EXPLANATORY MEMORANDUM TO

THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2015

2015 No. 545

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.

2. Purpose of this instrument

2.1. The Guardian's Allowance Up-rating Order 2015 and the Guardian's Allowance Uprating (Northern Ireland) Order 2015 will come into effect on 6 April 2015.

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 regarding the effect of the up-rating of Guardian's Allowance already in payment, the altered rates will not apply until that question has been resolved.

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

None.

4. Legislative content

4.1. 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.

4.2. Regulation 4(1) of the Social Security Benefits (Persons Abroad) Regulations 1975, 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 are corresponding provisions for Northern Ireland contained in regulation 4(1) of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978.

4.3. These regulations relate to Guardian's Allowance only and apply the provisions contained in regulation 5 of each of the Social Security Benefit (Persons Abroad) Regulations 1975 and the Social Security Benefit (Persons Abroad) Regulations

(Northern Ireland) 1978 so as to disapply the benefit increases as set out in the Up-rating Orders in cases where the beneficiary lives abroad.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

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.

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 883/04 (as amended by Regulation (EC) No 988/2009) and implementing Regulation 987/2009/EC which largely replaces Regulation (EEC) No 1408/71 and Implementing Regulation 574/72/EC with effect from 1 May 2010) or under bilateral social security agreements the disapplication of the up-rating will not apply.

8. Consultation outcome

No formal consultation has taken place.

9. Guidance

Following the Chancellor of the Exchequer's announcement in the Autumn Statement 2012, HM Treasury have published the following, which sets out the rates of Guardian's Allowance from 6 April 2015, http://cdn.hm-treasury.gov.uk/as2012_tax_and_tax_credit_rates_and_thresholds_051212.pdf. Leaflets will be up-dated to reflect the new rates in due course.

10. Impact

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

10.2. There is no impact on the public sector.

10.3. An impact assessment has not been prepared for this instrument.

11. Regulating and business

The legislation does not apply to small business.

12. Monitoring and review

The position is subject to review each tax year.

13. Contact

Jacqueline Latter at HM Revenue and Customs: Tel 03000 586748 or email: jacqueline.latter@hmrc.gsi.gov.uk can answer any queries regarding the instrument on behalf of the Treasury.