

**EXPLANATORY MEMORANDUM TO**  
**THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2019**  
**2019 No. 525**

**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 This instrument makes provision in consequence of the Tax Credits and Guardian's Allowance Up-rating Regulations 2019 ("the Up-rating Regulations") (S.I 2019/252) which provide for the annual up-rating of Guardian's Allowance, amongst other things.
- 2.2 This instrument will prevent the Guardian's Allowance rate changed by the up-rating regulations from applying in cases where there is a question about the effect of those regulations on the rate payable until the question is resolved and will restrict the up-rating of Guardian's Allowance for people not ordinarily resident in the United Kingdom, unless there is a reciprocal agreement or legal obligation to pay such increases.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 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.

- 6.2 The general rule contained in section 113 of the Social Security Contributions and Benefits Act 1992 Act is that Guardian's Allowance 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 (S.I. 1975/563) 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 (S.R. (NI) 1978 No. 114).

## **7. Policy background**

### *What is being done and why*

- 7.1 Guardian's Allowance is a four weekly payment for people bringing up a child who is not their own because one or both of the child's parents are absent or deceased. 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. There is a statutory requirement to increase Guardian's Allowance by price inflation which is given effect through the Up-rating Regulations.
- 7.2 This instrument restricts the application of increases of Guardian's Allowance specified in the Up-rating Regulations to beneficiaries who are ordinarily resident in the United Kingdom, another Member State of the European Economic Area (EEA), Switzerland or a country or territory with which the United Kingdom has a specific agreement that allows for uprating. Where Guardian's Allowance is payable to a person living abroad i.e. outside the EEA, Switzerland or in countries where there is no agreement to provide for uprating, it is frozen at the rate in payment when the claim was made if that is later than the date of going abroad. This provision follows the long-standing policy that benefits payable to people not ordinarily resident in the United Kingdom are not up-rated unless there is a legal obligation to do so, for example, under rules co-ordinating social security provision in the European Union or under special arrangements, known as reciprocal agreements, with particular countries.
- 7.3 This instrument also prevents the increase in the rate of Guardian's Allowance from applying in cases where there is a question about the effect of the Up-rating Regulations on the rate payable until the question is resolved. This may occur, for example, where Guardian's Allowance overlaps with another benefit affecting the rate of Guardian's Allowance payable. This instrument allows payment of the altered rates to be delayed until the increased rate due has been worked out. This provision is intended to avoid incorrect payments of Guardian's Allowance where the increase is not payable.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 These regulations are remade each year therefore consolidation is not appropriate.

## **10. Consultation outcome**

- 10.1 No consultation was carried out as the regulations form part of the annual requirement to increase welfare benefits.

## **11. Guidance**

- 11.1 These amendments will be reflected in the Child Benefit Technical Manual <https://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual> and in guidance for claimants once the instrument is published. The GOV.UK website will also be updated to reflect the new rates once the instrument comes into force.

## **12. Impact**

- 12.1 There is no impact on business, charities or voluntary bodies as the regulations only affect individuals claiming Guardian's Allowance.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The rate of Guardian's Allowance is subject to review each tax year by HM Treasury Ministers under section 150 of the Social Security Administration Act 1992 and section 132 of the Social Security Administration Act (Northern Ireland) 1992.

## **15. Contact**

- 15.1 Michelle Mathieson at HMRC, on Telephone: 03000 513002 or email [michelle.mathieson@hmrc.gsi.gov.uk](mailto:michelle.mathieson@hmrc.gsi.gov.uk), can be contacted with any queries regarding the instrument on behalf of HMT.
- 15.2 James Dunstan, Deputy Director for Tax Credits and Child Benefit at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Elizabeth Truss MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.