Northern Ireland
Assembly

COMMITTEE FOR SOCIAL DEVELOPMENT

OFFICIAL REPORT
(Hansard)

Welfare Reform Bill: Personal Independence Payment

8 December 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Gregory Campbell
Mrs Judith Cochrane
Mr Sammy Douglas
Mr Mark H Durkan
Mr Alex Easton
Mr Fra McCann
Mr David McClarty

Witnesses:

Mr Sam Dempster	)	
Ms Anne McCleary	)	Department for Social Development
Mr John McKervill	)	

The Chairperson:

We move to the briefing on the personal independence payment element of the Welfare Reform Bill. I welcome Anne McCleary, John McKervill and Sam Dempster. A paper has been tabled and is being handed out to members. Anne, John and Sam, the floor is yours.

Ms Anne McCleary (Department for Social Development): Thank you for the opportunity to brief you on the proposals for the personal independence payment. We emphasise at the outset that they are only proposals at this stage. Any final decision is a matter for the Assembly, but this is a policy area where the Minister will be seeking to maintain parity. You now have our written briefing and, if you are content, I would like to outline the main policy proposals before handing over to John, who will talk about implementation.

I refer you to the second slide on the paper. The coalition Government announced plans for the reform of disability living allowance (DLA) in the June 2010 Budget, and proposals for the introduction of the personal independence payment. Those were published in December 2010. It is clear from the responses to the December 2010 consultation that disabled people said that they should be at the heart of the reform. The personal independence payment will, therefore, target support at those who face the greatest challenges.

From April 2013, new claims by people of working age, those aged 16 to 64, will be for the personal independence payment, which from now on I will refer to as PIP. Reassessment of working-age people already in receipt of DLA will also begin, and will be completed by March 2016. That will affect around 117,000 people in Northern Ireland. However, having heard the previous presentation, it is important to be clear that this is a new benefit — it is not DLA, nor, more importantly, is it employment and support allowance (ESA) mark II. This is a new benefit. PIP and ESA meet different needs. ESA is to support people who can work to get back into the workplace. PIP will provide support for people to lead an independent life, regardless of whether they are in work. Most crucially, perhaps, the assessments will be different. The work capability assessment, which you have just discussed, measures a person's ability to work or undertake activities linked to work. The PIP assessment will measure a person's ability to perform a range of everyday tasks: it is not work related. It is important to recognise and emphasise that difference.

Consultation on the equality impact assessment has ended and the responses are being analysed. With regard to PIP, some respondents have pointed to Northern Ireland's unique circumstances, while others are concerned, understandably, that they think that people will lose out. I understand that the intention is to brief the Committee on all the responses in January, once a full analysis has been carried out.

I may well be telling you something that you have already suspected: I can confirm that the profile of the caseload in Northern Ireland differs from that in Britain. A significant proportion of claimants in Northern Ireland have mental health problems: 22% of all awards. The Department has, therefore, been working to ensure that Northern Ireland's interests are reflected in how the assessment is developed. The Westminster Bill is still in the Lords, and Royal Assent is expected in February 2012. Subject to Executive agreement, we anticipate introducing a corresponding Bill in the Assembly thereafter. A date for Royal Assent here will depend on the Bill's progress in the Assembly. By around December 2012, we anticipate that detailed regulations will be made and proposals for those will be submitted to the Committee in the normal way. Those regulations will come into operation in April 2013.

The third slide deals with the rationale for change. DLA was introduced in 1992 and has not been fundamentally reviewed or reformed since. The focus has been on awards based on a person's disability, rather than the impact it has on their everyday life. We want to address sustainability and the perception that we see in some parts of the media that the reform is just a cost-cutting exercise designed to force people off the benefit. It is clear that deficit reduction remains a key priority for the coalition Government, and they are seeking to make savings across a wide range of expenditure, not just in relation to welfare. There is no doubt that PIP needs to be sustainable. The bill for DLA has risen further than many anticipated. In 2010-11, expenditure was £754 million, which is more than double the amount paid out in pension credit. Only expenditure on state pension was higher, and that was £1·35 billion.

The reform is about focusing cash support on the people who face the most significant barriers to participating in everyday life. Of the 117,000 people of working age who currently receive DLA, many are unlikely, because of their disability, to see any significant change in the cash support that they receive. There is confusion about the purpose of DLA. Some claimants view DLA as a form of compensation, while others believe that entitlement will end if they start work. We have a lengthy claims process, and we have no systematic way of checking that the DLA award remains correct. In some cases, that could mean that people are not getting the support that they need. This is not just about people getting too much: it is also about people getting too little. PIP needs to reflect the needs of people today and provide the support to enable them to lead full, independent lives. One of the issues raised by respondents to the December 2010 consultation was that DLA was not responsive to fluctuating conditions. That issue is being addressed in the design and development of the proposed assessment criteria for PIP. The assessment will consider a 12-month period rather than a snapshot. In order to accurately capture fluctuations and ability within that period, it will consider the impact experienced on the majority of days in that period. The assessment will also look at a person's ability to perform an activity safely, reliably and repeatedly.

Slide 4 is about what is not changing. Some features of DLA will be carried forward in the design of PIP and the first and perhaps most important is that it will not be means-tested or taxable. It will be payable regardless of whether the claimant is working. That meets a key policy objective of enabling people to live full, independent lives. The rules for terminally ill people will be maintained. They will be entitled to the daily living component at the enhanced rate, and they will be entitled to either rate of the mobility component without having to satisfy the six-month qualifying period.

The Department will continue to make decisions on claims, and there will be a right of appeal. The Bill will enable the Department to reconsider and, if appropriate, revise decisions in certain cases. That will reduce the burden on both claimants and the tribunals. As is the case now, new claimants over 65 will be able to claim attendance allowance, and children under 16 will continue to claim DLA. The fact that DLA is vanishing for those over working age does not mean that those who are in other categories will lose out; it will still be there for them.

The initial focus of PIP will be on the working-age population, and experience gained in assessing how PIP works in respect of them will inform future decisions about how it might apply to other groups.

Claimants who are in receipt of PIP when they reach 65 will continue to receive it for as long as they meet the eligibility conditions. The age-65 threshold will increase if the state pension age starts to rise to 66 after 2018.

The next slide is about the key proposals. The proposed Bill will establish the personal independence payment and set out its general principles. It will also contain a number of enabling powers, which will provide for many of the details relating to the benefit, which will be set out in the regulations. To be eligible, claimants will have to satisfy a number of qualifying conditions: they must have a condition that limits or severely limits their ability to perform a range of everyday tasks; they must meet a qualifying period of six months; and they will be expected to have the condition for a prospective six months. That 12-month period reflects the intention that PIP will be payable to people who have a long-term disability.

There will be two components: a mobility component, which will be awarded on the basis of the individual's ability to get around; and a daily living component, which will be awarded on the basis of their ability to carry out key activities necessary to be able to participate in daily life. For each of those components, there will be two rates. That will be set out in regulations.

It is important to ensure that PIP awards remain correct. They will be made for a fixed term, except in exceptional circumstances. The term of an award will, in part, be guided by a judgement by an independent assessor on the likelihood of the condition changing. There will also be a process for reassessing claims to ensure that people continue to receive the current amount of support. That will be a major change from DLA, for which about 76% of awards are for an indefinite period.

Payments of both components of DLA will stop if an individual is in hospital and their needs are being met from public funds. Payment of the care component stops if a person is in a care home, although payment of the mobility component continues. You are probably aware that that is a fairly recent change. The Bill will make similar provision for PIP. That is a change from our original policy, which was to remove both components from people in care homes, but, as I said, the decision was announced on 1 December and has been welcomed by the Minister and organisations representing the disabled. It is recognised that receipt of DLA passports many people to additional support offered by other Departments or schemes. We have started to advise sponsoring Departments about the proposed introduction of PIP and the need for them to consider the impact on their schemes. Work on that is ongoing.

At the heart of PIP will be a new, fairer assessment of individual need. The assessment will use descriptors that are being developed with professionals in the fields of health, social care and disability, as well as with disabled people. There will be 11 descriptors: nine relating to daily living activities and two relating to mobility activities.

Moving to the next slide, the second draft of the regulations setting out the assessment criteria descriptors was published by the Department for Work and Pensions (DWP) on 14 November. I am pleased to say that it reflects changes suggested by respondents to the first draft, which was published in May. The changes, which are particularly relevant bearing in mind some of the comments we heard in earlier discussions today, include adding reference to supervision by another if that is required to perform an activity safely; considering descriptors in the light of whether they apply for the majority of days within a period, which is particularly relevant when we are looking at the impact of a fluctuating condition; broadening the number of definitions used; and ensuring that the assessment does not unfairly penalise individuals who choose to use aids and appliances to improve their independence.

I stress that the descriptors are not intended to be a snapshot of a person’s ability to perform key activities. Instead, they will consider whether a person can perform a task safely, reliably, repeatedly and in a timely manner. Again, that will help an assessor to measure the impact of a fluctuating condition on any individual. Each descriptor will reflect a range of activities, from being able to perform a task unaided through to not being able to perform it at all. They also reflect a person’s ability to perform a task with support, supervision or assistance.

The second draft of the regulations incorporates a score for each descriptor. I think that Les Allamby’s phrase earlier was “points mean prizes”. Those are not final scores; they are just suggestions at the minute, and a decision has not been taken on the entitlement threshold: in other words, how many points somebody needs to get before they receive the benefit. No decision has yet been made on that, although if you have been watching the progress of the Bill through the House of Lords, I think Lord Freud has given various assurances about information on that being available in the very near future. We will be consulting formally with DWP once the scores are finalised and the thresholds set.

Mr John McKervill (Department for Social Development): The new assessment will be more transparent and objective to allow it to identify those who face the greatest challenges to leading full, active and independent lives. The assessment will, in a sense, allow individuals to tell their story, more so than DLA, which tends to focus on physical disability. The new benefit takes into account the needs of those with mental health, intellectual, cognitive and developmental impairments. Claimants will be able to bring someone with them to the assessment and for that person to play an active part in the assessment — in a sense, to be their advocate. That will be particularly important for those with a mental disability or learning difficulties. Although most cases will involve a face-to-face assessment, such an assessment should not be required when there is already sufficient information on which to make a decision on entitlement.

The draft criteria were tested over the summer using 1,000 existing DLA customers, including 180 from Northern Ireland. It was important that our client base fed into the development of the criteria. As Anne said, that resulted in revised criteria, which were published and shared with the Committee last month. There is a higher proportion of DLA customers in Northern Ireland with a mental health disability or learning difficulties. As there is a greater focus on cognitive ability with the new assessment, GB Ministers acknowledged that there will likely be a swing in favour of those with a mental disability.

If you move to the final slide, you will see that, in Northern Ireland, we have established a dedicated project team to take forward the planning and delivery of the new benefit. That includes liaising with other parties affected by the changes, such as the NI Courts and Tribunals Service. Senior officials in the agency also attend meetings of the GB PIP project board. That ensures that, for example, on IT, NI issues are captured and not overlooked.

We are engaging, through a proactive approach to communication, with community representative groups. The disability forum, which was established initially to discuss the administration of DLA, has been developed into a larger forum for disability groups and the advice sector for PIP. The forum will be a vehicle to share information, to listen to and address any emerging concerns and, where possible, provide reassurance about the changes. The inaugural meeting of the group took place on 10 November, and the second meeting was held yesterday. In total, 31 groups were represented.

Our aim is to ensure that individuals feel well supported during the reassessment process. That will be at the heart of our thinking as we develop the customer journey.

The Chairperson:

OK, thank you. We have had a quick gallop through quite a comprehensive report.

Mr Brady:

Thanks very much for your presentation. I think that the raison d'être for all this is summed up in slide 2: the system is too costly to sustain. We can take that as our starting point; it is to save money. Then, we go on to the euphemisms about how people with disabilities will or will not be treated.

You talked about points-based criteria. Lord Freud has not given any indication on that, but it is very reassuring to hear that he is going to. We might have 50 points instead of 15; we do not know at this point.

You also said that assessments will be carried out by third-party assessors. We are back to Atos, presumably.

Ms McCleary:

We do not know. That contract has not been —

Mr Brady:

Without being too prescriptive about it, I am sure —

Ms McCleary:

I do not know that that is necessarily the case.

Mr McKervill:

It is not necessarily the case. A tender process is being engaged in at the moment with DWP —

Mr Brady:

Well, we can say Atos or some similar organisation.

Mr McKervill:

At the pre-qualification questionnaire (PQQ) stage, people were invited to express interest, and 24 or 25 different companies did so.

Mr Brady:

The other premise used is that there has been no fundamental reassessment of DLA since 1992 and there is no method for checking. There have been some reassessments — for example, life awards became indefinite awards, which then became not indefinite awards, and various things like that — and periodic reviews were introduced in the mid 1990s. I went to various meetings at which we went into great detail to explain the reason for periodic reviews, which is to make sure that people were getting their benefits and people were not getting benefits they should not have been.

Ms McCleary:

I think that that came in around 1997.

Mr Brady:

The meetings started in 1995 through 1996 and then that came in. Those safeguards were introduced. So, the personal independence payment is really to pare back DLA. I think that most people would accept that.

The other thing I want to ask is about children. DLA will continue for children under the age of 16. Maybe this is supposition on all our parts, but do you think that those children will be reassessed at 16? One reason that triggered the inquiry into DLA by the Committee I was on in the previous mandate was the case of two children, both the same age and both with Down's syndrome, in which one got an indefinite award and the other got an award for two years. The likelihood was that that child was never going to wake up some Monday morning and not have Down's syndrome. I wonder whether things like that will be factored in.

Mr McKervill:

They will be. It is intended that children at aged 16 will be invited to apply for PIP. We are working out the actual journey for that category of people.

Mr Sam Dempster (Department for Social Development):

The thing to remember is that we are looking at the impact of a person's condition rather than the condition itself. As you said, two people may have Down's syndrome, but it may impact on them differently. The new assessment will look at the impact on their ability to be able to perform a range of everyday functions. It is possible to come to two different conclusions, because the impact is different.

Mr Brady:

The other thing I want to say, just to finish, is that mental health is maybe not being properly addressed, yet the figures you gave us say that 22% of people here claiming DLA are doing so because of mental health issues. In the past few days, a report has been published about post-traumatic stress in the North, which is much higher than it is in England, Scotland and Wales.

Ms McCleary:

I think that is generally recognised.

Mr Brady:

All of that has to be factored in. It is very important.

Ms McCleary:

That is why I would not like to put money on what exactly the impact of the change will be in Northern Ireland. We do have a very different profile of person receiving DLA to GB, where the main cause for receipt of DLA is musculoskeletal disorder. Our main cause is mental health, and we also have a far younger client base. Those two factors together mean that, whatever happens in GB, may not be reflected, and certainly will not be directly reflected, in Northern Ireland. We could see a very different outcome here.

Mr Brady:

This is an unfair question, but, realistically, do you think that that will happen?

Mr McKervill:

DWP Ministers have acknowledged in the House of Lords that there could well be a swing in favour of people with mental health difficulties.

Mr Brady:

It will be interesting to see the outworkings of that.

Mr Easton:

Will people who are already of pension age and who have gone on to attendance allowance have to be transferred back to PIP if the pension age goes up?

Mr Dempster:

No, the upper age threshold for PIP will increase as the pension age increases.

Mr Easton:

So there will be no danger there. The cost of DLA is £754 million, and the Government are looking to reduce that. Will that continue to be funded directly from Westminster rather than the block grant?

Ms McCleary:

We have had no indication that it would not. We are assuming that it is coming from Westminster, otherwise we are all in trouble.

Mr Dempster:

The £754 million is for all age groups, and around £490 million is spent on people of working age. That is people between 16 and 64. Assuming that we retain parity, the funding would continue.

Mr Easton:

Under the new process, will the claimant’s GP be contacted for a report for the payment of PIP, as is currently done with DLA?

Mr McKervill:

The decision-maker will be able to ask for whatever evidence they want.

Mr Easton:

He does not have to ask for it.

Mr McKervill:

They will not have to. They do not have to currently. Only around 76% of DLA cases get a doctor’s report.

Mr Easton:

I thought that they automatically wrote to the doctor.

Mr McKervill:

No.

Mr Dempster:

The individual can bring someone with them to the assessment interview. That might be a medical professional.

Mr Easton:

If they go for an appeal, will there still be three people on the panel?

Ms McCleary:

That is outside our —

Mr Easton:

Have you any plans to make the application form a lot easier to fill in?

Mr McKervill:

We are certainly looking at making the application process a lot easier.

Mr Easton:

It would make my life a lot easier as well.

Ms McCleary:

It would also save a few trees.

Mr McKervill:

We have been working with representative groups on what they are looking for and at how easy we can make it for them.

Mr Easton:

It would reduce my stress levels.

Mr F McCann:

I will be short and to the point. Your paper on the personal independence payment states that £754 million a year is spent on DLA payments. Obviously, all of the people who have applied for DLA have done so because they need it. It really concerns me when it is said that the system is too costly, because, regardless of whether you are in need or not, there are people in medical need and who need the money who will be cut off from the system altogether. That is the purpose. No matter what way we try to dress it up, that is the point of the personal independence payment.

You said that multiple companies or people had applied —

Mr McKervill:

Expressed an interest.

Mr F McCann:

No matter what way you look at it, they are all Atos-type organisations that have an interest in running this system. It may differ slightly, but, from earlier on in the meeting, you are aware that there have been growing concerns about the way that Atos has run the system.

When I say that it is a tick-box operation, obviously the form that you fill in is a tick-box operation, but the claimant has some control over that. Are we saying that people may have to sit in front of representatives of whatever company or organisation wins the tender to be assessed and will not have the freedom to fill in the form themselves or go to an advice centre to get them filled in?

Mr McKervill:

The claimant will be able to complete a form explaining exactly how their disability impacts on them; it is not just simply a tick-box questionnaire. It is completely different to work capability assessment.

Mr F McCann:

The present procedure is that, once the form is filled in, you usually go to a doctor to fill in the rest. Mickey just reminded me that sometimes doctors will not do it if they are not getting paid for it, but by and large they do. That means that there is medical evidence from a doctor on a form showing the doctors support for the contents of the form.

Mr McKervill:

A claimant for PIP will be able to provide as much evidence as they want to, whether it is from a doctor or some other specialist.

Mr F McCann:

I take it that that will go directly to the decision-maker and that there will be no middle person who assesses it.

Mr McKervill:

That will go to the decision-maker. The healthcare professional assessment provider will then contact the customer — this is how it is working at the moment — and ask them to come in for an assessment if the decision-maker thinks that one is necessary.

Mr F McCann:

That is the point I was trying to make five minutes ago. I asked whether there was an independent company coming in to assess claimants. I was told no. Now, I am being told that, at the third stage, there will be an independent assessment.

Ms McCleary:

I think that the discussion was about which independent company it would be.

Mr F McCann:

The point I was making was whether it would be an Atos-type operation. There is a company, of whatever ilk, in the third stage of this, after the form has been filled in and sent to the decision-maker, being brought in to assess the claimant. That was the question that I was trying to ask.

Mr Dempster:

The key thing is that the people who actually do the face-to-face consultations will have a medical background, a nursing background or will be occupational therapists or physiotherapists.

Mr F McCann:

What is the difference between that and the system for incapacity benefit?

Mr McKervill:

The decision-maker for PIP will take the final decision; it is not just a case of a score, because the decision-maker will have other evidence as well as the assessment provided by the third party.

Ms McCleary:

The first point that you made was about cuts. You have to remember that, if people have a disability need, they are entitled to a certain number of points and get the benefit regardless of anything else. If they have got the points, they get the benefit. The key issue is how you acquire points and how many points it takes to receive the benefit. The new system will not necessarily see a reduction here or to any individual. There is a lot of scaremongering at the minute, and it is not necessarily going to be like that.

Mr F McCann:

I am a bit concerned by the word "scaremongering" to be honest, Anne. We were told earlier that there are a considerable number of people who a doctor and maybe a consultant have assessed and deemed to be unfit for work. Somebody from a private company has come in and given those people 15, 20 or 30 points. However, we were told that when those people went in front of the assessor, they did not get any points, so I am not reassured that a health practitioner or a healthcare professional will be able to do that. The process is running against the trend of doctors. We could all cite cases that we have dealt with, but you are talking about a similar operation, because when people are turned down for incapacity benefit, it goes to a decision-maker and the claimant is assessed. So, there is no difference between what is happening with incapacity benefit and ESA and what is being proposed for DLA.

Mr McKervill:

I think that lessons have been learned from the Harrington report to the extent that these medical healthcare professionals will have access to specialist support if they need it in assessing the disability and its impact. The assessors and the decision-makers will require considerable training in the introduction of PIP.

Mr Durkan:

Thanks for the presentation. You seem to be saying that the independent assessor will be a health professional. However, in paragraph 15 of the main briefing, it says:

> "consultation with a trained independent assessor, most likely a health professional, will be an important part of the assessment process".

Will it definitely be a health professional or will it "most likely" be a health professional?

The other issue is passporting. It is most important that we have more detail on that, which I hope will be forthcoming. There is nothing that I can see that deals with rates of the personal independence payment, whereas currently there are three rates of DLA.

Ms McCleary:

There will be two components of PIP, each of which will have two rates.

Mr Dempster:

The rates have not yet been set.

Mr Durkan:

So the middle rate will be going. What is the middle rate currently, which is a passport rate?

Ms McCleary:

It is not as if we are wiping out everybody who is on the middle rate. It is not like that.

Mr Durkan:

I know that, but they will be going up or down — most likely down, I would imagine. The middle rate is a passport benefit to many other benefits.

Ms McCleary:

We are in discussion with other Departments about that.

Mr Durkan:

For the Committee’s information, an all-party group meeting on welfare reform and disability took place last week. It took evidence from representatives of the Law Centre, Disability Action and RNIB. It may be worth inviting those groups to give evidence to this Committee as well.

Mr Brady:

I want to make two quick points. You are saying that the form will be filled in by the person saying what is wrong with them. Presumably, then, one of those trained health professionals will assess what is not wrong with them and how they cope with it.

John, you said that, ultimately, the decision will be made by the decision-maker. That is what happens at the moment, so what is going to be different about that? Irrespective of any medical evidence that is brought in, that is what happens with DLA.

Mr McKervill:

That is right. There is no change: the decision-maker, as now for DLA, will take the final decision. It is not going to be just as a result of the objective assessment alone.

Mr Brady:

No, no. That is what happens with DLA at the moment. You can put in all the medical evidence you want to support your claim, but ultimately, it is a civil servant, who is not medically trained, who makes that decision. That is going to happen with PIP, so what is the difference?

Mr McKervill:

There is no difference. It is not changing.

Mr Brady:

Exactly. So, what is the point of going to all this trouble to change it? Unless you are saving money, of course.

Ms McCleary:

It is about looking at the assessment itself and making sure that we are targeting the right people to get the support.

Mr Brady:

That is what is supposed to happen with DLA, with respect.

Ms McCleary:

The purpose of the assessment is slightly different for the new benefit.

Mr Brady:

In fairness, a myth has been put out that there are loads of people getting DLA who should not get it. It is subject to the least amount of fraud — less than 0·01% — according to your own figures. You just wonder —

Ms McCleary:

I do not think that we are not suggesting that there is a huge degree of fraud in all this, or that there are people who should not be getting benefits. As I said, if a person who has a medical condition or a disability gives evidence about their condition, or explains how it affects them in their ordinary, everyday lives, that person acquires points. As a result of the number of points that they acquire, that person is entitled to benefit at a particular level or not —

Mr Brady:

With respect, scaremongering can work both ways. It can come from the Department or it can come from the public. That has to be recognised as well.

Ms McCleary:

We are just trying to explain that there are an awful lot of folk who are concerned. There are some people, for example, who seem to believe that they are going to be reviewed every year. That is not necessarily going to be the case. They will be reviewed on an individual case-by-case basis, and some of them may not have to be reviewed at all. It depends on the individual's circumstances. That is what I mean by scaremongering; it is a misunderstanding.

Mr Brady:

You will have to forgive us for our scepticism. We have been around too long to take that on board. I am sorry.

The Chairperson:

OK. There are no further questions. We have covered the matter quite comprehensively. Anne, Sam and John, thank you for your efforts.