

EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2009

2009 NO. 810

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Guardian's Allowance Up-rating Regulations are consequential on the Guardian's Allowance Up-rating Order 2009 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2009, which will come into effect on 6 April 2009. 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.

- 2.2 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 been allocated with statutory instrument numbers. The Orders were debated in the House of Lords on 23 March and the House of Commons on 24 March 2009.

The Guardian's Allowance Up-rating Orders take effect in the week beginning 6 April 2009. 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 date.

4. **Legislative Context**

- 4.1 Section 63 of the Social Security Contributions and Benefits Act 1992 and section 63 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 list guardian's allowance as a non-contributory benefit under Part III of each Act.

- 4.2 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.

- 4.3 Section 150 of the Social Security Administration Act 1992 requires the Treasury, in each tax year, to review in line with prices the amounts of all benefits as detailed in Schedule 4 to the Social Security Contributions and Benefits Act 1992 which includes guardian's allowance. Section 132 of the Social Security Administration (Northern Ireland) Act 1992 provides for the equivalent change to be made in Northern Ireland.
- 4.4 By virtue of section 190 of the Social Security Administration Act 1992 and section 166(10A) of the Social Security Administration (Northern Ireland) Act 1992, the Guardian's Allowance Up-rating Order 2009 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2009 require a resolution by both Houses of Parliament. In contrast, these regulations (Guardian's Allowance Up-rating Regulations 2009) are subject to annulment.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

- 7.1 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.
- 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 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.
- 7.3 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.

- *Consolidation*

- 7.4 None.

8. Consultation outcome

No formal consultation has taken place.

9. Guidance

HM Treasury has issued a press release setting out the rates of Guardian's Allowance from 2009-10. Leaflets will be up-dated to reflect the new rates in due course.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The instrument does not apply to small business.

12. Monitoring & review

The position is subject to review each tax year.

13. Contact

Jenny Fox at HM Revenue and Customs Tel: 020 7147 2503 or e-mail:
jenny.fox@hmrc.gsi.gov.uk.