
STATUTORY INSTRUMENTS

2017 No. 725

The Loans for Mortgage Interest Regulations 2017

[^{F1}Transitional provision: persons who lack capacity or may lack capacity identified before 6th April 2018

- 20.**—(1) Paragraph (2) applies in relation to an existing claimant where, before 6th April 2018—
- (a) the Secretary of State believes that the claimant is a person who lacks capacity to make some or all decisions about accepting an offer of loan payments; or
 - (b) on the basis of information received by the Secretary of State, the Secretary of State suspects that the claimant is a person who may lack such capacity,
- (a “relevant claimant”).
- (2) In relation to a relevant claimant, the amendments made by Schedule 5 shall be treated as though they were not in force until the day that is the earlier of (“the transitional end day”)—
- (a) the relevant day in paragraph (3) or (8);
 - (b) the day after the day on which entitlement to a qualifying benefit ends.
- (3) Subject to paragraph (8), the relevant day is the later of—
- (a) 5th November 2018;
 - (b) where, in a case where paragraph (1)(b) applies, the Secretary of State believes before 5th November 2018 that the claimant is a person who lacks capacity as referred to in paragraph (1)(a), the day after the last day of the period of 6 weeks beginning with the day on which the Secretary of State forms that belief;
 - (c) where an application for a decision referred to in paragraph (7) is made before the later of 5th November 2018 and the relevant day under sub-paragraph (b), the day after the day specified in paragraph (4).
- (4) The specified day is—
- (a) the last day of the period of 6 weeks beginning with the day on which a person referred to in paragraph (7) (“relevant person”) makes a decision referred to in paragraph (7); or
 - (b) the last day of the period of 6 weeks beginning with the day on which a relevant person receives notification that the application for such a decision is withdrawn.
- (5) Where more than one application for a decision as referred to in paragraph (7) is made to a relevant person within the period referred to in paragraph (3)(c), then the periods in paragraph (4) do not start to run until the relevant person has made a decision with respect to the last of the applications to be dealt with, or the relevant person receives notification that all of the applications are withdrawn.
- (6) Where an application for a decision as referred to in paragraph (7) is made to more than one relevant person within the period referred to in paragraph (3)(c), then, where the specified day under paragraph (4) would be different as between the applications made to the different relevant persons, the specified day is the later of the two days.
- (7) The decisions referred to are—
- (a) in England and Wales—

- (i) a decision by the Court of Protection whether or not to appoint a deputy under section 16(2) of the Mental Capacity Act 2005 with power to act on the claimant's behalf in respect of accepting an offer of loan payments;
 - (ii) a decision by the Court of Protection whether or not, by making an order under section 16(2) of the Mental Capacity Act 2005, to decide on behalf of the claimant to accept an offer of loan payments; or
 - (iii) a decision by the Public Guardian whether or not to register a lasting power of attorney under the Mental Capacity Act 2005 where the power includes power to act on the claimant's behalf with respect to accepting an offer of loan payments; or
- (b) in Scotland—
- (i) a decision by the sheriff whether or not to make an order under section 58 of the Adults with Incapacity (Scotland) Act 2000 to appoint a guardian with power to act on the claimant's behalf with respect to accepting an offer of loan payments;
 - (ii) a decision by the sheriff whether or not, by making an intervention order under section 53 of the Adults with Incapacity (Scotland) Act 2000, to decide on behalf of the claimant to accept an offer of loan payments; or
 - (ii) a decision by the sheriff or the Court of Session whether or not to make an order under the Judicial Factors Act 1849 to appoint a judicial factor with power to act on the claimant's behalf with respect to accepting an offer of loan payments.
- (8) Where, in a case where paragraph (1)(b) applies, the Secretary of State believes before 5th November 2018 that the claimant is not a person who lacks capacity as referred to in paragraph (1)(a), the relevant day is the day after the earlier of—
- (a) the day specified in paragraph (9);
 - (b) the day on which the Secretary of State receives notification from the claimant that the claimant does not wish to receive loan payments.
- (9) The specified day is—
- (a) the last day of the period of 6 weeks beginning with the day on which the Secretary of State forms the belief in paragraph (8); or
 - (b) where the loan payments offer date occurs during the period in sub-paragraph (a), the day referred to in regulation 19(3)(b) and (c) and (4).
- (10) Where in the case of—
- (a) a legacy benefit claimant or SPC claimant, the relevant day referred to in paragraph (3) or (8) is not the first day of the claimant's benefit week, then the relevant day shall be the first day of the first benefit week that begins after the relevant day; or
 - (b) a UC claimant, the relevant day in paragraph (3) or (8) is not the first day of the claimant's assessment period, then the relevant day shall be the first day of the first assessment period that begins after the relevant day.]

<p>F1 Regs. 19-20 substituted (6.4.2018) by The Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018 (S.I. 2018/307), regs. 1(2), 2(12)</p>

Changes to legislation:

There are currently no known outstanding effects for the The Loans for Mortgage Interest Regulations 2017, Section 20.