

**EXPLANATORY MEMORANDUM TO**  
**THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2010**

**2010 No. 1035**

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the Instrument**

- 2.1 The Guardian's Allowance Up-rating Order 2010 (S.I. 2010/978) and the Guardian's Allowance Up-rating (Northern Ireland) Order 2010 (S.I. 2010/979) ("the Guardian's Allowance Up-rating Orders") increase the rate of guardian's allowance from 12 April 2010.
- 2.2 As a result of an increase in the rate of guardian's allowance made under the above Orders, regulations are required to ensure that the increase does not apply to a payment of guardian's allowance that is being made to a person living abroad. Where guardian's allowance is paid to a person who is living abroad, it is frozen at the rate in payment at the time of their going abroad or at the rate that was in payment when the claim was made if that is later than the date of going abroad.
- 2.3 These regulations also ensure that if there is any outstanding question about the effect of the up-rating on guardian's allowance already in payment, the altered rates will not apply until the question has been resolved.

3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument is subject to negative resolution but it has not been possible to comply with the 21-day rule.
- 3.2 As the amendments made by these Regulations are necessary only if the rate of guardian's allowance is increased by the Guardian's Allowance Up-rating Orders, it was not possible to make and lay these regulations until the Orders were made following the approval of drafts of the Orders by both Houses of Parliament. The Orders were debated in the House of Lords on 15 March and the House of Commons on 17 March 2010 and were made on 24th March 2010
- 3.3 The Guardian's Allowance Up-rating Orders have effect from 12 April 2010. To ensure that the up-rated amounts do not apply to those who are receiving a frozen rate of Guardian's Allowance these regulations must apply from the same date.

4. **Legislative Background**

- 4.1 Section 77 of the Social Security Contributions and Benefits Act 1992 and section 77 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 provide for guardian's allowance to be payable for a child or a qualifying person where the child's parents are dead, or one parent is dead and the other parent is missing, or detained, or treated as detained in prison in prescribed circumstances.
- 4.2 Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975, made under section 113 of the Social Security Contributions and Benefits Act 1992, provides for guardian's allowance to be payable if a person leaves Great Britain. There are corresponding provisions for Northern Ireland.
- 4.3 These regulations apply the provisions contained in regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 and the Social Security Benefit (Persons Abroad)(Northern Ireland) Regulations 1978 so as to disapply the benefit increases specified in the Up-rating Orders in cases where the beneficiary lives abroad

## **5. Extent**

This instrument applies to the whole of the United Kingdom

## **6. European Convention on Human Rights**

This instrument is subject to annulment and does not amend primary legislation. Accordingly no statement of compatibility with the Convention rights is required.

## **7. Policy Background**

- 7.1 Guardian's allowance was originally a contributory benefit, and remains funded from the National Insurance Fund. In line with other such benefits it may be paid to people who live abroad.
- 7.2 The restriction on the application of increases specified in the Up-rating Orders, in cases where the beneficiary lives abroad, follows the long-standing policy that benefits payable to people living abroad are not increased. In cases where benefits come within the provisions of the European Community's social security legislation (Regulation (EEC) No. 1408/71) or under bilateral social security agreements the disapplication of the up-rating will not apply.
- 7.3 The Department of Work and Pensions is making similar provision for the specified benefits which are detailed in Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975.

## **8. Consultation outcome**

No formal consultation has taken place

## **9. Guidance**

HM Treasury has issued a press-release setting out the rates of guardian's allowance from 2009-10. Leaflets will be up-dated to reflect the new rates in due course.

## **10 Impact**

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

The instrument does not apply to small business.

## **12. Monitoring & review**

The position is subject to review each tax year.

## **13 Contact**

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