

EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2017
2017 No. 412

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Guardian's Allowance Up-rating Regulations 2017 ("the Regulations") make provision in consequence of the Tax Credits and Guardian's Allowance Up-rating etc. Regulations 2017 ("the Up-rating Regulations") (S.I.2017/406) which provide for the annual up-rating of guardian's allowance (GA), amongst other things.
- 2.2 The Regulations provide for the prevention of any up-rating of GA if there is a question about how the Up-rating Regulations affect an existing GA in payment and restrict the up-rating of GA for people not ordinarily resident in the United Kingdom, unless there is a legal obligation to do so.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Regulations are consequential on the Up-rating Regulations which are made under section 150 of the Social Security Administration Act 1992 and section 132 of the Social Security Administration (Northern Ireland) Act 1992, and provide for the annual up-rating of guardian's allowance.
- 4.2 The general rule contained in section 113 of the Social Security Contributions and Benefits Act 1992 Act is that GA is not payable if claimants are not ordinarily resident in Great Britain, unless an exception is made in regulations. Regulations 4 and 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 make provision for exceptions to the general rule contained in section 113 of the Social Security Contributions and Benefits Act 1992. There is corresponding provision for Northern Ireland in section 113 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and regulations 4 and 5 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978.

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.

5.2 The territorial application of this instrument varies between provisions.

6. European Convention on Human Rights

6.1 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 GA 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 Regulations restrict the application of increases of GA specified in the Up-rating Regulations to beneficiaries who are ordinarily resident in United Kingdom, another Member State of the European Economic Area, Switzerland or a country or territory with which United Kingdom has a relevant reciprocal agreement. This provision follows the long-standing policy that benefits payable to people not ordinarily resident in United Kingdom are not up-rated unless there is a legal obligation or reciprocal agreement to do so.

7.3 The Regulations also prevent the increase in the rate of GA from applying in cases where there is a question about the effect of the Up-rating Regulations on a GA that is already in payment until the question is resolved. This provision is intended to avoid incorrect payments of GA where the increase is not payable.

Consolidation

7.4 There are no plans to consolidate the Regulations.

8. Consultation outcome

8.1 No formal consultation has taken place.

9. Guidance

9.1 Following Autumn Statement 2016, HM Treasury have published the following, which sets out the rate of GA from 10 April 2017 <https://www.gov.uk/government/publications/tax-and-tax-credit-rates-and-thresholdsfor-2017-18/tax-and-tax-credit-rates-and-thresholds-for-2017-18> . Leaflets will be updated to reflect the new rate in due course.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

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

13.1 Philip Hogan at HMRC on Telephone: 03000 586534 or email Philip.Hogan@hmrc.gsi.gov.uk who can answer any queries regarding the instrument.