EXPLANATORY MEMORANDUM TO

THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2022

2022 No. 236

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her 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 2022 (S.I. 2022/231) ("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 This 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 2002 provides that Guardian's Allowance is not payable if claimants are not ordinarily resident in 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.) 1978/114).

6.3 This instrument is consequential of 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.

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 This 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 This 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 Gregory Coulter, Policy Lead in Her Majesty's Revenue and Customs (gregory.coulter@hmrc.gov.uk), can be contacted with any queries regarding the instrument.

15.2 Edmund Hair, Deputy Director for Tax Credits and Child Benefit Policy in Her Majesty's Revenue and Customs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Simon Clarke MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.