EXPLANATORY MEMORANDUM TO

THE GUARDIAN'S ALLOWANCE UP-RATING ORDER 2012

2012 No. [XXXX]

AND

THE GUARDIAN'S ALLOWANCE UP-RATING (NORTHERN IRELAND) ORDER 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These two Orders increase, from the 9th April 2012, the amounts of Guardian's Allowance as announced in the autumn statement on the 29th November 2011 and subsequently published by HM Treasury.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

None.

4. Legislative Context

4.1 These orders provide for the annual up-rating of the weekly rate of Guardian's Allowance specified in Part 3 of Schedule 4, to the Social Security Contributions and Benefits Act 1992 and Part 3 of Schedule 4 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

4.2 Section 63 of the Social Security Contributions and Benefits Act 1992 and section 63 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 list Guardian's Allowance as a non-contributory benefit under Part of each Act.

4.3 Section 77 of the Social Security Contributions and Benefits Act 1992 and section 77 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 provide for Guardian's Allowance to be payable for a child or a qualifying person where the child's parents are dead, or one parent is dead and the other parent is missing, or detained in prison, or hospital in specified circumstances.

4.4 Section 150 of the Social Security Administration Act 1992 ("the Great Britain Administration Act") requires the Treasury, in each tax year, to review in line with prices the amounts of all benefits as detailed in Schedule 4 to the Social Security Contributions and Benefits Act 1992. Section 150(2)(a) states that those sums listed in section 150(3), which includes Guardian's Allowance (para. 5 of Part 3 of Schedule 4) shall be up-rated in line with prices. Section 132 of the Social Security Administration (Northern Ireland) Act 1992 ("the Northern Ireland Administration Act") provides for the equivalent change to be made in Northern Ireland.

4.5 Section 150(2)(c) of the Great Britain Administration Act provides that any up-rating order must also state those amounts mentioned in section 150(1) that are not being increased. This obligation includes the rate of child benefit (set by S.I. 2006/965) prescribed under section 145 of the Social Security Contributions and Benefits Act 1992 (see section 150(1)(i) of the Great Britain Administration Act.

4.6 The Guardian's Allowance Up-rating Order includes article 3, which states that rates of child benefit remain the same as last year. This statement is in accordance with the obligation under section 150(2)(c) of the Great Britain Administration Act. Section 132(1) of the Northern Ireland Administration Act provides that, where an Order is made under section 150 of the Great Britain Administration Act, a corresponding Order may be made for Northern Ireland but does not expressly require a statement to be made as is required by section 150(2)(c) of the Great Britain Administration Act.

4.7 By virtue of section 190 of the Great Britain Administration Act and section 165 of the Northern Ireland Administration Act these two Orders require a resolution by both Houses of Parliament.

5. Territorial Extent and Application

5.1 The Guardian's Allowance Up-rating Order 2012 applies to Great Britain.

5.2 The Guardian's Allowance Up-rating (Northern Ireland) Order 2012 replicates the provisions of the Guardian's Allowance Up-rating Order 2012 in respect of Northern Ireland.

6. European Convention on Human Rights

The Economic Secretary to the Treasury, Chloe Smith MP, has made the following statement regarding Human Rights:

In my view the provisions of the Guardian's Allowance Up-rating are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 In consequence of section 150 of the Great Britain Administration Act and section132 of the Northern Ireland Administration Act, HM Treasury has made these Orders amending the rate of Guardian's Allowance specified in Part 3 of Schedule 4 to the Social Security Contributions and Benefits Act 1992. The equivalent change is also made in respect of the rate payable in Northern Ireland.

7.2 The changes being introduced from 9th April 2012 increase the rate of the Guardian's Allowance from £14.75 to £15.55.

- ***Consolidation***

7.3 None.

8. Consultation outcome

No formal consultation has taken place.

9. Guidance

HM Treasury has issued a press release setting out the rate of Guardian's Allowance for 2012-13.
http://cdn.hm-treasury.gov.uk/as2011_rates_and_thresholds_201213.pdf.
Guidance will be updated to reflect the new rates in due course.

10. Impact

10.1 These instruments have no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The rate of Guardian's Allowance is reviewed annually. This is in accordance with section 150(1) of the Great Britain Administration Act, which requires that in each tax year the Secretary of State ("Treasury") shall review the sums specified in Schedule 4 to the Social Security Contributions and Benefits Act 1992 in order to determine whether they have retained their value in relation to the general level of prices obtaining in Great Britain estimated in such manner as determined by the Treasury. Section 150(2) states that those sums listed in s. 150(3), which includes Guardian's Allowance (para. 5 of Part 3 of Schedule

4), shall be up-rated in line with prices. Section 132(1) of the Northern Ireland Administration Act provides the equivalent power for Northern Ireland.

13. Contact

Rachel Varndell at HM Revenue and Customs Tel: 0207 147 3617 or email rachel.varndell@hmrc.gsi.gov.uk who can answer any queries regarding the instrument.