
STATUTORY INSTRUMENTS

2011 No. 1039

SOCIAL SECURITY

The Guardian's Allowance Up-rating Regulations 2011

Made - - - - *31st March 2011*
Laid before Parliament *1st April 2011*
Coming into force - - *11th April 2011*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 113(1), and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1), sections 155(3), 189(1), (4) and (5), 190 and 191 of the Social Security Administration Act 1992(2) sections 113(1) and 171(1),(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(3) and sections 135(3), 165(1), (4) and (5) and 167(1) of the Social Security Administration (Northern Ireland) Act 1992(4), and now vested in them(5).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Guardian's Allowance Up-rating Regulations 2011 and come into force on 11th April 2011.

(2) In these Regulations "the Up-rating Orders" means the Guardian's Allowance Up-rating Order 2011(6) and the Guardian's Allowance Up-rating (Northern Ireland) Order 2011(7).

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- (1) [1992 c. 4](#). Section 113(1) was amended by paragraph 38 of Schedule 24 to the Civil Partnership Act 2004 ([c. 33](#)). Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 ([c. 2](#)).
- (2) [1992 c. 5](#). Subsection (1) of section 189 was amended by paragraph 109 of Schedule 7 to the Social Security Act 1998 ([c. 14](#)), paragraph 57 of Schedule 3 to the Social Security (Transfer of Functions, etc) Act 1999 and Schedule 6 to the Tax Credits Act 2002 ([c. 21](#)). Subsections (4) and (5) of section 189 were amended by paragraph 109 of Schedule 7 to the Social Security Act 1992. Section 191 is cited for the meaning assigned to the word "prescribe".
- (3) [1992 c. 7](#). Section 113(1) was amended by paragraph 92 of Schedule 24 to the Civil Partnership Act 2004.
- (4) [1992 c. 8](#). Section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 ([S.I. 1999/671](#)). Section 167(1) is cited for the meaning assigned to the word "prescribe".
- (5) By section 50 of the Tax Credits Act 2002 the functions of the Secretary of State and the Department for Social Development in Northern Ireland, so far as relating to guardian's allowance, were (except as provided) transferred to the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 ([c. 11](#)). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (6) [S.I. 2011/1029](#)
- (7) [S.I. 2011/1030](#)

Exceptions relating to payment of allowance by virtue of the Up-rating Orders

2. Neither section 155(3) of the Social Security Administration Act 1992 nor section 135(3) of the Social Security Administration (Northern Ireland) Act 1992 shall apply if a question arises as to either—

- (a) the weekly rate at which guardian's allowance is payable by virtue of either of the Up-rating Orders, or
- (b) whether the conditions for receipt of that allowance at the altered rate are satisfied,

until that question has been determined in accordance with the provisions of section 8 of the Social Security Act 1998⁽⁸⁾ or article 9 of the Social Security (Northern Ireland) Order 1998⁽⁹⁾.

Persons not ordinarily resident in either Great Britain or Northern Ireland

3. Regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975⁽¹⁰⁾ and regulation 5 of the Social Security Benefit (Persons Abroad) (Northern Ireland) Regulations 1978⁽¹¹⁾ (application of disqualification in respect of up-rating of benefit) shall apply to any additional benefit payable by virtue of either of the Up-rating Orders.

*Dave Hartnett
Melanie Dawes*

Two of the Commissioners for Her Majesty's
Revenue and Customs

31st March 2011

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- (8) By virtue of paragraph 15 of Schedule 4 to the Tax Credits Act 2002, references in Chapter 2 of Part 1 of the Social Security Act 1998 to a decision of the Secretary of State are to be construed as references to a decision of the Commissioners of Inland Revenue or (where the power to decide is exercisable by an officer of the Board of Inland Revenue) as references to an officer of the Board of Inland Revenue. As detailed above, the functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs. The functions of an officer of the Board of Inland Revenue were transferred to an officer of Revenue and Customs by section 7(2) of the Commissioners for Revenue and Customs Act 2005. Section 50(2) of that Act provides that, in so far as it is appropriate in consequence of section 7, a reference, however expressed, to an officer of the Board of Inland Revenue is to be read as a reference to an officer of Revenue and Customs.
- (9) *S.I. 1998/1506 (N.I. 10)*. By virtue of paragraph 19 of Schedule 4 to the Tax Credits Act 2002 (c.21), references in Chapter 2 of Part 2 of *S.I. 1998/1506 (N.I. 10)* to a decision of the Department are to be construed as references to a decision of the Commissioners of Inland Revenue, or (where to power to decide is exercisable by an officer of the Board of Inland Revenue) as references to an officer of the Board. As detailed above, the functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs and the functions of an officer of the Board of Inland Revenue were transferred to an officer of Revenue and Customs.
- (10) *S.I. 1975/563*, to which there are amendments not relevant to these Regulations.
- (11) *S.R. (N.I.) 1978 No. 114*, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supersede the Guardian's Allowance Up-rating Regulations 2010 ([S.I. 2010/1035](#)).

Regulation 2 provides that where a question has arisen about the effect of the Guardian's Allowance Up-rating Order 2011 or the Guardian's Allowance Up-rating (Northern Ireland) Order 2011 ("the Up-rating Orders") on a guardian's allowance already in payment, the altered rates will not apply until that question is determined by Her Majesty's Revenue and Customs, an appeal tribunal or a Commissioner.

Regulation 3 applies the provisions of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 and regulation 5 of the Social Security Benefit (Persons Abroad) (Northern Ireland) Regulations 1978 so as to restrict the application of the increases specified in the Up-rating Orders in cases where the beneficiary lives abroad.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.