EXPLANATORY MEMORANDUM TO

THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2011

2011 No. 1039

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

2.1 The Guardian's Allowance Up-rating Order 2011 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2011 will come into effect on 11th April 2011.

2.2 As a result of an increase in the rate of guardian's allowance made under the above Orders, regulations are 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 These regulations also ensure that if there is any outstanding question about the effect of the up-rating on guardian's allowance already in payment, the altered rates will not apply until the question has been resolved.

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

3.1 It is very much regretted that these regulations are in breach of the rule requiring laying of an instrument 21 days before its provisions take effect.

3.2 The timing of these regulations is dependent on the approval of the Guardian's Allowance Up-rating Orders. Unfortunately the timing means that it has not been possible to lay these regulations until the Orders have been approved by both Houses. The Orders were debated in the House of Lords on 23rd March 2011 and the House of Commons on 28th March 2011.

3.3 The amendment needs to take effect from the 11th April 2011 (the beginning of the 2011-12 tax year for the purposes of Guardian's

Allowance) and accordingly it is not possible to allow 21 days to elapse between the laying of the instrument and its coming into force.

4. Legislative Context

4.1 Section 77 of the Social Security Contributions and Benefits Act ("the 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.

4.2. Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975, made under section 113 of the Act, provides for guardian's allowance to be payable if a person leaves Great Britain. There are corresponding provisions for Northern Ireland.

4.3. These regulations apply the provisions contained in regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 and the Social Security Benefit (Persons Abroad)(Northern Ireland) Regulations 1978 so as to dis-apply the benefit increases specified in the Up-rating Orders in cases where the beneficiary lives abroad

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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.

7.2 The restriction on the application of increases specified in the Up-rating Orders, in cases where the beneficiary lives abroad, follows the long-standing policy that benefits payable to people living abroad are not increased. In cases where benefits come within the provisions of the European Community's social security legislation (Regulation (EEC) No. 1408/71) or under bilateral social security agreements the disapplication of the up-rating will not apply.

7.3 The Department of Work and Pensions is making similar provision for the specified benefits which are detailed in Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975.

8. Consultation outcome

8.1 No formal consultation has taken place

9. Guidance

9.1 HM Treasury has issued a press release setting out the rates of Guardian's Allowance from 11th April 2011. Leaflets will be up-dated to reflect the new rates in due course.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as there is no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The position is subject to review each tax year.

13. Contact

Rachel Varndell at the HM Revenues and Customs Tel: 020 7147 3617 or email: Rachel.varndell@hmrc.gsi.gov.uk can answer any queries regarding the instrument.