EXPLANATORY MEMORANDUM TO
THE GUARDIAN'S ALLOWANCE UP-RATING ORDER 2010

2010 No. [DRAFT]

THE GUARDIAN'S ALLOWANCE UP-RATING (NORTHERN IRELAND) ORDER 2010 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs 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 12 April 2010, the amounts of guardian's allowance, as set out in the Pre-Budget Report on 9 December 2009.

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

The Treasury have exercised the discretion afforded during the tax year ending 5th April 2010 by section 23 of the Welfare Reform Act 2009 (c. 24) to lay these Orders up-rating guardian's allowance, even though a review by the Treasury required by section 150 of the Social Security Administration Act 1992 (c. 5) has determined that the general level of prices was not greater at the end of period under review than it was at the beginning.

4. Legislative Context

4.1 These orders provide for the annual uprating of the weekly rate of guardian's allowance specified in Schedules 4 Part 3 of the Social Security Contributions and Benefits Act 1992 (c. 4) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7).

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 III 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 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 which includes guardian's allowance. Section 132 of the

Social Security Administration (Northern Ireland) Act 1992 (c. 8) provides for the equivalent change to be made in Northern Ireland.

4.5 Section 23 of the Welfare Reform Act 2009 (c. 24) provides that section 150 of the Social Security Administration Act 1992 shall have effect as if after sub-section (2) of that section, there were inserted subsection (2A) which allows guardian's allowance (and other benefits described in the provision) in the tax year ending 5th April 2010 to be increased even though the general level of prices have not increased during the period under review.

4.6 By virtue of section 190 of the Social Security Administration Act 1992 and section 165 of the Social Security Administration (Northern Ireland) Act 1992. 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 2010 applies to Great Britain.

5.2 The Guardian's Allowance Up-rating (Northern Ireland) Order 2010 replicates the provisions of the Guardian's Allowance Up-rating Order 2010 in respect of Northern Ireland.

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6. European Convention on Human Rights

The Financial Secretary to the Treasury, Stephen Timms, has made the following statement regarding Human Rights:

In my view the provisions of the Guardian's Allowance Up-rating Order 2010 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2010 are compatible with the Convention rights.

7. Policy background

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

7.1 In previous years many of the other rates and thresholds have increased by prices but for the first time in half a century, the Retail Price Index (RPI) decreased which means that all the rates have increased in real terms. To provide additional support to households during the early stages of economic recovery and having regard to the national economic situation and other relevant matters, the Chancellor announced in his Pre-Budget Report that the Government will bring forward a proportion of the increases expected in April 2011 a year earlier, thereby providing a 1.5 per cent increase from April 2010 for those benefits and tax credits normally uprated by RPI. In April 2011, rates will be increased by the remaining amount necessary to make up the difference with the RPI for September 2010, locking in the real increase that arises from the fact that prices fell.

7.2 Accordingly the weekly rate of guardian's allowance specified in Schedules 4 Parts 3 of the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 will be £14.30.

- ***Consolidation***

7.2 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 2010-11.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The estimated cost of the increases to guardian's allowance, which was included in the PBR 2009 forecast, is negligible.

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

11. Regulating small business

The instrument 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 Social Security Administration Act 1992, 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 the Treasury think fit. Section 132(1) of the Social Security Administration (Northern Ireland) Act 1992 provides the equivalent power for Northern Ireland.

13. Contact

Jenny Fox at HM Revenue and Customs Tel: 020 7147 2503 or e-mail: jenny.fox@hmrc.gsi.gov.uk. can answer any queries regarding the instrument.