EXPLANATORY MEMORANDUM TO

THE LOANS FOR MORTGAGE INTEREST REGULATIONS 2017

2017 No. 725

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 enable help to be provided to benefit claimants who are homeowners in respect of their liability to make owner-occupier payments (principally mortgage interest) in the form of interest-bearing loan payments. This is in consequence of powers in the Welfare Reform and Work Act 2016 ("the 2016 Act"). This instrument also makes consequential amendments to other regulations to end the current provision of help with owner-occupier payments (commonly known as Support for Mortgage Interest ("SMI")) which is paid as part of a claimant's benefit award, and sets out certain transitional arrangements.

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 Help with owner-occupier payments is currently included in a claimant's award of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, State Pension Credit or Universal Credit under the Income Support (Regulations) 1987[1], Jobseeker's Allowance Regulations 1996[2], Employment and Support Allowance Regulations 2008[3], State Pension Credit Regulations 2002[4] and the Universal Credit Regulations 2013[5]. In addition, owner-occupier claimants who are leaseholders may get help with a limited range of other housing costs, including certain service charges and ground rent.

4.2 The 2016 Act 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

[1] Income Support (General) Regulations 1987
[2] Jobseeker's Allowance Regulations 1996
[3] Employment and Support Allowance Regulations 2008
[4] State Pension Credit Regulations 2002
[5] Universal Credit Regulations 2013

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with other housing costs (such as service charge and ground rent) will continue to be made via the income-related benefit schemes.

4.3 Changing this help from a benefit into a loan is intended to ensure that owner-occupier claimants continue to be protected from the risk of having their homes repossessed whilst providing increased fairness to taxpayers, many of whom cannot afford to buy a home of their own.

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 Northern Ireland will make legislation in line with this instrument.

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 The prime objective of SMI is to provide short-term help to prevent repossession by making a contribution towards owner-occupier payments (principally mortgage interest payments) while claimants take steps to move back into work.

7.2 The housing market has changed significantly since SMI was introduced in 1948. The upward trend in real house prices means that many owners have accrued significant equity in their homes. The result is that claimants who have capital assets in the form of their homes can still access financial assistance from the taxpayer in the form of a benefit, with no mechanism in place to recoup any of the funds provided to them. This means that in many cases taxpayers are effectively funding the accumulation of a potentially valuable capital asset.

7.3 In 1948, it was very unusual for people to take mortgages into retirement. However, now almost half of SMI recipients are pensioners, many of whom are likely to receive SMI for significant periods into their retirement. In many of these cases the equity that has been secured at taxpayers' expense passes on to the claimant's heirs after their death.

7.4 Based on the 2014-15 Family Resources Survey, in Great Britain 20.6 million households are owner-occupiers. Of these 10.5 million owned outright and 10.1 million were paying off a mortgage. Half (49%) of mortgage holders, based on the lead respondent, are between 35 and 54 years, a third (34%) are younger than 35 and 16 per cent are 65 or over. Less than 1 in 20 mortgage holders (4%) are 65 or over. The large majority (82%) of mortgagors include an adult in full time employment.

7.5 Currently, there are an estimated 124,000 claimants receiving SMI at a cost to the Exchequer of £170 million per annum (DWP Expenditure and Caseload Forecasts: Autumn Statement 2016). Around 48% are working age and 52% pension age.

7.6 The cost of SMI is sensitive to increases in mortgage interest rates, for example if the standard interest rate of 2.61% (which will apply from 18 June 2017 onwards) were doubled to 5.22% at the current caseload the additional cost of SMI to the exchequer would be in the region of £170m a year.

7.7 Annual house price growth has been positive since May 2012 and has been above 5% per year since December 2013. It is forecast by the Office for Budget Responsibility to be between 3.7% and 4.7% until 2022.

7.8 This, together with the effects of more people taking their mortgages into retirement, means that Support for Mortgage Interest (SMI) could become far more expensive in the future.

Policy change

7.9 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 Act.

7.10 The Government expects to recover the vast majority of loans made to claimants (referred to as a series of "loan payments" in the regulations), although in some cases this may not be possible, such as where claimants are in arrears with their mortgage or the value of the house has fallen since the mortgage was taken out. For planning purposes, the assumption is that around 9% of debt will be written off. This is based on an analysis of a sample of data provided by the Council of Mortgage Lenders.

7.11 Under the regulations, eligibility for the loan payments remains the same as for SMI as a benefit which means that owner-occupiers who are entitled to one of the income-related benefits (Income Support, Jobseeker's Allowance, Employment and Support Allowance, Universal Credit or Pension Credit) and need assistance with meeting their owner-occupier payments will be offered loan payments.

7.12 With the removal of SMI as part of their benefit entitlement, some individuals will no longer be entitled to one of the income-related benefits because they have too much income. The regulations ensure that this group will be "treated as entitled" to one of those benefits to ensure that they remain eligible for SMI and they will be offered SMI loans. They will however lose entitlement to some pass-ported benefits where the sole qualifying criterion is receipt of one of the income-related benefits. We believe that the number of people affected will be very low. These claimants may still be able to get help via certain pass-ported benefit schemes where there is an alternative access route via a low income test.

7.13 The loan payments will be available for the same owner-occupier payments as under the current scheme. This includes making the loan payments available for claimants of Universal Credit who have had help provided to purchase their property under alternative finance arrangements (AFAs). With the introduction of these loans this help will also become available to claimants of State Pension Credit. This provision is not extended to Income Support, income-based Jobseeker's Allowance and income-related Employment and Support Allowance because claims to these benefits will cease in September 2018 as Universal Credit is rolled out further. These are Sharia-compliant mortgage products and are not interest-bearing in the traditional sense. There is no data to indicate how many recipients of income related benefits have an AFA. However it is estimated that there are between 3,000 and 5,000 people of all ages with an AFA in Great Britain and volumes are therefore likely to be very low.

7.14 The new loans scheme will mirror current SMI provision in a number of other areas including the amount of support claimants can get, the manner in which the payments will be made and the period in which claimants are entitled to the payments. There will however be no two year limit on payment of SMI loans to claimants of Jobseeker's Allowance as there is for SMI as a benefit. This reflects the commitment made in Parliament that this is about making the SMI support that we provide more sustainable and fairer to taxpayers whilst still providing the same level of protection against repossession as current benefit based provision.

7.15 A broad summary of how the loan payments scheme will operate is set out below.

Offer and acceptance of loan payments

7.16 The offer process will begin with DWP sending eligible claimants a letter and an information leaflet. These documents will inform claimants about the introduction of the loan payments, explain when the change to SMI will take effect and inform claimants of various ways that may be available to them to meet their on-going owner-occupier commitments. It will explain that one option to help claimants meet their owner-occupier payments will be to accept the offer of loan payments and will inform them of the steps they need to take in order to accept the offer. The letter and the leaflet will be made available to the Secondary Legislation Scrutiny Committee before the regulations come into force.

7.17 Before a claimant can accept the loan payments, they will also have to take part in a telephone conversation with a third party provider that will provide more detailed information about the loan payments and alternative options that claimants may wish to explore to help them meet their owner-occupier payments, including their mortgage commitments. Claimants who indicate that they want to take on the loan payments, or are undecided, will then be sent a loan agreement and charge form, as referred to at paragraph 7.19 below. These documents will be made available to the Secondary Legislation Scrutiny Committee before the regulations come into force.

7.18 The loan payments offer will be formally accepted where the Department has received the loan agreement signed by the claimant (along with their partner, if they are a member of a couple) and the documents referred to in regulation 5(2) (regulation 4).

7.19 The regulations provide that certain additional conditions need to be met in order for the loan payments to commence (set out in regulation 5). The conditions are as follows:

- The claimant, if they are a legal owner of the property (which will usually be the case), will be required to execute and return a charge form (referred to as "standard security" in Scotland) to the Secretary of State in order for the Department to take security for the loan payments. If the claimant's partner is a co-owner, he or she will also be required to execute the charge form. If all legal owners have signed the charge deed, it will be capable of registration at the Land Registry (or Register of Scotland in respect of properties in Scotland).
- In the case of England and Wales, if there are any co-owners other than the claimant and/or their partner (who we do not require to execute the charge form), the claimant and/or their partner (if they are a co-owner) will be required to execute an equitable charge in respect of their beneficial interest in the property. This is a more limited form of security which is not registrable at the Land Registry.

- Where the claimant and/or their partner is/are not a legal owner but may have an interest in the property as an occupier, they will be required to give written consent to the creation of the charge (or standard security in Scotland) .
- The Secretary of State has provided information about the loan payments to the claimant within the period of 6 months ending with the day the loan offer is accepted (this is referred to in regulation 6 as the "Information Condition"). This will be provided by a telephone call from a third party provider who will explain the changes that are being made to SMI to the claimant and provide them with information about options they may wish to consider to meet their mortgage liability from April 2018, including the offer of the loan payments. The claimant's partner will also need to participate in this telephone call.

Calculation and timing of loan payments

7.20 The loan payments will be payable at the following intervals in arrears: (i) monthly intervals in the case of a universal credit claimant, (ii) four weekly intervals in the case of a legacy benefit claimant where payments are made directly to the claimant's lender, and (iii) at the same intervals as the qualifying benefit in the case of a legacy benefit claimant where the payments are made to them rather than their lender.

7.21 The regulations set out detail about the period in respect of which the loan payments are made (regulation 8), the duration of the payments (regulation 9) and how each loan payment is calculated (regulations 10 to 12).

7.22 Interest will be charged on the sum of the loan payments made to the claimant. The interest rate applied will be based on the Office for Budget Responsibility's forecast of gilt rate. It will be applied monthly on a compound basis (regulation 15).

Repayment

7.23 The sum of the loan payments and accrued interest will become immediately due and payable where (i) the claimant's home is sold, (ii) legal or beneficial title in, or in Scotland, heritable or registered title to, the property is transferred, assigned or otherwise disposed of, or (iii) on the claimant's death (where the claimant has no partner) or on the death of the last member of the benefit unit (where the claimant has a partner) (regulation 16).

7.24 Recovery will only be made from either the proceeds of sale, transfer, assignment or disposition or from the relevant person's estate (in the event of death), but repayment will be subject to certain limitations. For example, if the Secretary has obtained a legal charge over the claimant's property, repayment shall be limited to the available equity after prior charges on the property have been repaid. If there is insufficient equity to repay the total of the loan payments, we will write off any amount that cannot be repaid.

7.25 Claimants will be able to make voluntary repayments at any time. The lowest amount that will be accepted for any individual payment will be £100, unless the total owed is less than £100.

Transitional provisions

7.26 The regulations contain transitional provisions to enable existing claimants of SMI (that is claimants who are entitled to SMI on 5 April 2018) a temporary period in which they can still receive SMI as a benefit (regulation 19). This will allow the SMI benefit payments to continue should there be delays in the operational activity to migrate existing claimants to the loan payments scheme. This will enable the first loan payment to be made shortly after 6 April if that date falls during the claimant's benefit week (in the case of a claimant of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit) or assessment period (in the case of a Universal Credit claimant) so that there is no gap in payment between the last SMI benefit award and the first loan payment..

Where the Secretary of State considers that an existing claimant lacks mental capacity to make decisions about entering into the loan agreement, the regulations also enable SMI as a benefit to continue until a final determination as to whether to appoint an appropriate person to act on the claimant's behalf (such as a Deputy) in respect of the loan agreement is made. New claimants will not be able to benefit from this transitional protection. Instead, the Department is working with the Council of Mortgage Lenders to ensure that lenders forebear in cases where a claimant lacks mental capacity to act and an appointment is pending. These claimants will receive an SMI loan from the date that they first became entitled once the appropriate arrangements are in place.

7.27 Transitional provisions are also included to ease the transition from the legacy benefits to universal credit. Where a claimant who has served the qualifying period in respect of SMI before moving on to universal credit, the claimant will not have to serve the qualifying period again (subject to satisfying certain conditions). Where the claimants previous benefit award did not include an amount for SMI because the qualifying period was in the course of being served, the claimant will be able to satisfy a modified qualifying period in relation to the universal credit award.

8. Consultation outcome

8.1 No consultation was carried out in 2015 when the policy was announced. This is because a Call for Evidence[6] 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.

9. Guidance

9.1 In addition to the letter and information sheet that will be issued to claimants, as outlined at paragraph 7.15, summary information about the loan payments scheme will be made available on GOV.UK before the regulations come into force. This will be made available to the Secondary Legislation Scrutiny Committee before the regulations come into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that claimants' mortgage lenders will, where appropriate, be asked to agree formally to waive any restrictions on further charges being placed on a claimant's property via the Land Registry (Registers of Scotland in Scotland). Not all mortgage lenders place such restrictions. The Department has spoken to mainstream mortgage lenders and their unanimous response is that they would want to waive any restrictions so that charges can be

[6] Support for Mortgage Interest - Call for Evidence

placed in respect of Support for Mortgage Interest loans. The Department is working with the lending industry, including the Council of Mortgage Lenders, to agree the simplest and most cost-effective means of achieving this.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 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 the Council of Mortgage Lenders, 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.roscamp@dwp.gsi.gov.uk can answer any queries regarding the instrument.