EXPLANATORY MEMORANDUM TO

THE PERSONAL INDEPENDENCE PAYMENT (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2013

2013 No. 626

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make amendments to regulations made under the Access to Justice Act 1999 to include Personal Independence Payment (PIP) in the list of payments to be disregarded from an individual's income when determining whether the individual is financially eligible for legal aid, or is liable to make a contribution towards the costs of their legally aided representation in accordance with those regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Part 4 of the Welfare Reform Act 2012 makes provision for an allowance known as PIP and will come into force on 8th April 2013. The amendments provided for in these Regulations are made under powers contained in Part 4, and are consequential on the coming into force of Part 4. Part 2 of the Schedule to the Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 also makes amendments consequential on the coming into force of Part 4.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 A key measure in the Welfare Reform Act 2012 is to replace Disability Living Allowance (DLA) for eligible working age people with a new benefit, PIP from April 2013.

7.2 The purpose of PIP is to provide a cash contribution to individuals to help them meet the additional costs they face as a result of a long-term health condition or disability, as is the case for DLA currently. At the centre of the Government's proposals for PIP is the development of a transparent and objective assessment.

7.3 These Regulations make provision for PIP to be disregarded in the calculation of an individual's income for the purposes of determining an individual's eligibility for criminal or civil legal aid, or liability to make a contribution towards the costs of their legally aided representation in a criminal trial, in the same way that DLA is currently disregarded.

7.4 Though the regulations made under the Access to Justice Act 1999 that these Regulations amend will be repealed on 1st April 2013 upon the commencement of paragraph 51 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), they are saved for certain cases by regulation 6 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013, so it is necessary to amend the regulations to make provision for personal independence payment. New legal aid regulations made under LASPO anticipate PIP, and have accordingly been drafted to include references to PIP where appropriate.

8. Consultation outcome

8.1 There have been three formal consultations and one informal consultation on the introduction of PIP. Initial proposals for the reform of DLA, including the high-level principles of the PIP assessment criteria, were first consulted on between 6 December 2010 and 18 February 2011.

8.2 We have not consulted on The Personal Independence Payment (Consequential Amendments) Regulations 2013.

9. Guidance

9.1 Guidance will be given to the Director of Legal Aid Casework[1] to ensure that PIP is disregarded in determining the financial resources of an

[1] In accordance with regulation 7 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013, after 31st March 2013 the Director will make decisions about financial eligibility and contributions in the cases to which the amended Access to Justice Act 1999 regulations apply.

individual in the grant of legal aid or determining the level of contribution payable under the terms of the order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 These regulations do not apply to small business.

12. Monitoring & review

12.1 On 13 December 2012, the Department for Work and Pensions published outline proposals for evaluating the effects of the implementation of PIP[2]. This will include an assessment of claimant experience, including outcomes, longer-term issues and experiences of establishing entitlement to other benefits and schemes covered in these consequential regulations. Section 89 of the Act also provides for two biennial, independent reviews within the first four years of the implementation of PIP assessment. The Government has also committed to undertake a third independent review if the second demonstrates ongoing issues with the operation of the assessment[3].

13. Contact

Samantha Toyn at the Ministry of Justice (tel: 020 3334 4285 or email: Samantha.Toyn@justice.gsi.gov.uk) can answer any queries regarding the instrument.

---

[2] See www.dwp.gov.uk/docs/pip-evaluation-proposals.pdf

[3] Hansard, 17 January 2012, Columns 568 to 569: www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0003.htm#12011769000243