



Social Security (Mortgage Interest Payments) Act 1992

1992 CHAPTER 33

An Act to make provision for requiring, in certain cases where interest on a loan secured on land is payable by a person who is entitled, or whose partner, former partner or qualifying associate is entitled, to income support, the applicable amount in respect of which includes a sum in respect of that interest, that a part of the benefits to which any of those persons is entitled under the enactments relating to social security shall be paid directly to the lender and applied towards the discharge of the liability in respect of the interest; and for purposes connected therewith.

[16th March 1992]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) After section 51B of the Social Security Act 1986 (general provisions about administration of benefits) there shall be inserted—

“Payment out of benefit of sums in respect of mortgage interest etc.

51C.—(1) This section applies in relation to cases where—

- (a) mortgage interest is payable to a qualifying lender by a person (“the borrower”) who is entitled, or whose partner, former partner or qualifying associate is entitled, to income support; and

Payment out of benefit of sums in respect of mortgage interest etc.
1986 c. 50.

(b) a sum in respect of that mortgage interest is or was brought into account in determining the applicable amount for the purposes of income support in the case of the borrower or the partner, former partner or qualifying associate; and any reference in this section to “the relevant beneficiary” is a reference to the person whose applicable amount for the purposes of income support is or was determined as mentioned in paragraph (b) above.

(2) Without prejudice to paragraphs (k) and (r) of section 51(1) above, regulations may, in relation to cases where this section applies, make provision—

- (a) requiring that, in prescribed circumstances, a prescribed part of any relevant benefits to which the relevant beneficiary is entitled shall be paid by the Secretary of State directly to the qualifying lender and applied by that lender towards the discharge of the liability in respect of the mortgage interest;
- (b) for the expenses of the Secretary of State in administering the making of payments under the regulations to be defrayed, in whole or in part, at the expense of qualifying lenders, whether by requiring them to pay prescribed fees or by deducting and retaining a prescribed part of the payments that would otherwise be made to them under the regulations or by such other method as may be prescribed;
- (c) for requiring a qualifying lender, in a case where by virtue of paragraph (b) above the amount of the payment made to him under the regulations is less than it would otherwise have been, to credit against the liability in respect of the mortgage interest (in addition to the payment actually made) an amount equal to the difference between—
 - (i) the payment that would have been so made, apart from paragraph (b) above; and
 - (ii) the payment actually made;and, in any such case, for treating the amount so credited as properly paid on account of benefit due to the relevant beneficiary;
- (d) for enabling a body which, or person who, would otherwise be a qualifying lender to elect not to be regarded as such for the purposes of this section, other than this paragraph;
- (e) for the recovery from any body or person—
 - (i) of any sums paid to that body or person by way of payment under the regulations that ought not to have been so paid; or

(ii) of any fees or other sums due from that body or person by virtue of paragraph (b) above;

- (f) for cases where the same person is the borrower in relation to mortgage interest payable in respect of two or more different loans; and
- (g) for any person of a prescribed class or description who would otherwise be regarded for the purposes of this section as the borrower in relation to any mortgage interest not to be so regarded, except for the purposes of this paragraph;

but the Secretary of State shall not make any regulations under paragraph (b) above unless he has consulted with such organisations representing qualifying lenders likely to be affected by the regulations as he considers appropriate.

(3) The bodies and persons who are “qualifying lenders” for the purposes of this section are—

- (a) any authorised institution, within the meaning of the Banking Act 1987, to which section 67 of that Act applies (companies and partnerships which may describe themselves as banks etc), 1987 c. 22.
- (b) any building society incorporated under the Building Societies Act 1986, 1986 c. 53.
- (c) any body or person carrying on insurance business, within the meaning of the Insurance Companies Act 1982, 1982 c. 50.
- (d) any county council, district council, islands council or London Borough Council,
- (e) the Common Council of the City of London,
- (f) the Council of the Isles of Scilly,
- (g) any new town corporation,

and such bodies or persons not falling within the above paragraphs as may be prescribed.

(4) In this section—

“mortgage interest” means interest on a loan which is secured by a mortgage of or charge over land, or (in Scotland) by a heritable security, and which has been taken out to defray money applied for any of the following purposes, that is to say—

- (a) acquiring any residential land which was intended, at the time of the acquisition, for occupation by the borrower as his home;
- (b) carrying out repairs or improvements to any residential land which was intended, at the time of taking out the loan, for occupation by the borrower as his home;
- (c) paying off another loan; or

(d) any prescribed purpose not falling within paragraphs (a) to (c) above;

but interest shall be regarded as mortgage interest by virtue of paragraph (c) above only to the extent that interest on that other loan would have been regarded as mortgage interest for the purposes of this section had the loan not been paid off;

“partner” means—

(a) any person to whom the borrower is married and who is a member of the same household as the borrower; or

(b) any person to whom the borrower is not married but who lives together with the borrower as husband and wife, otherwise than in prescribed circumstances;

and “former partner” means a person who has at some time been, but no longer is, the borrower’s partner;

“qualifying associate”, in relation to the borrower, means a person who, for the purposes of income support, falls to be treated by regulations under Part II above as responsible for so much of the expenditure which relates to housing costs (within the meaning of those regulations) as consists of any of the mortgage interest payable by the borrower, and who falls to be so treated because—

(a) the borrower is not meeting those costs, so that the person has to meet them if he is to continue to live in the dwelling occupied as his home; and

(b) the person is one whom it is reasonable, in the circumstances, to treat as liable to meet those costs;

“relevant benefits” means such of the following benefits as may be prescribed, namely—

(a) benefits under the Social Security Act 1975;

(b) income support;

“residential land” means any land which consists of or includes a dwelling.

(5) For the purposes of this section, regulations may make provision—

(a) as to circumstances in which residential land is or is not to be treated as intended for occupation by the borrower as his home; or

(b) as to circumstances in which persons are to be treated as being or not being members of the same household.”

(2) For the purpose of incorporating provisions of this Act into the Social Security Administration Act 1992 (which consolidates certain enactments relating to the administration of social security and which comes into force on 1st July 1992) that Act shall have effect, and be taken always to have had effect, as if it had originally been enacted with the amendments specified in the Schedule to this Act; and subsection (1) above shall accordingly cease to have effect on the coming into force of that Act. 1992 c. 5.

2.—(1) This Act may be cited as the Social Security (Mortgage Interest Payments) Act 1992. Short title, supplementary provisions and extent.

(2) Any administrative expenses incurred by a Minister of the Crown in consequence of this Act shall be defrayed out of money provided by Parliament.

(3) Any sums recovered by a Minister of the Crown by virtue of this Act shall be paid—

- (a) into the Consolidated Fund, to the extent that the Secretary of State estimates that those sums relate to payments out of money provided by Parliament; and
- (b) into the National Insurance Fund, to the extent that he estimates that they relate to payments out of that Fund;

and any other sums received by a Minister of the Crown by virtue of this Act shall be paid into the Consolidated Fund.

(4) The Secretary of State may by regulations make such transitional or consequential provision, and such savings, as he considers necessary or expedient for, or in connection with, the coming into force of any provision of this Act.

(5) Subsections (1) to (3A) of section 166 of the Social Security Act 1975 (general provisions about regulations and orders) shall apply in relation to the powers to make regulations conferred by subsection (4) above as they apply in relation to any power conferred by that Act to make regulations, but as if for references to that Act there were substituted references to that subsection. 1975 c. 14.

(6) A statutory instrument—

- (a) which contains (whether alone or with other provisions) any regulations made under subsection (4) above, and
- (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act— 1974 c. 28.

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

c. 33 *Social Security (Mortgage Interest Payments) Act 1992*

(8) Subsections (1) and (7) above and this subsection extend to Northern Ireland; but, except as provided by this subsection, this Act does not extend to Northern Ireland.

SCHEDULE

Section 1(2).

CORRESPONDING AMENDMENT OF THE SOCIAL SECURITY ADMINISTRATION ACT 1992

1. After section 15 of the Social Security Administration Act 1992 there shall be inserted—

“Payments in respect of mortgage interest etc.

Payment out of benefit of sums in respect of mortgage interest etc.

15A.—(1) This section applies in relation to cases where—

- (a) mortgage interest is payable to a qualifying lender by a person (“the borrower”) who is entitled, or whose partner, former partner or qualifying associate is entitled, to income support; and
- (b) a sum in respect of that mortgage interest is or was brought into account in determining the applicable amount for the purposes of income support in the case of the borrower or the partner, former partner or qualifying associate;

and any reference in this section to “the relevant beneficiary” is a reference to the person whose applicable amount for the purposes of income support is or was determined as mentioned in paragraph (b) above.

(2) Without prejudice to paragraphs (i) and (p) of section 5(1) above, regulations may, in relation to cases where this section applies, make provision—

- (a) requiring that, in prescribed circumstances, a prescribed part of any relevant benefits to which the relevant beneficiary is entitled shall be paid by the Secretary of State directly to the qualifying lender and applied by that lender towards the discharge of the liability in respect of the mortgage interest;
- (b) for the expenses of the Secretary of State in administering the making of payments under the regulations to be defrayed, in whole or in part, at the expense of qualifying lenders, whether by requiring them to pay prescribed fees or by deducting and retaining a prescribed part of the payments that would otherwise be made to them under the regulations or by such other method as may be prescribed;
- (c) for requiring a qualifying lender, in a case where by virtue of paragraph (b) above the amount of the payment made to him under the regulations is less than it would otherwise have been, to credit against the liability in respect of the mortgage interest (in addition to the payment actually made) an amount equal to the difference between—
 - (i) the payment that would have been so made, apart from paragraph (b) above; and
 - (ii) the payment actually made;

and, in any such case, for treating the amount so credited as properly paid on account of benefit due to the relevant beneficiary;

SCH.

- (d) for enabling a body which, or person who, would otherwise be a qualifying lender to elect not to be regarded as such for the purposes of this section, other than this paragraph;
- (e) for the recovery from any body or person—
 - (i) of any sums paid to that body or person by way of payment under the regulations that ought not to have been so paid; or
 - (ii) of any fees or other sums due from that body or person by virtue of paragraph (b) above;
- (f) for cases where the same person is the borrower in relation to mortgage interest payable in respect of two or more different loans; and
- (g) for any person of a prescribed class or description who would otherwise be regarded for the purposes of this section as the borrower in relation to any mortgage interest not to be so regarded, except for the purposes of this paragraph;

but the Secretary of State shall not make any regulations under paragraph (b) above unless he has consulted with such organisations representing qualifying lenders likely to be affected by the regulations as he considers appropriate.

(3) The bodies and persons who are “qualifying lenders” for the purposes of this section are—

- 1987 c. 22. (a) any authorised institution, within the meaning of the Banking Act 1987, to which section 67 of that Act applies (companies and partnerships which may describe themselves as banks etc),
- 1986 c. 53. (b) any building society incorporated under the Building Societies Act 1986,
- 1982 c. 50. (c) any body or person carrying on insurance business, within the meaning of the Insurance Companies Act 1982,
- (d) any county council, district council, islands council or London Borough Council,
- (e) the Common Council of the City of London,
- (f) the Council of the Isles of Scilly,
- (g) any new town corporation,

and such bodies or persons not falling within the above paragraphs as may be prescribed.

(4) In this section—

“mortgage interest” means interest on a loan which is secured by a mortgage of or charge over land, or (in Scotland) by a heritable security, and which has been taken out to defray money applied for any of the following purposes, that is to say—

- (a) acquiring any residential land which was intended, at the time of the acquisition, for occupation by the borrower as his home;
- (b) carrying out repairs or improvements to any residential land which was intended, at the time of taking out the loan, for occupation by the borrower as his home;
- (c) paying off another loan; or

SCH.

(d) any prescribed purpose not falling within paragraphs (a) to (c) above;

but interest shall be regarded as mortgage interest by virtue of paragraph (c) above only to the extent that interest on that other loan would have been regarded as mortgage interest for the purposes of this section had the loan not been paid off;

“partner” means—

(a) any person to whom the borrower is married and who is a member of the same household as the borrower; or

(b) any person to whom the borrower is not married but who lives together with the borrower as husband and wife, otherwise than in prescribed circumstances;

and “former partner” means a person who has at some time been, but no longer is, the borrower’s partner;

“qualifying associate”, in relation to the borrower, means a person who, for the purposes of income support, falls to be treated by regulations under Part VII of the Contributions and Benefits Act as responsible for so much of the expenditure which relates to housing costs (within the meaning of those regulations) as consists of any of the mortgage interest payable by the borrower, and who falls to be so treated because—

(a) the borrower is not meeting those costs, so that the person has to meet them if he is to continue to live in the dwelling occupied as his home; and

(b) the person is one whom it is reasonable, in the circumstances, to treat as liable to meet those costs;

“relevant benefits” means such of the following benefits as may be prescribed, namely—

(a) benefits, as defined in section 122 of the Contributions and Benefits Act;

(b) income support;

“residential land” means any land which consists of or includes a dwelling.

(5) For the purposes of this section, regulations may make provision—

(a) as to circumstances in which residential land is or is not to be treated as intended for occupation by the borrower as his home; or

(b) as to circumstances in which persons are to be treated as being or not being members of the same household.”

2.—(1) In section 164 of that Act, in subsection (6) (which consolidates certain enactments making provision about the destination of receipts similar to that made by section 2(3) of this Act) for the words “paid to the Secretary of State” there shall be substituted the words “recovered by the Secretary of State under section 15A above or paid to him”.

c. 33 *Social Security (Mortgage Interest Payments) Act 1992*

SCH. (2) At the end of that section there shall be added—

“(7) Any sums received by the Secretary of State under regulations made by virtue of section 15A(2)(b) above shall be paid into the Consolidated Fund.”

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