

EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2013
2013 No. 746

1. This explanatory memorandum has been prepared by The Commissioners for Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Guardian's Allowance Up-rating Order 2013 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2013 will come into effect on 8th April 2013.
 - 2.2 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.
 - 2.3 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**
 - 3.1 It is with regret that these regulations are laid in breach of the "21 day rule" which requires the laying of an instrument 21 days before its provisions take effect.
 - 3.2 The timing of these regulations is dependent on the approval of the Guardian's Allowance Up-rating Orders by both Houses of Parliament. The Orders was debated and approved in the House of Commons on 11th March 2013 and the House of Lords on 18th March 2013. To assist, a draft of the Order was provided to both Houses in advance of the Order being made and laid.
 - 3.3 The regulations need to take effect from the 8th April 2013 (the first Monday of the tax year) along with the Orders and accordingly it is not possible to allow 21 days to elapse between the laying of this instrument and its coming into force.

4. Legislative Context

4.1 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 in hospital in specified circumstances.

4.2. 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.

4.3. 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. Territorial Extent and Application

5.1 This instrument applies to all 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 883/04 (as amended by Regulation (EC) No 988/2009) and implementing Regulation 987/2009/EC which largely replaces Regulation (EEC) No 1408/71 and Implementing Regulation 574/72/EC with effect from 1st May 2010)) 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.

8. Consultation outcome

8.1 No formal consultation has taken place.

9. Guidance

9.1 Following the Chancellor of the Exchequer's announcement in the Autumn Statement 2012, HM Treasury have published the following, which sets out the rates of Guardian's Allowance from 8th April 2013, http://cdn.hm-treasury.gov.uk/as2012_tax_and_tax_credit_rates_and_thresholds_051212.pdf Leaflets will be up-dated to reflect the new rates in due course.

10. Impact

10.1 An impact assessment has not been prepared for this instrument as there is no impact on Business, Charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The position is subject to review each tax year.

13. Contact

Trevor Sanders at HM Revenue and Customs Tel: 0207 147 2272 or email: Trevor.sanders@hmrc.gsi.gov.uk can answer any queries regarding the instrument.