

**EXPLANATORY MEMORANDUM TO**  
**THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2007**

**2007 No. 1071**

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 2007 (S.I. 2007 No. 1054) and the Guardian's Allowance Up-rating (Northern Ireland) Order 2007 (S.I. 2007 No. 1055) increase, from 9 April 2007, the amounts of guardian's allowance, as set out in the Pre-Budget Report on 6th December 2006.
  - 2.2 On each occasion that the amount of guardian's allowance 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 guardian's allowance at a frozen rate. These regulations ensure that certain people, living abroad, receiving guardian's allowance, 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 guardian's allowance 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.
  - 3.2 The Orders were scheduled for debate in the House of Lords on the 22 February and in the House of Commons on the 19 March, so it was not possible to lay these regulations 21 days before their effective date, 9 April 2007.
  - 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 9 April 2007. 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 Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975 (made under S113 SSCBA 1992) allows guardian's allowance to continue in payment if a person leaves Great Britain. There are corresponding provisions for Northern Ireland.

4.2 These regulations apply the provisions of 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 restrict the application of the increases specified in the Up-rating Orders in cases where the beneficiary lives abroad.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all the United Kingdom.

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

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Guardian's allowance is a non-contributory, non-income related benefit. It is payable to a person who is bringing up a child or young person because the child's parents have died, or where only one parent has died and the whereabouts of the surviving parents are not known, or the surviving parent is serving a prison sentence, or is detained in a hospital.

7.2 To be eligible to receive guardian's allowance a person does not have to be the child's legal guardian and entitlement is not affected by income or savings, but the person must be entitled to child benefit for the child or the young person.

7.3 Guardian's allowance was once a benefit that relied on a contribution history, so like most contributory benefits, it can be paid to people who live abroad.

7.4 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).

7.5 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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