

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

2018 No. 307

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 Interest Regulations 2017¹ (S.I. 2017/725) (the “LMI Regulations”) and the Social Fund Maternity and Funeral Expenses (General) Regulations 2005² (S.I. 2005/3061) (the “Social Fund Regulations”). It makes essential amendments to the LMI Regulations to ensure that loan payments can be made to benefit claimants in respect of their liability to make owner occupier payments on their home in line with the intended policy. It also fulfils the commitment that claimants will be able to get the same amount of help from 6 April 2018 as was previously available via Support for Mortgage Interest (“SMI”) (which formed part of the claimant’s benefit award). This instrument also amends the Social Fund Regulations to ensure that Sure Start Maternity Grants (“SSMGs”) can be paid to kinship carers, foster carers and those who are adoptive parents when they have their own first born child.

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 The LMI Regulations provide for SMI to be made as a series of loan payments 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.
- 4.2 The Social Fund Regulations provide a SSMG payment to help with maternity expenses to claimants who are in receipt of a qualifying benefit and otherwise eligible. The Social Fund Maternity Grant Amendment Regulations 2012 amended the Social Fund Regulations to restrict payment of a SSMG where there is already another child

¹ <http://www.legislation.gov.uk/uksi/2017/725/introduction/made>

² <http://www.legislation.gov.uk/uksi/2005/3061/contents>

under 16 in the household. These regulations make amendments to the Social Fund Regulations to extend eligibility.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Separate legislation for Northern Ireland will be produced and led by the Department for Communities in 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 2015³, the Chancellor announced that from April 2018 help with owner-occupier payments, referred to as Support or Mortgage Interest (“SMI”), would be changed from a benefit to an interest-bearing loan. The powers to establish this change are set out in the Welfare Reform and Work Act 2016 Act and the detailed framework for the scheme is set out in the Loans for Mortgage Interest Regulations 2017 (“the LMI Regulations”).
- 7.2 Regulation 5A of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (“the Social Fund Regulations”) restricts eligibility for a Sure Start Maternity Grant to the first child (except in cases of multiple birth) on the basis that parents are likely to already have 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 – LMI Regulations

- 7.3 These Regulations make essential amendments to the LMI Regulations in order to ensure that SMI 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 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 (“UC”) as an individual must have actual entitlement to UC to be offered loan payments. It also amends the definition of “single claimant” to ensure that where a claimant’s income exceeds the amount of benefit they would get, but is less than the sum of that amount and the loan payment they would receive under the LMI Regulations, they are treated as entitled to the benefit and can therefore get loan payments. This ensures that SMI loan payments will be available to claimants who would have received support for their owner-occupier payments as part of their benefit pre-6 April 2018.

³ [Summer Budget 2015](#)

- 7.5 A definition of being “treated as entitled” to benefit is inserted into regulation 2 of the LMI Regulations by regulation 2(2). Amendments are also made to the definitions of legacy benefit claimant and pension credit claimant, and other provisions in the Loans for Mortgage Interest Regulations (“LMI Regulations” to provide for these cases.
- 7.6 Regulation 2(3) amends regulation 7 of the LMI Regulations so that loan payments in respect of legacy benefit claimants and state pension credit claimants will be paid at four weekly intervals in arrears. This is for administrative simplicity and ensures that the payment frequency for these claimants is the same regardless of whether the loan payments are paid directly to the mortgage lender or to the claimant.
- 7.7 Regulation 2(4) provides that the period in respect of which loan payments are made shall begin on a date requested by the claimant, where this date is later than the other dates referred to in regulation 8 of the LMI Regulations. This ensures that a claimant who chooses to pay their mortgage using some other means, but later decides they wish to accept the offer of loan payments, 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 earlier than when it is required.
- 7.8 Regulations 2(6) and to 2(8) amend the LMI Regulations to provide for a deduction from the amount of each loan payment made to a claimant where that claimant is receiving insurance payments relating to the repayment of their owner-occupier payments. In this way we are treating insurance payments to claimants with alternative finance products in the same way as for those with standard mortgage and home loan products.
- 7.9 Regulation 2(9) enables the Secretary of State to stop charging interest on the outstanding loan payments where a claimant requests a completion statement to repay all of the outstanding amount owed to the Secretary of State, but only if the outstanding amount is paid within the period of 30 days from the date the completion statement is sent to the claimant. This will streamline the operational process and prevent further interest charges accruing between the issue of the completion statement and the date on which the outstanding amount is repaid in full.
- 7.10 Regulation 2(9) also provides that where, in the case of a couple, one member of the couple dies and ownership of the property is transferred to the remaining member of the couple who remains in occupation of the property, interest will continue to be charged on the outstanding amount in line with the original policy intention.
- 7.11 Regulation 2(10) specifies when repayment of the outstanding loan payment becomes due following the death of a claimant or their partner.
- 7.12 Regulation 2(11) substitutes regulation 18 of the LMI Regulations to enable the Decision and Appeal Regulations to continue to apply, without amendment, to any decision about support for mortgage interest (“SMI”) which forms part of the claimant’s benefit award.
- 7.13 Regulation 2(12) replaces the current transitional provisions that are in place for existing claimants (those getting SMI benefit on 5 April 2018) with 3 more detailed regulations which enable SMI benefit to continue for a limited period in certain circumstances.
- 7.14 New regulation 19 provides for a transitional period in respect of cases where the Secretary of State has offered loan payments to existing claimants before 6 April 2018.

- 7.15 New regulation 19A provides for cases where the Secretary of State has not offered loan payments before 6 April 2018. This ensures that if the Department for Work and Pensions has not been able to contact all SMI claimants before 6 April 2018 or completed the “information condition”, Support for Mortgage Interest (“SMI”) will continue to be paid as a benefit for a short extended period. Where the reason for the delay in offering the loan payments is because the claimant has failed to provide some information to the Secretary of State on request, the claimant will not be entitled to SMI benefit for this extended period.
- 7.16 New regulation 20 provides for a longer transitional period than the current provision during which SMI benefit can be paid to existing claimants who, before 6 April 2018, the Secretary of State believes lack capacity, or suspects may lack capacity on the basis of information received, to make a decision about accepting the offer of loan payments. This longer period (which ends on 5 November 2018 or later, in certain circumstances) will allow the Department for Work and Pensions sufficient time to decide whether such claimants do lack capacity and to apply for a decision to appoint someone to act on the claimant’s behalf in respect of accepting the offer of loan payments. This financial deputy will then be able to accept the loan payments on the claimant’s behalf, where they deem it appropriate. SMI benefit will continue for these vulnerable claimants until the appointment is in place.
- 7.17 Regulation 2(17) amends Schedule 4 of the Loans for Mortgage Interest Regulations (“LMI Regulations”) to clarify what happens where loan payments are made directly to a qualifying lender in excess of the claimant’s liability to make owner-occupier payments.
- 7.18 Regulation 2(18) inserts further consequential amendments into Schedule 5 of the LMI Regulations to various regulations which currently make provision for help with SMI benefit. This includes:
- a) amendments to the Social Security (Claims and Payment) Regulations 1988 to omit references to mortgage interest, including in respect of deductions from benefit, which are no longer relevant;
 - b) amendments to the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (“the Social Fund Regulations”) and the Social Fund Cold Weather Payments (General) Regulations 1988 to enable claimants receiving loan payments to access the passported benefits to which those regulations relate where they are treated as entitled to benefit, but do not have actual entitlement; and
 - c) amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 to ensure that a claimant who is offered SMI loan payments has the same appeal rights as someone getting SMI benefit.

Policy Change – Social Fund Regulations

- 7.19 The 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.
- 7.20 Regulation 3(2) 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 Sure Start Maternity Grant (“SSMG”) in respect of their own first child, born subsequently.

8. Consultation outcome

- 8.1 No consultation was carried out in 2015 when the support for mortgage interest (“SMI”) loans policy was announced. This is because a Call for Evidence⁴ on SMI was made 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.
- 8.2 The change to the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 is a positive change in order to provide more households with “family support”, enabling the claimant to buy a package of provision to support the arrival of a new child. Given that the change is small, we have not run a public consultation. We have discussed the policy proposal to amend the Sure Start Maternity Grant (“SSMG”) with the Department for Education (“DfE”) as they have responsibility for the Children Act 1989, and maintain the policy for kinship care/ adoption and non-parental care arrangements. The DfE have confirmed that they are very supportive of our approach, and the policy proposals.
- 8.3 The Social Security Advisory Committee were formally consulted about these regulations and have given their approval to them being laid and made.

9. Guidance

- 9.1 Summary information about the SMI loan payments scheme⁵ and SSMGs⁶ is available on the GOV.UK website.
- 9.2 Guidance for staff about these minor amendments is under development and will be made available to staff as soon as it is finalised. Guidance for staff dealing with Support for Mortgage Interest (“SMI”) loans, about the process for handling cases where the claimant lacks or may lack capacity is available alongside the Explanatory Memorandum.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 In respect of the loan payments, around 2,500 claimants who lack capacity will benefit from the transitional provision in new regulation 20 of the Loans for Mortgage Interest Regulations 2017. This will allow SMI benefit to continue to be paid to such claimants for a limited period in certain circumstances. The amount of SMI that this group gets will not change, but that SMI will not be paid as loan payments until the question of mental capacity has been decided and a decision made on whether or not to accept the loan payments.

⁴ [Support for Mortgage Interest - Call for Evidence](#)

⁵ <https://www.gov.uk/support-for-mortgage-interest>

⁶ <https://www.gov.uk/sure-start-maternity-grant>

10.4 We estimate approximately 300 additional SSMG awards each year. This estimate includes both informal kinship care and formal adoptive and foster care arrangements. This increase in the volumes of potential claims, results in an increased expenditure of £155,000 (roughly 0.5% of the gross expenditure on Sure Start Maternity Grants in 2015/16).

11. Regulating small business

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

12. Monitoring & review

12.1 The Department for Work and Pensions (“DWP”) does not propose to undertake formal evaluation of this change. However, DWP is committed to monitoring the impacts of its policies and will use evidence from a number of sources to assess the impact on an on-going basis.

12.2 The Department will use the updated data that is available to DWP on a quarterly basis, survey data (such as the Family Resources Survey) and feedback from stakeholder groups, including via our regular liaison with UK Finance, to assess whether there are unintended consequences for particular groups.

12.3 The Department will utilise feedback from Departmental employee networks and internal management information. For example we will monitor the level of complaints in order to assess the broader impact of the policy.

13. Contact

13.1 Tim Roscamp at the Department for Work and Pensions Telephone: 0207 449 5344 or email: tim.roscomp@dwpgsi.gov.uk can answer any queries regarding the support for Mortgage Interest aspects of the instrument.

13.2 Ron Butler at the Department for Work and Pensions Telephone: 020 7340 4039 or email: ron.butler@dwpgsi.gov.uk can answer any queries regarding the SSMG aspects of the Regulations.