

EXPLANATORY MEMORANDUM TO
THE LOANS FOR MORTGAGE INTEREST AND SOCIAL FUND MATERNITY
GRANT (AMENDMENT) REGULATIONS (NORTHERN
IRELAND) 2018

2018 No. 37

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

- 2.1 The purpose of this instrument is to amend the Loans for Mortgage Regulations (Northern Ireland) 2017 (S.R. 2017 No. 176) (the “LMI Regulations”) and the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 (the “Social Fund Regulations”). It makes essential amendments to the LMI Regulations to ensure that loan payments can be made to benefit claimants in line with the policy intention and to fulfil the commitment that claimants will be able to get the same amount of help from 6 April 2018 as was previously available via the Support for Mortgage Interest (SMI) benefit provision. This instrument also amends the Social Fund Regulations to ensure that Sure Start Maternity Grants can be paid to Kinship Carers, Foster Carers and those who are adoptive parents, when they have their own first born child.
- 2.2 These Regulations replicate for Northern Ireland the legislation that applies to Great Britain by virtue of the Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018 (S.I. 2018/307).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 [Section 87 of the Northern Ireland Act 1998](#) places a statutory duty on the Northern Ireland Minister with responsibility for social security and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.

- 4.2 Underpinning legislative parity principle that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.
- 4.3 The [Welfare Reform Act 2012](#) introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker's Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive.
- 4.4 The [Welfare Reform and Work Act 2016](#) ("the 2016 Act") makes further provision in connection with welfare benefits, including amendments in relation to the benefit cap, employment and support allowance, universal credit and a freeze on certain social security benefits for four years. It also introduces loans for mortgage interest and provisions for defraying expenses in respect of vehicle hire.
- 4.5 On 17 November 2015 "[A Fresh Start: The Stormont Agreement and Implementation Plan](#)" was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Northern Ireland Executive and HM Government to implementing welfare reform in Northern Ireland. The [Northern Ireland \(Welfare Reform\) Act 2015](#) provides for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland Department to make further provision regarding these matters by regulations or order. The [Welfare Reform \(Northern Ireland\) Order 2015](#) was made on 9 December 2015 making provision corresponding to the 2012 Act. The [Welfare Reform and Work \(Northern Ireland\) Order 2016](#) ("the 2016 Order") was made on the 12 October 2016 making provision corresponding to the social security provisions of the 2016 Act, and regulations stemming from the 2016 Order are now being brought forward.
- 4.6 The 2016 Order enables regulations to be made which provide for help with owner-occupier payments to be made as loans rather than as part of a claimant's benefit award, and for the detailed framework of the scheme to be set out in regulations. Help with other housing costs (such as service charge and ground rent) will continue to be made via the income related benefit schemes.
- 4.7 The LMI Regulations introduced the legislative changes required to allow support with owner-occupier payments to be made as loans rather than as part of a claimant's benefit award and to ensure that owner-occupier claimants continue to be protected from the risk of having their homes repossessed whilst providing increased fairness to taxpayers. These Regulations amend the LMI Regulations to ensure that these changes can be implemented as intended and to facilitate the smooth operation of the scheme and in particular transitional arrangement for both the Department for Communities and for claimants.
- 4.8 The Social Fund Regulations provide a payment to help with maternity expenses (a Sure Start Maternity Grant (SSMG)) to claimants who are in receipt of a qualifying benefit and otherwise eligible. The Social Fund Maternity and Funeral Expenses (General) (Amendment) Regulations (Northern Ireland) 2012 amended the Social Fund Regulations to restrict payment of a SSMG where there is already another child under 16 in the household. Regulation 3 of these Regulations extends eligibility for a SSMG to claimants who are already looking after a child who is not their own (or a child of their partner at the date of claim) at the time that their own child is born.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Northern Ireland only.
- 5.2 The territorial application of this instrument is Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

Background

- 7.1 In the Summer Budget 2015, the Chancellor announced that from April 2018 SMI would be changed from a benefit to an interest bearing loan. The powers to establish this change are set out in the 2016 Order and the detailed framework for the scheme is set out in the LMI Regulations.
- 7.2 Regulation 5A of the Social Fund Regulations restricts eligibility for a SSMG to the first child (except in cases of multiple birth) on the basis that parents are likely to already have their baby equipment where the first child is under 16 and a subsequent child is born. This is unlikely to be the case where the claimant is, at the time that their own first child is born, responsible for a child who is not their own, in circumstances where that child was aged 12 months or over at the time that the claimant first became responsible for him or her.

Policy change

- 7.3 These Regulations make essential amendments to the LMI Regulations in order to ensure that loan payments can be made to benefit claimants in respect of their owner-occupier liabilities in line with the original policy intention and to fulfil our commitment that claimants will be able to get the same amount of help from 6 April 2018 as is currently available. A summary of the key amendments is set out below.
- 7.4 Regulation 2(2) amends the definition of “joint claimant” in respect of Universal Credit as an individual must have actual entitlement to universal credit to be offered loan payments. It also amends the definition of “single claimant” and related references to claimant in the LMI Regulations to ensure that where (i) an individual is single and claiming a qualifying benefit (for themselves or as a member of a couple), or (ii) an individual has made a benefit claim (for themselves or as a member of a couple) but their income exceeds the requirements for getting the benefit, they are treated as entitled to the benefit and can therefore get loan payments. This ensures that anyone who would have received support for their owner-occupier payments as part of their benefit pre-April 2018 will be able to access SMI loans.
- 7.5 Regulation 2(5) amends regulation 7 of the LMI Regulations to provide that in the case of a legacy benefit claimant or state pension credit claimant, the loan payments will be paid at four weekly intervals in arrears. This is for administrative simplicity and aligns the payment frequency for these claimants.
- 7.6 Regulation 2(6) allows the loan payments to commence from a date specified by a claimant. This ensures that a claimant who chooses to pay their mortgage using some other means, but later decides they wish to accept a loan is able to exercise some choice over when the loan payments will commence, and does not have to take out a loan for a period where it is not required.

- 7.7 Regulations 2(8) to 2(10) treat payments of mortgage payment protection insurance to claimants with alternative finance products in the same way as for those with standard mortgage and home loan products. The full amount of the insurance payment will be deducted as these products are intended to cover the full mortgage liability, which will never be less than the amount of SMI loan payments available to an individual.
- 7.8 Regulation 2(11) enables the Department for Communities to stop charging interest on the outstanding loan payments where a claimant requests a completion statement to repay all the outstanding loan amount, for a period of 30 days from the date on which the completion statement is sent to the claimant, provided that the loan is repaid in full within that period. This change is being introduced to streamline the operational process and prevent further interest charges accruing between the issue of the loan statement and the date on which the loan is repaid in full. Regulation 2(11) also provides that, where one member of a couple dies and ownership of the property is transferred to the remaining member of the couple, interest will continue to be charged on the loan in line with the original policy intention.
- 7.9 Regulation 2(12) clarifies when repayment of a loan becomes due following the death of a claimant or their partner.
- 7.10 Regulation 2(13) amends regulation 18 of the LMI Regulations to provide that the amendments made by Part 2 of Schedule 5 (which relate to the decision and appeal rules) are treated as though they are not in operation in relation to a decision concerning SMI benefit. This will enable the current decision and appeal rules to continue to apply to any decision about SMI benefit after 6 April 2018.
- 7.11 Regulation 2(14) replaces the current transitional provisions that are in place for existing claimants (those getting SMI on 5 April 2018) in regulations 19 and 20 of the LMI Regulations with 3 more detailed regulations which enable SMI benefit to continue for a limited period in certain circumstances.
- 7.12 The amended regulation 19 is very similar to regulation 19 of the LMI Regulations, but clarifies that the loan payment offer date has to occur before 6 April 2018 for the transitional period to apply.
- 7.13 Regulation 19A provides for cases where the loan offer date has not happened by 6 April 2018. This ensures that if the Department for Communities has not been able to contact all SMI claimants before 6 April 2018 or completed the “information condition” SMI will continue to be paid as a benefit for a short extended period. Where the reason for the delay in sending out the loan agreement is because the claimant has failed to provide some information to the Department on request, the claimant will not be entitled to the transitional period.
- 7.14 The amended regulation 20 builds on the current provision in regulation 20 of the LMI Regulations but provides for a longer period during which SMI benefit can be paid to claimants who lack capacity or where the Department has received information indicating that they may lack capacity. This longer period will allow the Department for Communities sufficient time to decide whether such claimants do lack capacity and to apply for a decision to appoint an appropriate person/controller through the court for these claimants. These appropriate persons/controllers will then be able to accept an SMI loan on the claimant’s behalf where they deem it appropriate. SMI benefit will continue for these vulnerable claimants until the appointment is in place.
- 7.15 Regulation 2(17) inserts further consequential amendments into Schedule 5 of the LMI Regulations to regulations which currently make provision for help with SMI. The

amendments remove references to SMI or related terms which are no longer relevant and amend certain rules so they apply to loan payments. In particular, amendments are included to the Decision and Appeal Regulations, [The Social Security and Child Support \(Decisions and Appeals\) Regulations \(Northern Ireland\) 1999](#) to ensure that a claimant who is offered SMI loans has the same appeal rights as someone getting SMI benefit.

- 7.16 These Regulations also amend the Social Fund Regulations to ensure that Sure Start Maternity Grants can be paid to Kinship Carers, Foster Carers and those who are adoptive parents, when they have their own first born child.
- 7.17 Regulation 3 of these Regulations amends the definition of “existing member of the family” to exclude from the definition a child under 16 for whom the claimant or the claimant’s partner is responsible but who was not, at the time of that child’s birth, a child of the claimant (or of the claimant’s partner at the date of claim). Provided that child was 12 months or over at the time the claimant, or their partner, first became responsible for the child, the claimant is eligible for a SSMG in respect of their own first child, born subsequently.

8. Consultation outcome

- 8.1 No consultation was carried out in 2015 when the policy was announced. This is because of a Call for Evidence on SMI from December 2011 to February 2012. This Call for Evidence engaged with many stakeholders and included a suggestion of SMI as a loan secured on the claimant’s property. There was a predominantly positive response to the idea of SMI as a loan.

9. Guidance

- 9.1 Summary information about the loan payments scheme will be made available on [NI Direct](#). The changes will also be made to the Decision Makers Guide which is available on the internet at <http://www.communities-ni.gov.uk/articles/decision-makers-guide> through implementation updates and updates to operational guidance at the appropriate time.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring and review

- 12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department for Communities’ offices and correspondence from members of the public.
- 12.2 The Department for Work and Pensions will continue to liaise (on a UK wide basis) with the Council of Mortgage Lenders, to assess whether there are unintended consequences for particular groups.

12.3 Northern Ireland social security legislation normally maintains parity with changes made by the Department for Work and Pensions.

13. Contact

13.1 Anne McCleary at the Department for Communities can answer any queries regarding the instrument. (Telephone: 028 9082 3332 or email: anne.mccleary@communities-ni.gov.uk)