

EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2023
2023 No. 280

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs and is laid before Parliament by Command of His 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 2023 (S.I. 2023/237) ("the Up-rating Regulations") which provide for the annual up-rating of Guardian's Allowance, amongst other things.

2.2 As a result of an increase in the rate of Guardian's Allowance made under the Up-rating Regulations, this instrument is 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 The instrument will also ensure that if there is any outstanding question regarding the effect of the up-rating of Guardian's Allowance 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.

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 Section 113 of the Social Security Contributions and Benefits Act 1992 provides that Guardian's Allowance is not payable if claimants are absent from 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 Guardian's Allowance, to be payable if a person leaves Great Britain. There is corresponding provision for Northern Ireland contained in regulation 4(1) of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 (S.R. (N.I.) 1978 No. 114.

6.3 This instrument is consequential to 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.

6.4 These Regulations apply regulation 5 of S.I. 1975/563 and S.R. (N.I.) 1978 No. 114 so as to disqualify Guardian's Allowance recipients, who are not ordinarily resident, from up-rating.

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. There is a statutory requirement to increase Guardian's Allowance by price inflation, which is given effect through the Up-rating Regulations.

7.2 The 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. Where Guardian's Allowance 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 the 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 The 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 in an existing claim until that 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 provision allows for 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 Guardian's Allowance where the increase is not payable.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 These Regulations are remade in their entirety each tax 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 Guardian's Allowance.

11. Guidance

- 11.1 The rules for Guardian's Allowance form part of the Child Benefit Technical Manual:
<https://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm12000>
- 11.2 Current and past rates of Guardian's Allowance are published on GOV.UK at:
<https://www.gov.uk/government/publications/rates-and-allowances-tax-credits-child-benefit-and-guardians-allowance/tax-credits-child-benefit-and-guardians-allowance>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sectors 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 the Treasury in accordance with 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 Kay Sayer, Policy Lead in His Majesty's Revenue and Customs (kay.sayer@hmrc.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 James Knipe, Deputy Director for Welfare Policy in His Majesty's Revenue and Customs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon John Glen MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.