

EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2006
2006 No. 1034

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

2. Description

2.1 The Guardian's Allowance Up-rating Order 2006 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2006 will come into effect on 10th April 2006.

2.2 On each occasion that the amount of Guardian's Allowance ("GA") is up-rated by way of an Up-rating Order, Regulations are required to ensure that this up-rated amount does not apply to those who are receiving GA at a frozen rate. These regulations ensure that certain people, living abroad, receiving GA, will continue to receive it at the rate it was in payment when they moved abroad or at the rate that was in payment when the claim was made, if that claim was made from abroad (that is, the frozen rate).

2.3 These regulations also ensure that if there is any outstanding question about the effect of the up-rating on a GA already in payment, the altered rates will not apply until that question has been resolved.

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

3.1 This instrument is subject to the negative resolution procedure but it has not been possible to comply with the 21 day rule.

3.2 These regulations refer to the Guardian's Allowance Up-rating Orders, so they cannot be laid until those Orders have been approved by both Houses and allocated with statutory instrument numbers. The Orders were scheduled for debates in the House of Lords on the 24th March and the Standing Committee on Statutory Instruments in the House of Commons on the 27th March, so it was not possible to lay these regulations 21 days before their effective date, 10 April 2006.

3.3 The Guardian's Allowance Up-rating Orders take effect in the week beginning with the first Monday in the tax year, which this year, is 10 April 2006. To ensure that the up-rated amounts do not apply to those who are receiving Guardian's Allowance at a frozen rate, these regulations must take effect on the same day.

4. Legislative Background

4.1 The Social Security Contributions and Benefits Act 1992 (SSCBA 1992) as amended by Part 2 Tax Credits Act 2002 provides the powers for GA Regulations.

- 4.2 Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975 (made under s113 SSCBA 1992) allows GA to continue in payment if a person leaves Great Britain.
- 4.3 There are corresponding provisions for Northern Ireland.
- 4.4 These regulations apply the provisions of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 and the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 so as to restrict the application of the increases specified in the Up-rating Orders in cases where the beneficiary lives abroad.

5. Extent

This instrument applies to all 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 GA was once a benefit that relied on a contribution history, so like most contributory benefits, it can 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 up-rated. (However, benefits can be up-rated where they come within the provisions of the European Community's social security legislation (Regulation (EEC) No 1408/71) or under bilateral social security agreements).
- 7.3 The Department for Work and Pensions is making similar provision for its contributory benefits.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 There is no impact on the public sector.

9. Contact

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