EXPLANATORY MEMORANDUM TO

THE LOANS FOR MORTGAGE INTEREST (AMENDMENT) REGULATIONS 2021

2021 No. 131

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Loans for Mortgage Interest Regulations 2017 to enable anyone with an outstanding Support for Mortgage Interest (SMI) loan to 'port' their loan to a new property rather than repay it upon the sale of their home. The amendments will also make minor drafting amendments to ensure regulations meet the policy intent with respect to Cold Weather Payments and Domestic Violence.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument makes amendments to the Loans for Mortgage Interest Regulations 2017[1] to enable anyone with an outstanding SMI loan to 'port' their loan to a new property rather than repay it upon the sale of their home. This will make the scheme more flexible so no one with an SMI loan is prevented from moving home.

[1] The Loans for Mortgage Interest Regulations 2017 (S.I. 2017/725), available at: https://www.legislation.gov.uk/uksi/2017/725/made

6.2 The amendments will also make minor drafting amendments to ensure regulations meet the policy intent with respect to Domestic Violence and Cold Weather Payments. The Domestic Violence regulations are amended in the Loans for Mortgage Interest Regulations 2017[2] and the cold weather payments are in the Social Fund Cold Weather Payments Regulations 1988[3].

7. Policy background

What is being done and why?

Loan Porting

7.1 The primary purpose of SMI is to protect owner-occupiers receiving an income-related benefit from the threat of repossession. In April 2018, SMI changed from a benefit to an interest bearing loan. SMI loans are secured against the claimant's property through a legal or equitable charge against the property title. The loan is recoverable from any equity on the sale, transfer of ownership of the property or when the claimant dies. There is currently no exception to this provision.

7.2 This amendment will allow SMI recipients purchasing a new home to 'port' their outstanding loan to the new property rather than repay it upon the sale of their current home. Porting will be optional (loan holders may choose to repay on the sale of their home as now) but will be available to anyone with an outstanding SMI loan, whether they are currently in receipt of a qualifying benefit or not. The SoS may, however, decline a request to port an outstanding loan where the homeowner has not executed an equitable charge (in Scotland a standard security) against the new property. Porting may be especially beneficial to people who may need to move due to changing circumstances. Examples might include disabled people with deteriorating health conditions or families with children who can no longer share a bedroom. This change will allow for uninterrupted support towards their mortgage payments.

7.3 The Department will seek for the solicitor, who is acting on behalf of the loan recipient and commercial lender through the house sale and purchase, to carry out all the necessary activity to 'port' the outstanding SMI loan. This agreement will be reached through a formal agreement with the solicitor called an 'undertaking' (see annex A). Through this agreement, the solicitor will commit to removing the charge against the current property, holding the loan during any transitional period and registering a charge against the new property.

7.4 The solicitor will be well placed to do this as part of their activities to support the sale and purchase of the new home. This is because they must retain control of the registration of the mortgage, SMI loan security and the Deed of Postponement (an agreement to postpone the charge rather than redeem), in order to secure the mortgage debt.

7.5 This process will also allow for a gap between completion of sale and purchase, where necessary. Although the majority of completions happen on the same day there may be some circumstances where there is a delay. In the event that a purchase does not complete within three months, the loan is returned to the Department.

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[2] The Loans for Mortgage Interest Regulations 2017 (S.I. 2017/725), available at: https://www.legislation.gov.uk/uksi/2017/725/made

[3] The Social Fund Cold Weather Payments (General) Regulations 1988 (S.I. 1988/1724), available at: https://www.legislation.gov.uk/uksi/1988/1724

7.6 This process includes the transition of current SMI payments ensuring these are uninterrupted where possible.

Drafting Amendments

7.7 Two minor changes to current regulations are also included in the package. These will correct drafting errors within the current regulations and ensure the regulations accurately reflect the policy intent. The changes do not change current policy and are cost neutral.

7.8 Domestic violence – the current provision as drafted provides for someone to be treated as occupying two properties only where they have a liability to make owner-occupier payments on both. If fear of domestic violence or abuse forces someone to leave their mortgaged family home for any other accommodation, the current regulations do not allow them (for SMI loan purposes) to be treated as occupying the family home because they don't pay a mortgage on the refuge. However, the policy intent is to allow someone fleeing domestic violence to be treated as occupying their family home and, therefore, still qualify for SMI. This change will ensure that DWP can continue to protect victims of domestic violence against the threat of repossession until it is safe for them to return home.

7.9 Cold weather payments – the amendment will amend an error within Regulation 1A(3) of the Social Fund Cold Weather Fund (General) Regulations 1988[4] (as amended by the Loans for Mortgage Interest Amendment Regulations 2018). The current regulations as drafted, unintentionally broadened a condition for cold weather payments to include Pension Credit claimants. It was not intended for Pension Credit claimants to satisfy this second condition to be eligible for cold weather payments and so this change makes that clear. This is a small, technical amendment which will ensure that those of state pension age in receipt of SMI will retain entitlement to cold weather payments in line with policy intent.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidated text or instruments is available to the public free of charge via the National Archives' website: www.legislation.gov.uk.

10. Consultation outcome

10.1 The Department of Work and Pensions informally consulted with the Law Society England and Wales and the Law Society Scotland. The Law Society is an external organisation that represent and governs solicitors. Consulting with the Law Society provided insight from solicitors on the proposed process and if it will be effective in delivering the policy. The Law Societies did not highlight any issues with the devised process.

[4] The Social Fund Cold Weather Payments (General) Regulations 1988 (S.I. 1988/1724), available at: https://www.legislation.gov.uk/uksi/1988/1724

10.2 The Department consulted with external lawyers, Womble Bond Dickenson (UK) LLP and Morton Fraser LLP along with internal property lawyers from the Government Legal Department. These consultations were informal, used to develop and refine the porting process. The Department also informally consulted with UK Finance and the Building Societies Association, trade associations for the lending industry to measure business impact. This consultation concluded this change had no significant impact on business.

10.3 In the interest of maintaining parity across the UK, the Department consulted with the Department for Communities in Northern Ireland who intend make the same amendments.

11. Guidance

11.1 Internal guidance for staff at the Department for Work and Pensions has been developed for the porting process.

11.2 Information on porting will be made available on gov.uk for any loan holders who wish to port their SMI loan.

11.3 Guidance for solicitors conducting all the necessary activity to port the loan on behalf of the SMI loan holder has been developed and will be issued along with the necessary forms.

11.4 The Department plans to consult with conveyancing solicitor societies and trade associations for the lending industry to inform them of the porting change and supply information on the process by 22 February 2021.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business. The Department has consulted lenders through UK finance and the Building Societies Association who have confirmed that the porting measure will have no direct financial impacts on mortgage lenders.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is on-going. Officials will monitor costs to ensure the SMI scheme continues to meet the Her Majesty's Treasury Management Public Money guidance.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 David Reynolds at the Department for Work and Pensions Telephone: 07825 298010 or email: david.reynolds@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Vicki Kennedy, Deputy Director for Housing Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Stedman-Scott at the Department of Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.