EXPLANATORY MEMORANDUM TO

THE GUARDIAN'S ALLOWANCE UP-RATING REGULATIONS 2025

2025 No. 337

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Darren Jones MP, Chief Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 James Knipe, Deputy Director for Welfare Policy in HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mandy Clark, Welfare Policy Lead at HMRC, Telephone: 03000 544321 email: bcpolicyinbox@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes provision in consequence of the Child Benefit and Guardian's Allowance Up-rating Order 2025 (S.I.2025/292) ("the Up-rating Order") which provides for the annual up-rating of Child Benefit and Guardian's Allowance.

4.2 As a result of an increase in the rate of Guardian's Allowance made under the Up-rating Order, 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.

4.3 The 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.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 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 Order.

5.2 The instrument restricts the application of increases of Guardian's Allowance specified in the Up-rating Order 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.

5.3 The 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 Order 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 calculated and is intended to avoid incorrect payments of Guardian's Allowance where the increase is not payable.

What was the previous policy, how is this different?

5.4 There is no change in the policy for up-rating Guardian's Allowance.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 113 of the Social Security Contributions and Benefits Act 1992 provides that Guardian's Allowance is not payable if claimants are absent from 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 No 114.

6.3 This instrument is consequential to the Up-rating Order which is made under section 150 of the Social Security Administration Act 1992 and section 132 of the Social Security Administration (Northern Ireland) Act 1992 and provides for the annual up-rating of Guardian's Allowance.

6.4 These regulations apply regulation 5 of S.I. 1975/563 and S.R. (N.I.) 1978 No.114 which disqualifies Guardian's Allowance recipients, who are not ordinarily resident in the UK, from up-rating.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was carried out as the regulations form part of the annual requirement to review Guardian's Allowance.

8. Applicable Guidance

8.1 The rules for Guardian's Allowance form part of the Child Benefit Technical Manual.[1]

8.2 Current and past rates of Guardian's Allowance are published on the GOV.UK website.[2]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies as this type of payment isn't applicable to them.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The rate of Guardian's Allowance is subject to review each 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

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[1] Child Benefit Technical Manual: https://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm12000

[2] Current and past rates of Guardian's Allowance: https://www.gov.uk/government/publications/rates-and-allowances-tax-credits-child-benefit-and-guardians-allowance/tax-credits-child-benefit-and-guardians-allowance

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").