

**EXPLANATORY MEMORANDUM TO**  
**THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2008**

**2008 No. 840**

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**

The Guardian's Allowance Up-rating Order 2008 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2008 will come into effect on 7 April 2008.

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.

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**

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

As a result of these regulations making reference to the Guardian's Allowance Up-rating Orders, it is not possible to lay these regulations until the Orders have been approved by both Houses and have been allocated with statutory instrument numbers. The orders were scheduled for debate in the House of Lords on 6 March and House of Commons on 19 March 2008, so it was not possible to lay these regulations 21 days before their effective date, 7th April 2008.

The Guardian's Allowance Up-rating Orders take effect in the week beginning 7 April 2008. 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 day.

**4. Legislative Background**

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 in prison, or hospital in specified circumstances.

Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975, made under section 113 of the Act, provides for guardian's allowance to be payable if a person leaves Great Britain. There are corresponding provisions for Northern Ireland.

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**

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.

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.

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. Impact**

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

## **9. Contact**

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