

EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2021

2021 No. 256

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, Child Benefit and Guardian's Allowance Up-rating Regulations 2021 (S.I. 2021/156) (the Up-rating Regulations) which provide for the annual up-rating of Guardian's Allowance (GA), amongst other things.

2.2 As a result of an increase in the rate of GA made under the Up-rating Regulations, this instrument is required to ensure that the increase does not apply to a payment of GA that is being made to a person living abroad. Where GA 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 This instrument will also ensure that if there is any outstanding question regarding the effect of the up-rating of GA already in payment, the altered rates will not apply until that question is resolved.

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 territorial 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 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. There is corresponding provision for Northern Ireland in section 113 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 6.2 Regulation 4(1) of the Social Security Benefits (Persons Abroad) Regulations 1975 (S.I. 1975/563), made under section 113 of the Social Security Contributions and Benefits Act 1992, provides for certain benefits, including GA to be payable if a person leaves Great Britain. There are corresponding provisions for Northern Ireland contained in regulation 4(1) of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 (S.R. (N.I.) 1978/114).
- 6.3 This instrument is 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 GA.

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. There is a statutory requirement to increase GA by price inflation which is given effect through the Up-rating Regulations.
- 7.2 This instrument restricts the application of increases of GA specified in the Up-rating Regulations to beneficiaries who are ordinarily resident in the United Kingdom. Where GA is payable to a person living abroad it is frozen at the rate of payment when the claim was made, if that is later than the date of that person moving 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 international social security agreements (known as reciprocal agreements) with particular countries.
- 7.3 This instrument also prevents 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 the rate payable in an existing claim until that question is resolved. This may occur, for example, where GA overlaps with another benefit affecting the rate of GA payable. This provision allows payment of the altered rates to be delayed until the increased rate due has been worked out and is intended to avoid incorrect payments of GA 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 review Guardians Allowance.

11. Guidance

- 11.1 These amendments will be reflected in the Child Benefit Technical Manual. The relevant information can be found at the following webpage: <https://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual> and in guidance for claimants. 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 GA.
- 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 GA is subject to review each tax year by the Treasury under section 150 of the Social Security Administration Act 1992 and section 132 of the Social Security Administration (Northern Ireland) Act 1992.

15. Contact

- 15.1 Laura Richardson at HMRC, on Telephone 03000 518023 or email Laura.richardson2@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 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 The Rt Hon Steve Barclay MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.