the new assessment, secondary.

DA questions underlying assumptions about the extent of inaccuracy in DLA awards, pointing to the DWP’s own estimates of the extent of fraud and error:

It cannot be fair to justify a 20% cut in working age DLA expenditure on a Government statistic of 0.5-0.6% potential fraud in the system. It also seems punitive to target many disabled people for a reduction or loss in support using a new bureaucratic process when the existing system’s ‘official error’ has caused more inaccuracy than evidenced fraud.<sup>52</sup>

DA shares the DBC’s concerns about the impact of changes in DLA in the context of wider public service and benefit changes which, it says, will disproportionately affect disabled people. It draws attention not only to the human costs of cutting DLA expenditure by 20%, but also to the cost to governments through increased demands on the NHS and social care.

The Disability Alliance interim response concludes with a list of questions to the Government to help it finalise its full response, including:

- How was the decision to cut 20% of working age DLA expenditure reached, and how many people will be affected?

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<sup>50</sup> [Consultation response by the Disability Benefits Consortium](#), January 2011

<sup>51</sup> [Disability Alliance: Interim consultation response](#), 3 February 2011, p4

<sup>52</sup> [Disability Alliance: Interim consultation response](#), 3 February 2011, p7

- What will be the impact on those receiving other “passported” benefits, and how many will lose Carer’s Allowance?
- How much will it cost to implement the new assessment process, including periodic reviews?
- Will the assessment be extended to children and people over 65, and if so when?
- Will any groups receive the Personal Independence Payment automatically, without having to undergo an assessment, and will any groups be exempt from periodic reviews?
- How will the costs of living be factored into the assessment process?

There is considerable uncertainty about how many people may be affected by the new assessment for the Personal Independence Payment. A 20% reduction in the working age DLA caseload (1.8 million) would mean 360,000 losing their benefit, but Disability Alliance points out that this would not deliver the £1 billion a year savings the Government wants to make. Abolishing the lowest rate DLA care component (received by 643,000 people at May 2010) would, Disability Alliance estimates, deliver savings of £643 million a year, still leaving a shortfall. To achieve the £1 billion figure, Disability Alliance suggests that almost 750,000 people could lose support. Alternatively, it notes that the Government could decide reduce Personal Independence Payment rates.

**Scope** - which works with and supports people with cerebral palsy and their families - is also “deeply concerned” about the DLA proposals, and argues that the decision to cut 20% from the DLA budget - which it regards as arbitrary - has been taken without due consideration of the effect on disabled claimants. It states:

The budget cut was justified on the benefit not being well-targeted which may be true - however the Government has done no research to understand who incurs extra costs, what factors drive these extra costs and what the impact of removing this benefit from those with lower levels of impairment means we have no confidence that the new approach will result in better targeting of the benefit. This all suggests that the reform that is motivated purely by the desire to cut costs rather than to target the benefit at those who incur extra impairment-related costs.<sup>53</sup>

Scope welcomes some aspects of the proposals, including the acknowledgement that “care” and “mobility” alone are inadequate proxies for the extra costs disabled people face. However, it believes there is confusion about the purpose of the Personal Independence Payment and is concerned that targeting help on those “facing the greatest challenges” may be misconceived. Instead, it argues that support should be targeted at those experiencing the highest costs as a result of the disability, and that the assessment should enable this. Complexity of impairment, it argues, is not a reliable proxy for extra costs because these are influenced by a wide range of factors.

The **Multiple Sclerosis Society** echoes the concerns expressed by other organisations about focusing on “those with the greatest need”, underlining the point made by Scope that the additional costs of disability do not necessarily correlate with functional impact. It also has major concerns about the proposals for face-to-face tests, noting the serious problems encountered assessing people with fluctuating and hidden symptoms through the Work

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<sup>53</sup> [Disability Living Allowance reform – a response from Scope](#), p2

Capability Assessment. It also argues that reassessing all awards, especially for those with long-term degenerative conditions such as MS, would be an unnecessary use of government resources and would cause undue stress for claimants.

**Carers UK**, while accepting that DLA is an “imperfect and overly complex benefit” and that there is a good case for reforming it, has a number of concerns about the proposals. In particular, it is-

...disappointed that the Government has not given detailed consideration of carers within its proposals – no assessment has been published on how the introduction of the Personal Independence payment or the £1 billion reduction in the DLA budget would affect Carer’s Allowance claimants.<sup>54</sup>

It believes that the loss of DLA for claimants – and the resulting loss of Carer’s Allowance for those caring for them – could be “devastating” for some families, “...pushing carers into poverty or making family care financially impossible for some.”<sup>55</sup>

More detailed aspects of the Government proposals, and responses from organisations in relation to them, are discussed below.

#### **4.3 Structure of the benefit**

The DLA mobility component has two rates, and the care component has three rates. The Government proposes that each component of the Personal Independence Payment will have two rates. This will “simplify the overall structure, make it easier to understand, and reflect the range of individual needs.”<sup>56</sup>

The fact that the new “daily living” component will only have two rates has been interpreted by some organisations as meaning the abolition of the lowest rate DLA care component.<sup>57</sup>

#### **Scope comments:**

What is the rationale for reducing the components to two? Surely, the structure of the benefit should depend on the assessment process and what it’s trying to measure.

We are concerned that reducing the three rates for the previously known care component to two could mean that many disabled people do not qualify despite facing huge costs due to their impairment. For example, people with learning difficulties may not be seen as eligible for receiving PIP as those with more complex needs. However, the former demographic still encounter significant costs that can seriously affect their capabilities to participate in society and lead active, full and independent lives. As our research demonstrates, the medical complexity of impairment should not be conflated with costs because it is much more complex than this. Around two thirds of disabled people have multiple impairments anyway so experience a range of barriers. Reducing the number of rates of the components, even by one, could have a huge and detrimental effect on people whose impairments have subtle but significant implications for participating in society.<sup>58</sup>

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<sup>54</sup> [Disability Living Allowance reform: Carers UK Policy briefing](#), p1

<sup>55</sup> [Disability Living Allowance reform: Carers UK Policy briefing](#), p2

<sup>56</sup> Cm 7984 p14

<sup>57</sup> See for example [Disability Alliance: Interim consultation response](#), 3 February 2011, p8; [Disability Living Allowance review: RNIB’s key issues](#), para 2.4

<sup>58</sup> [Disability Living Allowance reform – a response from Scope](#), pp3-4

The research referred to was undertaken by Demos, and the findings are in a report published on 17 December 2010.<sup>59</sup> Further information is given in section 4.6 below.

#### 4.4 Qualifying period

As noted in section 1.2 of this note, neither component of DLA is payable until a person has needed help for three months (the “qualifying period”), and the person must be expected to need help for a further six months (the “prospective test”). For the Personal Independence Payment, the consultation paper proposes to retain the six month prospective test, and to extend the qualifying period to six months.<sup>60</sup> This is to “ensure that support goes to those with the greatest need”.

The **Disability Benefits Consortium** does not believe it is right to make people wait for six months before they can access support:

For people with sudden onset conditions, their needs and the debilitating effects of treatment are immediate, as are their additional costs. In addition, the 'prospective test' will continue to be particularly problematic for certain groups of claimants - e.g. people with cancer and people with fluctuating conditions where predicting future need can be very difficult.<sup>61</sup>

**Disability Alliance** makes similar points, arguing that the change would undermine one of the key aims for DLA, which was to provide help “quickly and effectively”. Failure to provide “early-intervention support” for people with sudden onset conditions could, it suggests, result in longer term demands for welfare support, as a result of loss of employment or taking longer to adapt.<sup>62</sup>

#### 4.5 Automatic entitlement

The Government proposes that there will be no automatic entitlement to the Personal Independence Payment for people with certain health conditions or impairments (see section 1.2 of this note for the current situation under DLA). The Government argues that as a result of the current rules, “DLA is sometimes based on medical condition rather than the impact of that condition, meaning that support is not always appropriately targeted.” Removing automatic entitlement “will deliver a more personalised service that ensures resources are targeted where they are most needed.”<sup>63</sup>

The **Disability Benefits Consortium** acknowledges that for many disabled people, their needs may change over time. However, it also notes that for others with life-long or long-term conditions this is not the case and, in this context, the existing rules on automatic entitlement to DLA are an efficient and effective. It argues:

It will not be cost effective for the Government to make people go through an assessment process (and potentially repeated assessments / reviews) where there is clear entitlement to the benefit. This will not only incur significant costs to the state but will be highly stressful and potentially counterproductive for the individual, potentially worsening their condition where it is exacerbated by stress and exertion.<sup>64</sup>

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<sup>59</sup> Claudia Wood and Eugene Grant, *Counting the Cost*, Demos, 2010

<sup>60</sup> People who are terminally ill will however continue to be exempt from both the qualifying period and the prospective test, as is currently the case under the DLA “special rules”

<sup>61</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, p9

<sup>62</sup> *Disability Alliance: Interim consultation response*, 3 February 2011, p24

<sup>63</sup> Cm 7984 p15

<sup>64</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, 10

**RNIB** is concerned that the Government's proposals could end automatic entitlement to the higher rate mobility component for blind or severely visually impaired people, a change due to come into force in April 2011.<sup>65</sup>

**Disability Alliance** states that recent meetings with DWP have suggested that exemptions for some groups of disabled people may be under consideration. Any system, it argues, must be fair and transparent, and it would welcome further details on proposed exemptions as soon as possible.<sup>66</sup>

**Scope** does not however believe that there should be automatic entitlement for particular groups which, it believes "would medicalise the entire process as well as making it extremely divisive":

Again, we do not believe it is helpful to conflate impairments with particular costs as every disabled individual experiences extra costs in a different way. This is why a co-produced, multi-dimensional assessment is so important. Again, it needs to be acknowledged by Government that complexity of impairment should not be conflated with extra costs - instead, a person's impairment correlates with costs in a highly complex way. This is why further research is needed to understand the correlation between disability and financial costs better.<sup>67</sup>

#### **4.6 The assessment**

The consultation paper argues that "care" and "mobility" are not necessarily the best proxies for the extra costs disabled people face. It states that the new benefit-

...offers an opportunity to rethink our approach and focus resources on individuals whose impairments have the most impact on their lives. As such, we intend to consider individuals' ability to carry out a range of activities key to everyday life, including some related to a broader definition of mobility. Those least able to do so will be awarded the greatest support in the new benefit. There is some evidence to suggest that individuals whose impairments have the greatest impact are likely to experience higher costs. The new assessment will therefore allow us to prioritise support to individuals who face the greatest challenges and expense.<sup>68</sup>

The Government believes that the current process for assessing DLA applications-

...is based on unclear criteria and often does not make the best use of available evidence. As a result, awards can be subjective, inconsistent and do not always focus support on those who need it most. Disabled people also tell us that the DLA claim forms are too long and can be difficult to understand.<sup>69</sup>

The consultation paper states:

We want the new assessment to be objective and evidence-based, to ensure that support is targeted to those individuals whose health condition or impairment has the greatest impact on their day-to-day lives. A greater emphasis on objectivity and increased use of evidence will lead to more consistent outcomes and greater

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<sup>65</sup> [Disability Living Allowance review: RNIB's key issues](#), para 2.7

<sup>66</sup> [Disability Alliance: Interim consultation response](#), 3 February 2011, p24

<sup>67</sup> [Disability Living Allowance reform – a response from Scope](#), p4

<sup>68</sup> Cm 7984 p13

<sup>69</sup> Cm 7984 p16

transparency for individuals, as the process will be easier to understand. To enable us to focus support on those who need it most, we believe it will also be important for the new assessment to have a stronger focus on individuals' specific needs and how these may change over time.<sup>70</sup>

It also states that the Government remains "committed to the social model of disability" and that the new assessment "will not be based solely on the medical model of disability and focused entirely on an individual's impairment."<sup>71</sup>

There is great concern among organisations about the proposal to target the new benefit on those with "greatest need".

The **Disability Benefits Consortium** comments:

A focus on those disabled people with higher needs will exclude many disabled people - who will still face considerable additional costs as a result of their disability or condition - from participating in society. Meeting lower level need is important in terms of preventative benefits as well as providing essential support. If the Government's aim is to create a "sustainable system" this approach risks allowing unmet needs to develop into crisis situations, which have higher costs to individuals, families and public resource - for example, through reduced work hours or hospitalisation.<sup>72</sup>

The DBC is concerned that people not deemed "disabled enough" may be doubly hit by increasingly restrictive eligibility criteria for social care, noting that already in 2007/08, 74% of local authorities set eligibility criteria at "substantial" or "critical" only. It notes that this figure is likely to rise, with many local authorities consulting on proposals to further tighten eligibility rules and to increase costs of care.<sup>73</sup>

Both the DBC and the Disability Alliance believe that focusing on those with the greatest needs goes against the original purpose of DLA. The **Disability Alliance** interim response notes:

'The Way Ahead' (which led to the legislation which introduced DLA in 1990) focused specifically on people with additional costs, but lower needs who were unable to access alternative support. The original Conservative Government's plan specifically highlighted the availability of alternative support – based on the findings of four major surveys – and included the action that DLA would:

'introduce new lower rate payments for people with care and mobility needs lower down the severity scale'.

We believe the PIP proposals risk distorting a principal aim of DLA which was introduced to help disabled people who now appear at risk of losing access to support.<sup>74</sup>

DBC argues that it is vital that the Government ensures that changes to DLA are not based on meeting "arbitrary target", but on "better supporting disabled people and their families to overcome the additional costs and barriers that can drive them into poverty."<sup>75</sup>

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<sup>70</sup> Cm 7984 p16

<sup>71</sup> Cm 7984 p16

<sup>72</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, pp4-5

<sup>73</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, p5

<sup>74</sup> *Disability Alliance: Interim consultation response*, 3 February 2011, p23

<sup>75</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, p6

The 20% target is also criticised as arbitrary by the **MS Society**, which comments “...the Government has presented no evidence as to why this target has been set. We object to the approach to reform as a manifest cost-cutting exercise”<sup>76</sup>, and Scope argues that the decision was taken “without consideration being given to the effect this will have on disabled claimants.”<sup>77</sup>

**Scope** argues strongly that support should be targeted at those experiencing the highest costs as a result of their impairment, and that it is vital that the assessment for the Personal Independence Payment enables this. It argues that complexity of impairment is not a reliable proxy for extra costs because these are driven by a wide range of factors. Given this, any move towards a medical-type assessment, or one which looks at functional impact, would make the test less effective in identifying those facing the greatest extra costs.

Scope points towards recent research by the think tank Demos, which it commissioned.<sup>78</sup> The following extract from the Demos report highlights the potential problem:

...a test measuring the functional impact of a person’s disability may not be able to take into account the disabling social and environmental factors which the DLA and its successor seeks to compensate for.

Two people with similar disabilities may be assessed as having equal ‘functional impact’ on their lives, but could have widely different disability costs — one might be unemployed, in unsuitable rented accommodation, reliant on public transport, with no family and friends for support. The other may be in work, with their own suitably adapted car and home, with a good social network. Their lives, and disability-related costs, are very different, but they could be entitled to the same level of benefit using a test exclusively measuring the impact of a condition or impairment.

So although the current DLA system is criticised for being based on a ‘deficit’ model (focusing on what people cannot do) and administratively complex, it is possible that the proposed reform could constitute a regressive step by targeting the benefit at those with this greatest health and care needs, rather than the most prohibitive disability costs. The two are not always the same.<sup>79</sup>

The Disability Benefits Consortium notes the Government’s undertaking that it will not introduce a “medical assessment” for DLA. It is however concerned that the proposed assessment process - involving face-to-face meetings with independent healthcare professions - appears very similar to the controversial Work Capability Assessment for Employment and Support Allowance. It adds:

...DLA is already said to be a benefit which is based on a social model of understanding - that is, that disability is rooted in social and environmental factors which renders a person's condition or disability 'disabling'. From this perspective, DLA recognises that it is these factors which drive a person's disability costs - not just their impairment or condition. It will be a challenge to establish an assessment which looks at both the functional impact of a person's disability, as well as one that takes into account the social and environmental factors impacting on an individual's day-to-day costs.<sup>80</sup>

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<sup>76</sup> *Disability Living Allowance reform: A response from the MS Society*, February 2011

<sup>77</sup> *Disability Living Allowance reform – a response from Scope*, p1

<sup>78</sup> Claudia Wood and Eugene Grant, *Counting the Cost*, Demos, 2010. Available at [www.demos.co.uk](http://www.demos.co.uk)

<sup>79</sup> *Ibid*, Executive Summary, p19

<sup>80</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, p8

## **Activities**

The Government is still working on the detail of the new assessment – in collaboration with independent specialists in healthcare, social care and disability, and disabled people themselves – but it wants the test to provide a “broader, more objective measurement” of the impact of a person’s condition on everyday activities than is currently the case with DLA. The consultation paper states:

Our initial proposal is that the assessment should consider activities related to an individual’s ability to get around, interact with others, manage personal care and treatment needs, and access food and drink.

Activities we assess could include, for example, planning and making a journey, and understanding and communicating with others. The extent to which an individual could carry out these activities would determine their eligibility for Personal Independence Payment and the level of their award. This should ensure that priority is given to those individuals who need to overcome the greatest barriers to living full and active lives. As part of this work, we know it is essential to ensure that the assessment adequately reflects the support needs of variable and fluctuating conditions.<sup>81</sup>

In its response, the **Disability Benefits Consortium** comments:

It will be essential that any new assessment reflects the broad range of 'everyday activities' that an individual needs to undertake in order to fully participate in society. The DBC is very concerned that the assessment be made robust enough to reflect the wide range of disabilities and conditions or whether the 'impact on everyday life' proxy (as opposed to 'care' and 'support' used in DLA) will effectively measure the multi-dimensional drivers that impact on the costs that disabled people incur. It is difficult to imagine how an assessment looking at 'everyday activities' such as "planning and making a journey" and "communicating with others" will take into account some of the ways in which DLA is currently spent - for example, to help with increased electricity bills associated with doing laundry more often or for more expensive specialist clothing.<sup>82</sup>

## **Aids and adaptations**

The consultation paper proposes – controversially – that in assessing the extent to which an individual’s health condition or impairment affects their ability to undertake everyday activities, the successful use of aids and adaptations should be taken into account. It notes that at present DLA takes account of some (e.g. prosthetic limbs), but not others (e.g. wheelchairs). The Government acknowledges however that taking aids and adaptations into account “should not discourage individuals from using them.”<sup>83</sup>

The proposal to take aids and applications into account in the assessment is controversial.

The **Disability Benefits Consortium** comments:

We are concerned by the proposal that the PIP assessment will take into account more aids and adaptations. For example under PIP, the individual's ability to get about in a wheelchair will be considered, rather than ignoring it as under the current DLA process. This could then affect their eligibility for PIP, yet it is based on the incorrect assumption that using a wheelchair will mean all physical barriers and resultant additional expenses are overcome. Another potential example could be aids for people with

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<sup>81</sup> Cm 7984 p16

<sup>82</sup> *Consultation response by the Disability Benefits Consortium*, January 2011

<sup>83</sup> Cm 7984 p17

sensory impairments such as long canes and hearing aids. These are just one part of successful mobility and communication for people with single and dual sensory impairments; they work in conjunction, for example, with any human support or transport. Therefore these individuals have an ongoing additional cost related to disability, despite successfully using aids and adaptations. Additionally, taking more aids and adaptations into account must not create a perverse incentive whereby individuals do not take up aids and adaptations for fear this could jeopardise their entitlement to PIP.<sup>84</sup>

At Lords starred questions on 7 February, the Minister for Welfare Reform, Lord Freud, admitted that taking into account aids and adaptations was a “complex issue” and added:

It would clearly be perverse if people were supported to live an independent life and that support was then removed when they still needed it. I cannot envisage that that situation would develop.<sup>85</sup>

### ***Healthcare professionals***

The Government believes that in assessing entitlement to the Personal Independence Payment, it is essential to use the “best and most appropriate evidence”, including “information from healthcare and other professionals who work with and support the individual, such as their GP or social worker.” It also believes that advice from an “independent healthcare professional, such as a doctor or occupational therapist approved by the Department” should be an important part of the process, and that in most cases this will involve a face-to-face meeting with the claimant (although there will be some exceptions, e.g. where the person has a terminal illness and “disabled people who face the most complex barriers”).<sup>86</sup>

The **MS Society** is very concerned about the proposal for new face-to-face tests, in light of problems encountered by people fluctuating conditions or hidden symptoms undergoing assessments as part of the Work Capability Assessment for Employment and Support Allowance. It argues:

Given the manifest problems with assessing people with complex and fluctuating conditions like MS, where someone with MS appears on the face of the application form to qualify for PIP, they should be exempt from attending a face-to-face assessment. We would instead encourage decision-makers to more routinely gather supporting evidence from a nominated healthcare professional in order to support decision-making. Anecdotal evidence gathered by the MS Society indicates that this process currently works well, and it is far less onerous, stressful and costly than putting every applicant, regardless of their condition, through a face-to-face assessment. This was also a recommendation of the Harrington review of the Work Capability Assessment (WCA).<sup>87</sup>

It adds:

Evidence gathered by the MS Society from individuals and healthcare professionals suggests that far fewer problems are currently encountered in applications for DLA than with the WCA (which involves such a ‘face-to-face’ test); Citizens Advice have also commented that they have received far higher than usual queries and concerns regarding the ESA assessment process than they have for other benefits applications.

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<sup>84</sup> [Consultation response by the Disability Benefits Consortium](#), January 2011, p9

<sup>85</sup> HL Deb 7 February 2011 c7

<sup>86</sup> [Cm 7984](#) p18

<sup>87</sup> [Disability Living Allowance reform: A response from the MS Society](#), February 2011

This evidence shows that the current process of gathering evidence from specialist healthcare professionals nominated by the individual (such as MS nurses, physiotherapists or occupational therapists) works well.

If face-to-face assessments by healthcare professionals are to be introduced for DLA, the MS Society argues that they should be treated as just one piece of evidence in the overall assessment process, and not given undue weight. The Society notes that this was one of the problems identified by Professor Malcolm Harrington in his independent report on the Work Capability Assessment<sup>88</sup>, adding:

It would be extremely unfortunate if, while the WCA is being adapted to move the focus away from the independent assessment as the sole source of evidence, DLA were to go the other way.

#### 4.7 Reviewing awards

The Government proposed that all awards of the Personal Independence Payment be subject to periodic reviews, in recognition that individuals' needs change over time, and to ensure people continue to receive the correct amount. The frequency and format of reviews will vary depending on the person's needs, the likelihood of their condition changing, and the successful use of aids and adaptations.

The **Disability Benefits Consortium** argues that the statement in the consultation paper that there is currently no process to check that awards remain correct is misleading, pointing out that since 2000 legislation has required that all awards are subject to review after an appropriate period of time based on an individual's circumstances.<sup>89</sup>

#### Disability Alliance comments:

Before introducing a new assessment and insisting disabled people, attend face to face interviews it is important that the Government outline the cost of this approach and further detail on whether the existing system could be improved rather than completely overhauled. We believe there are considerable benefits to improving the current review process rather than requiring all disabled people to attend regularly.<sup>90</sup>

The **MS Society** argues that, given the financial imperative behind the changes to DLA, the frequency and form of reviews should be carefully considered. It feels strongly that repeatedly reassessing people with long-term conditions such as MS is unnecessary:

Such assessments inevitably cause a great deal of undue stress to individuals. Stress has been shown to exacerbate MS, and in some cases even to bring on serious relapses. Putting DLA claimants with MS (and particularly the progressive form of the condition) through repeated and stressful reviews is therefore not only unnecessary expense for a system which is supposed to be designed to save the DWP money, it risks unintended and serious negative consequences for the health and wellbeing of the individuals at stake.<sup>91</sup>

Should reviews be made mandatory for all claimants, the MS Society argues that for people with long-term degenerative conditions such as MS they should consist, at the most, of a short telephone call or letter to ask if there had been any material change in the person's

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<sup>88</sup> For further background see Library standard note SN/SP/5850, *The Work Capability Assessment for Employment and Support Allowance*, 2 February 2010

<sup>89</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, p8

<sup>90</sup> *Disability Alliance: Interim consultation response*, 3 February 2011, pp19-20

<sup>91</sup> *Disability Living Allowance reform: A response from the MS Society*, February 2011

condition, or contact with a healthcare professional nominated by the claimant to obtain evidence as to whether there had been a change. If, following this no material change is identified, it believes there should be no need for any form or reassessment.

### ***Penalties for not reporting changes in circumstances***

The consultation paper proposes new penalties for failing to inform the DWP of changes in circumstances. It states:

If an individual is found to have knowingly withheld information about a change in circumstance which would have resulted in a reduction in benefit, they will have to repay the amount claimed. In addition, a penalty or a prosecution may result.<sup>92</sup>

The **Disability Benefits Consortium** is “very concerned” about the proposal to introduce penalties:

For those people with unpredictable and fluctuating conditions such as MS and HIV, asking them to report every change in their condition would be extremely onerous and stressful. Rather than introducing penalties, the Government should issue clear guidance about what represents changes in circumstance that claimants would be required to report and make it as easy as possible for them to do so. There should also be clear information about what reporting a change in circumstance could mean for the claimant.<sup>93</sup>

**Disability Alliance** reiterates the DBC’s concerns about the impact on people with variable conditions. It adds:

Other disabled people experience very gradual changes in circumstances which mean that the overall change (in an annual period for example) may seem slightly significant but won’t have been realised necessarily by the disabled person at any given point. The DWP has previously used this analysis in reporting on ‘fraud and error’ within DLA – as neither ‘fraud’ nor ‘error’ titles are accurate to explain the change in circumstances that mean disabled people may no longer qualify for (the rate of) DLA received. It has not been considered fraud or departmental error for the change by DWP and the new requirements may risk imposing a level of bureaucracy in reporting changes that is unnecessary and costly.<sup>94</sup>

**Scope** argues that the Government should ensure that the new system does not penalise people with fluctuating conditions. A requirement for individuals to constantly update the authorities on their impairment would be onerous and exert “enormous extra pressure” on the disabled person. It adds:

We warn against using a punitive regime to force people to update the government on the changing nature of their impairment because it will create an atmosphere of fear and intimidation and exacerbate concerns about having to ‘prove’ their disability.<sup>95</sup>

The **MS Society** is unclear what changes in circumstances would warrant a penalty for non-disclosure, and how evidence would be gathered by the Department on unreported changes in circumstances in order to impose penalties. It comments:

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<sup>92</sup> Cm 7984 p19

<sup>93</sup> *Consultation response by the Disability Benefits Consortium*, January 2011, p11

<sup>94</sup> *Disability Alliance: Interim consultation response*, 3 February 2011, p25

<sup>95</sup> *Disability Living Allowance reform – a response from Scope*, p5

Rather than introducing penalties, the Government should encourage people to report any changes by:

- a) giving clear, accessible and easy-to-understand guidance as to what constitutes a material change in circumstances which must be reported
- b) making it as easy as possible to report changes
- c) offering clear information on what reporting a change in circumstances could mean for claimants.<sup>96</sup>

#### 4.8 Other support

The Government wants the Personal Independence Payment to be “a more active and enabling benefit” than DLA and is looking at ways to help people manage their health condition or impairment. It suggests that, for example, “as part of the administration of the benefit we could signpost individuals to other support, or ensure they have the opportunity to discuss their health condition or impairment with an appropriate professional.”<sup>97</sup> The consultation paper adds:

We could potentially explore making elements of this part of the requirements of the benefit, where appropriate.<sup>98</sup>

The **Disability Benefits Consortium**, while welcoming a more “joined-up” approach giving disabled people greater access to appropriate support, is concerned by the suggestion that accessing services and support could become a condition of receiving the benefit:

Non-compliance with such a requirement is likely to be very subjective and highly dependent on the availability and quality of local services. Situations could arise where disabled people are forced to accept support that might not be appropriate for their needs out of fear of losing their benefits.<sup>99</sup>

#### 4.9 Passport benefits and services

Receipt of DLA, or of certain components, currently gives access to a range of other sources of support. This includes disability premiums payable with means-tested benefits, exemption from vehicle excise duty, the Motability scheme, discounts on leisure facilities, and a whole host of other “passport benefits.”<sup>100</sup>

Organisations responding to the consultation have drawn attention to the importance of these additional sources of help and to the wider consequences for people of losing entitlement to DLA. The **Disability Benefits Consortium** comments:

The consultation document acknowledges that entitlement to DLA also ‘passports’ the recipients to additional help and support. DLA can link to qualification for other means-tested benefits, as well as services and concessions. We believe it is essential that these links are protected. As noted above, uncertainty about who will be found eligible for PIP under the new assessment highlight the potential knock on effects of the

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<sup>96</sup> [Disability Living Allowance reform: A response from the MS Society](#), February 2011

<sup>97</sup> Cm 7984 p4

<sup>98</sup> Cm 7984 p20

<sup>99</sup> [Consultation response by the Disability Benefits Consortium](#), January 2011, p11

<sup>100</sup> A comprehensive list of the other forms of help DLA currently passports recipients to is given in the Disability Alliance *Disability Rights Handbook 2010-2011*, p15

proposed changes, which are a serious concern and could potentially exacerbate the effect of the loss of benefit.<sup>101</sup>

**Disability Alliance** states:

We are very keen that in progressing reform the Government provides estimates of how many people will lose access to these forms of 'passported' support systems. It is vital – especially in providing the full equality impact assessment – that the Government is clear how many people stand to lose support, what the support is and whether alternatives are being explored to ensure disabled people and their families are not further disadvantaged.<sup>102</sup>

**Scope** comments:

The passporting arrangements for DLA are extremely important. For example, a person who provides informal care for the disabled person can only receive Carers Allowance if the person being cared for receives the middle or higher rate of the Care Component. Additionally, the Government has recently announced a 'cap' on the maximum amount of benefits one household can receive, however households receiving DLA are exempt from this. Thus eligibility for DLA is now a 'high stakes issue, with wider disabled household income now dependent on it.'

We are very concerned that by restricting the number of people on DLA, this will trigger further financial consequences, pushing the person into poverty.<sup>103</sup>

**The MS Society** comments:

We are very concerned about the Government's lack of analysis of the knock-on impact for families of these reforms, and the proposed £1 billion cut to the DLA budget which motivates them. If a substantial number of DLA claimants see their benefits reduced or removed as a result of the proposed cut, this could have a significant impact on Carer's Allowance and other 'passported' benefits, particularly disability premia.

We urge the Government to conduct and publish analysis of the knock-on impacts of this cut on family incomes – which could be devastating for families as they lose disability and carers benefits – as a matter of urgency.<sup>104</sup>

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<sup>101</sup> [Consultation response by the Disability Benefits Consortium](#), January 2011, p12

<sup>102</sup> [Disability Alliance: Interim consultation response](#), 3 February 2011, p18

<sup>103</sup> [Disability Living Allowance reform – a response from Scope](#), pp9-10

<sup>104</sup> [Disability Living Allowance reform: A response from the MS Society](#), February 2011