Draft Regulations laid before Parliament under section 94(6) of the Welfare Reform Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

SOCIAL SECURITY

The Social Security (Personal Independence Payment) Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 77(3), 78(3) and (4), 79(3) and (4), 80(1), (2), (3), (4) and (5)(a) and (c), 81(1), (3)(b) and (4), 83(3), 85(1), (5) and (6), 86(1) and (3), 87, 92(1) and 94(1), (2), (3)(a) and (4) of the Welfare Reform Act 2012(**1**), makes the following Regulations.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 94(6) of that Act.

These Regulations are made under the provisions of that Act and are made before the end of a period of 6 months beginning with the coming into force of those provisions(**2**).

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Personal Independence Payment) Regulations 2013.

(2) These Regulations come into force in relation to a particular case on the day on which Part 4 of the Act comes into force in relation to that case.

(**1**) 2012 c.5.

(**2**) *See* section 173(5)(a) of the Social Security Administration Act 1992 (c.5) ('the 1992 Act'). The requirement to refer regulations to the Social Security Advisory Committee does not apply where regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made. Schedule 9, paragraph 26(a) to the Welfare Reform Act 2012 (c.5) ('the Act') inserted a reference to Part 4 of that Act into section 170(5) of the 1992 Act which has the effect of making that part of the Act a 'relevant enactment' and therefore subject to the requirement to refer regulations to the Social Security Advisory Committee unless section 173(5) applies.

Interpretation

2. In these Regulations —

"the 1998 Act" means the Social Security Act 1998(**3**);

"the Act" means the Welfare Reform Act 2012;

"aid or appliance"-

(a) means any device which improves, provides or replaces C's impaired physical or mental function; and

(b) includes a prosthesis;

"assessment" means the assessment referred to in regulation 4;

"C" means a person who has made a claim for or, as the case may be, is entitled to personal independence payment;

"component" means the daily living component or, as the case may be, the mobility component of personal independence payment;

"descriptor" means a descriptor in column 2 of the tables in Parts 2 and 3 of Schedule 1;

"disability living allowance" means disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(**4**);

"medical treatment" means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

"prescribed date" means the date prescribed(**5**) by regulation 14 or 15;

"previous award" means an award of either or both components to which C has ceased to be entitled;

"revised" means revised under section 9 of the 1998 Act, and "revision" is to be construed accordingly;

"superseded" means superseded under section 10 of the 1998 Act(**6**), and "supersession" is to be construed accordingly; and

terms defined for the purposes of a provision of Part 4 of the Act have the same meaning in these Regulations.

PART 2

Personal independence payment assessment

Daily living activities and mobility activities

3.—(1) For the purposes of section 78(4) of the Act and these Regulations, daily living activities are the activities set out in column 1 of the table in Part 2 of Schedule 1.

(2) For the purposes of section 79(4) of the Act and these Regulations, mobility activities are the activities set out in column 1 of the table in Part 3 of Schedule 1.

(**3**) 1998 c.14.
(**4**) 1992 c.4. Section 71 was amended by the Welfare Reform and Pensions Act 1999 (c.30), section 67(1).
(**5**) 'Prescribed' means prescribed by regulations. *See* section 95 of the Act.
(**6**) Section 10 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 7, paragraph 23(a) and (b) and Schedule 10, and the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), Schedule 3, paragraph 148.

Assessment of ability to carry out activities

4.—(1) For the purposes of section 77(2) and section 78 or 79, as the case may be, of the Act, whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C's physical or mental condition, is to be determined on the basis of an assessment.

(2) C's ability to carry out an activity is to be assessed –

(a) on the basis of C's ability whilst wearing or using any aid or appliance which C normally wears or uses; or

(b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(3) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

Scoring for daily living activities

5.—(1) The score C obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 ("the daily living activities table").

(2) For the purpose of paragraph (1), the number of points awarded to C for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to C under regulation 7.

(3) Where C has undergone an assessment, C has —

(a) limited ability to carry out daily living activities where C obtains a score of at least 8 points in relation to daily living activities; and

(b) severely limited ability to carry out daily living activities where C obtains a score of at least 12 points in relation to daily living activities.

Scoring for mobility activities

6.—(1) The score C obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 ("the mobility activities table").

(2) For the purpose of paragraph (1), the number of points awarded to C for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to C under regulation 7.

(3) Where C has undergone an assessment, C has —

(a) limited ability to carry out mobility activities where C obtains a score of at least 8 points in relation to mobility activities; and

(b) severely limited ability to carry out mobility activities where C obtains a score of at least 12 points in relation to mobility activities.

Scoring: further provision

7.—(1) The descriptor which applies to C in relation to each activity in the tables referred to in regulations 5 and 6 is —

(a) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;

(b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which scores the higher or highest number of points; and

(c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period–

(i) the descriptor which is satisfied for the greater or greatest proportion of days of the required period; or,

(ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.

(2) For the purposes of paragraph (1), a descriptor is satisfied on a day in the required period if it is likely that, if C had been assessed on that day, C would have satisfied that descriptor.

(3) In paragraphs (1) and (2), "required period" means —

(a) in the case where entitlement to personal independence payment falls to be determined, the period of 3 months ending with the prescribed date together with–

(i) in relation to a claim after an interval for the purpose of regulation 15, the period of 9 months beginning with the date on which that claim is made;

(ii) in relation to any other claim, the period of 9 months beginning with the day after the prescribed date.

(b) in the case where personal independence payment has been awarded to C -

(i) during the period of 3 months following a determination of entitlement under a claim for the purpose of regulation 15, the period of 3 months ending with the prescribed date together with, for each day of the award, the period of 9 months beginning with the day after that date;

(ii) in any other case, for each day of the award, the period of 3 months ending with that date together with the period of 9 months beginning with the day after that date.

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

8.—(1) The Secretary of State may require C to provide any information or evidence required to determine whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities.

(2) Where information or evidence is requested under paragraph (1), C must provide the information or evidence to the Secretary of State within one month from the date of the request being made or within such longer period as the Secretary of State may consider reasonable in the circumstances of the particular case.

(3) Where C fails without good reason to comply with the request referred to in paragraph (1), a negative determination in relation to the component to which the failure related must be made.

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

9.—(1) Where it falls to be determined whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities, C may be required to do either or both of the following —

(a) attend for and participate in a consultation in person;

(b) participate in a consultation by telephone.

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

(3) Paragraph (2) does not apply unless —

(a) written notice of the date, time and, where applicable, place for, the consultation is sent to C at least 7 days in advance; or

(b) C agrees, whether in writing or otherwise, to accept a shorter period of notice of those matters.

(4) In paragraph (3), reference to written notice includes notice sent by electronic communication where C has agreed to accept correspondence in that way and 'electronic communication' has the meaning given in section 15(1) of the Electronic Communications Act 2000(**7**).

(5) In this regulation, a reference to consultation is to a consultation with a person approved by the Secretary of State.

Matters to be taken into account in determining good reason in relation to regulations 8 and 9

10. The matters to be taken into account in determining whether C has good reason under regulation 8(3) or 9(2) include —

(a) C's state of health at the relevant time; and

(b) the nature of any disability that C has.

Re-determination of ability to carry out activities

11. Where it has been determined that C has limited ability or severely limited ability to carry out either or both daily living activities or mobility activities, the Secretary of State may, for any reason and at any time, determine afresh in accordance with regulation 4 whether C continues to have such limited ability or severely limited ability.

PART 3

Required period condition

Required period condition: daily living component

12.—(1) C meets the required period condition for the purposes of section 78(1) of the Act (daily living component at standard rate) where —

(a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had limited ability to carry out daily living activities; and

(b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had limited ability to carry out daily living activities.

(2) C meets the required period condition for the purposes of section 78(2) of the Act (daily living component at enhanced rate) where —

(**7**) 2000 (c.7). Section 15(1) was amended by the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 158.