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STATUTORY INSTRUMENTS

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**2021 No. 256**

**SOCIAL SECURITY**

**The Guardian's Allowance Up-rating Regulations 2021**

*Made* - - - - *5th March 2021*  
*Laid before Parliament* *8th March 2021*  
*Coming into force* - - *12th April 2021*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 113(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992 <sup>M1</sup>, sections 155(3) and 189(1), (4) and (5) of the Social Security Administration Act 1992 <sup>M2</sup>, sections 113(1) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 <sup>M3</sup>, and sections 135(3) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 <sup>M4</sup> and now vested in them <sup>M5</sup>.

These Regulations contain only provisions made in consequence of an instrument made under section 150 of the Social Security Administration Act 1992 and section 132(1) of the Social Security Administration (Northern Ireland) Act 1992 <sup>M6</sup>.

**Marginal Citations**

- M1** 1992 c.4. Section 113(1) was amended by paragraph 38 of Schedule 24 to the [Civil Partnership Act 2004 \(c.33\)](#). Subsections (1) and (4) of section 175 were amended by paragraphs 29(2) and (4) of Schedule 3 to the [Social Security Contributions \(Transfer of Functions etc.\) Act 1999 \(c.2\)](#) respectively.
- M2** 1992 c.5. Section 189(1) was amended by paragraph 57(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 and Schedule 6 to the [Tax Credits Act 2002 \(c.21\)](#). Subsections (4) and (5) of section 189 were amended by paragraph 109 of Schedule 7 to the [Social Security Act 1998 \(c.14\)](#). Section 189(4) was subsequently amended by [S.I. 2013/252](#). Section 191 explains the meaning given to “prescribe” which is “prescribe by regulations”. “Prescribe” is used in section 155(3) of the Social Security Administration Act 1992.
- M3** 1992 c.7. Section 113(1) was amended by paragraph 92 of Schedule 24 to the Civil Partnership Act 2004. Section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002.
- M4** 1992 c.8. Section 165(1) was amended by section 18(5) of the [National Insurance Contributions Act 2014 \(c. 7\)](#) and [S.I. 1996/671](#). Section 167(1) explains the meaning given to the word “prescribe” which is “prescribe by regulations”. “Prescribe” is used in section 135(3) of the Social Security Administration (Northern Ireland) Act 1992.
- M5** The functions of the Secretary of State and the Department for Social Development (renamed as the Department for Communities by the [Departments Act \(Northern Ireland\) 2016 \(c.5\)](#)) in Northern

Ireland, so far as relating to guardian's allowance were (except as provided) transferred to the Commissioners of Inland Revenue by section 50 of the Tax Credits Act 2002. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the [Commissioners for Revenue and Customs Act 2005 \(c.11\)](#). Section 50 (1) of the Commissioners for Revenue and Customs Act 2005 provides that, in so far as is appropriate in consequence of section 5, a reference to the Commissioners of Inland Revenue, however so expressed, is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

**M6** [Section 132\(1\)](#) was amended by paragraph 9 of Schedule 4 to the Tax Credits Act 2002.

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Guardian's Allowance Up-rating Regulations 2021 and come into force on 12th April 2021.

(2) In these Regulations “the Up-rating Regulations” means the Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2021 <sup>M7</sup>.

#### Marginal Citations

**M7** [S.I. 2021/156](#).

### Exceptions relating to payments of additional guardian's allowance by virtue of the Up - rating Regulations

2. Neither section 155(3) of the Social Security Administration Act 1992 nor section 135(3) of the Social Security Administration (Northern Ireland) Act 1992 shall apply if a question arises as to either—

- (a) the weekly rate at which guardian's allowance is payable by virtue of the Up-rating Regulations, or
- (b) whether the conditions for receipt of guardian's allowance at the altered rate are satisfied.

until that question has been determined in accordance with the provisions of section 8 of the Social Security Act 1998 <sup>M8</sup> or article 9 of the Social Security (Northern Ireland) Order 1998 <sup>M9</sup>.

#### Marginal Citations

**M8** [1998 c.14](#). References to a decision of the Secretary of State in Chapter 2 of Part 1 are to be construed as references to a decision of the Commissioners of Inland Revenue (or an officer of Inland Revenue where the power to decide is exercised by an officer of Inland Revenue) by virtue of paragraph 15 of Schedule 4 to the Tax Credits Act 2002. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005. The functions of officers of the Board of Inland Revenue were transferred to officers of Her Majesty's Revenue and Custom by section 7(2) of that Act. In so far as it is appropriate in consequence of section 7, a reference to an officer of the Board of Inland Revenue is to be read as an officer of Her Majesty's Revenue and Customs by virtue of section 50(2) of that Act.

**M9** [S.I. 1998/1506 \(N.I. 10\)](#). References to a decision of the Department in Chapter 2 of Part 2 are to be construed as references to a decision of the Commissioners of Inland Revenue (or an officer of Inland Revenue where the power to decide is exercised by an officer of Inland Revenue) by virtue of paragraph 19 of Schedule 4 to the Tax Credits Act 2002. As detailed above, the functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue

and Customs and the functions of the officers of the Board of Inland Revenue were transferred to officers of Her Majesty's Revenue and Customs.

### **Persons not ordinarily resident in either Great Britain or Northern Ireland**

3. Regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 <sup>M10</sup> and regulation 5 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 <sup>M11</sup> (application of disqualification in respect of up-rating of benefit) shall apply to any additional benefit payable by virtue of the Up-rating Regulations.

#### **Marginal Citations**

**M10** [S.I. 1975/563](#); relevant amending instruments are [S.I.1977/342](#) and 2010/788.

**M11** S.R. (N.I.) [1978 No. 114](#), amended by S.R. (N.I.) [2010 No. 110](#); there are other amending instruments but none are relevant.

5th March 2021

*Angela MacDonald*  
*Justin Holliday*  
Two of the Commissioners for Her Majesty's  
Revenue and Customs

**Changes to legislation:** There are currently no known outstanding effects for the The Guardian's Allowance Up-rating Regulations 2021. (See end of Document for details)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This instrument contains only provisions made in consequence of an instrument made under section 150 of the Social Security Administration Act 1992 (c.5), and section 132(1) of the Social Security Administration (Northern Ireland) Act 1992 (c.8).

Regulation 2 provides that where a question has arisen about the effects of the Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2021 (S.I. 2021/156) on a guardian's allowance already in payment, the altered rates will not apply until that question is determined by Her Majesty's Revenue and Customs, an appeal tribunal or a Commissioner.

Regulation 3 applies the provisions of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 (S.I. 1975/563) and regulation 5 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 (S.R. (N.I.) 1978 No.114) to restrict the application of the increases specified in the Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2021 in cases where the beneficiary is not ordinarily resident in the United Kingdom. A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

**Changes to legislation:**

There are currently no known outstanding effects for the The Guardian's Allowance Up-rating Regulations 2021.