

2023 No. 280

SOCIAL SECURITY

The Guardian's Allowance Up-rating Regulations 2023

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| <i>Made</i> - - - - | <i>7th March 2023</i> |
| <i>Laid before Parliament</i> | <i>8th March 2023</i> |
| <i>Coming into force</i> - - | <i>10th April 2023</i> |

The Commissioners for His 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(a), sections 155(3) and 189(1), (4) and (5) of the Social Security Administration Act 1992(b), sections 113(1) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c), and section 135(3) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(d) and now vested in them(e).

These Regulations contain only provisions made in consequence of an instrument made under section 150 of the Social Security Administration Act 1992 and section 132(1) of the Social Security Administration (Northern Ireland) Act 1992(f).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Guardian's Allowance Up-rating Regulations 2023 and come into force on 10th April 2023.

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- (a) 1992 c. 4. Section 113(1) was amended by paragraph 38 of Schedule 24 of the Civil Partnership Act 2004 (c. 33). Subsections (1) and (4) of section 175 were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2).
- (b) 1992 c. 5. Section 189(1) was amended by paragraph 109 of Schedule 7 of the Social Security Act 1998 (c. 14) ("SSA 1998"), paragraph 57(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 and paragraph 1 of 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 SSA 1998. Section 189(4) was subsequently amended by S.I. 2013/252. Section 191 defines the meaning given to "prescribe" which is "prescribe by regulations". "Prescribed" is used in section 155(3) of the Social Security Administration Act 1992.
- (c) 1992 c. 7. Section 113(1) was amended by paragraph 92 of Schedule 24 to the Civil Partnership Act 2004. Section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002.
- (d) 1992 c. 8. Section 165(1) was amended by section 18(5) of the National Insurance Contributions Act 2014 (c. 7) and S.I. 1999/671. Section 167(1) defines "prescribe" as meaning "prescribe by regulations". "Prescribed" is used in section 135(3) of the Social Security Administration (Northern Ireland) Act 1992.
- (e) The functions of the Secretary of State and the Department for Social Development in Northern Ireland (renamed as the Department for Communities by the Departments Act (Northern Ireland) 2016 (c. 5)), so far as relating to guardian's allowance, were (except as provided) transferred to the Commissioners of Inland Revenue by section 50 of Tax Credits Act 2002. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of the Commissioners for Revenue and Customs Act 2005 provides that, in so far as is appropriate in consequence of section 5, a reference to the Commissioners of Inland Revenue, however expressed, is to be taken as a reference to the Commissioners for His Majesty's Revenue and Customs.
- (f) Section 132(1) was amended by paragraph 9 of Schedule 4 to the Tax Credits Act 2002.

(2) In these Regulations “the Up-rating Regulations” means the Tax Credits, Child Benefit and Guardian’s Allowance Up-rating Regulations 2023(a).

Exceptions relating to payments of additional guardian’s allowance by virtue of the Up-rating Regulations

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 the Up-rating Regulations, or
- (b) whether the conditions for receipt of guardian’s 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(b) or Article 9 of the Social Security (Northern Ireland) Order 1998(c).

Persons not ordinarily resident in either Great Britain or Northern Ireland

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

*Jonathan Athow
Myrtle Lloyd*

7th March 2023

Two of the Commissioners of His Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument contains only provisions made in consequence of an instrument made under section 150 of the Social Security Administration Act 1992 (c. 5), and section 132(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

Regulation 2 provides that where a question has arisen about the effects of the Tax Credits, Child Benefit and Guardian’s Allowance Up-rating Regulations 2023 (S.I. 2023/237) on guardian’s allowance already in payment, the up-rated rates will not apply until that question is determined by His 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 (S.I. 1975/563) and regulation 5 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 (S.R. 1978 No. 114) to restrict the application of the increases specified in the Tax Credits, Child Benefit and Guardian’s Allowance Up-rating Regulations 2023 in cases where the beneficiary is not ordinarily resident in the United Kingdom.

(a) S.I. 2023/237.

(b) 1998 c. 14. References to a decision of the Secretary of State in Chapter 2 of Part 1 are to be construed as references to a decision of the Commissioners of Inland Revenue (or an officer of Inland Revenue where the power to decide is exercised by an officer of Inland Revenue) by virtue of paragraph 15 of Schedule 4 to the Tax Credits Act 2002. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for His Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005. The functions of officers of the Board of Inland Revenue were transferred to officers of Revenue and Customs by section 7(2) of that Act. In so far as it is appropriate in consequence of section 7, a reference to an officer of the Board of Inland Revenue is to be read as an officer of Revenue and Customs by virtue of section 50(2) of that Act.

(c) S.I. 1998/1506 (N.I. 10). References to a decision of the Department in Chapter 2 of Part 2 are to be construed as references to a decision of the Commissioners of Inland Revenue (or an officer of Inland Revenue where the power to decide is exercised by an officer of Inland Revenue) by virtue of paragraph 19 of Schedule 4 to the Tax Credits Act 2002. As detailed above, the functions of the Commissioners of Inland Revenue were transferred to the Commissioners for His Majesty’s Revenue and Customs and the functions of the officers of the Board of Inland Revenue were transferred to the officers of Revenue and Customs.

(d) S.I. 1975/563; relevant amending instruments are S.I. 1977/342 and S.I. 2010/788.

(e) S.R. 1978 No. 114, amended by S.R. 2010 No. 110; there are other amending instruments, but none is relevant.

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

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