EXPLANATORY MEMORANDUM TO

THE LOANS FOR MORTGAGE INTEREST (AMENDMENT) REGULATIONS 2023

2023 No. 226

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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Loans for Mortgage Interest Regulations 2017 to extend the Support for Mortgage Interest (SMI) loan scheme by reducing the qualifying period from nine months to three and extend eligibility to Universal Credit (UC) claimants with earnings. Current regulations require UC claimants to serve a nine-month qualifying period and have no earned income to be eligible for SMI. Further technical amendments will allow any claimants returning to UC who had earned enough to flow off UC to reclaim SMI as long as their period away from UC does not exceed 6-months. Finally, the amendments will help to retain and protect eligibility of SMI when migrating to UC for newly formed mixed-age couples where one member is of state pension age and the other is of working age.

3. Matters of special interest to Parliament

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

3.1 The procedure for free issue has been applied to this SI in order to make sure the wording of the new regulation 9(8) and the previous regulation 9(7) of the Loans for Mortgage Interest Regulations 2017 are the same for the sake of clarity.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and 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 to reduce the qualifying period from nine months to three. Providing support quicker will better protect homeowners against repossession. This instrument will also remove the rule that prevents the payment of SMI to any UC claimant who has earned income (the zero earnings rule) to extend eligibility to UC claimants with earnings.

This means homeowners in receipt of SMI can move into work without losing their SMI as long as they continue to qualify for Universal Credit. It will also offer the support of an SMI loan to eligible in-work homeowners.

6.2 Additional changes include allowing a Universal Credit (UC) claimant to retain their eligibility to Support for Mortgage Interest (SMI) should they return to UC within 6 months and enabling a newly formed mixed-age couple to retain their entitlement to SMI without serving the qualifying period.

7. Policy background

What is being done and why?

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, which was previously paid as a benefit, transitioned to an interest-bearing loan. Support paid is at the same level as under the previous benefit system and so the scheme continues to offer the same level of protection against repossession.

7.2 SMI loans are usually secured against the claimant's property and are recoverable from any available equity on the sale or transfer of ownership of the property. Recipients of qualifying working age benefits are required to serve a nine-month qualifying period before SMI can be paid, Pension Credit claimants are not required to serve a qualifying period.

7.3 These changes are intended to strengthen the level of protection SMI provides against the threat of repossession. We recognise the difficulties faced by homeowners as mortgage interest rates rise and these changes will ensure low-income homeowners are supported through better protection against repossession.

7.4 Those with shared ownership mortgages will also benefit from these changes through an extension to the protection SMI provides.

Explanations

What did any law do before the changes to be made by this instrument?

Qualifying Period

7.5 Current Regulations require working age claimants to serve a qualifying period of nine months before they become entitled to a SMI loan.

7.6 Reducing the qualifying period will provide support quicker to ensure homeowners have better protection against repossession and build-up of arrears.

UC Claimants in Work

7.7 SMI rules prevent in-work UC claimants from receiving the offer of an SMI loan if they have earned income. If UC claimants are already receiving SMI, their eligibility ceases should they move into work and receive earned income.

7.8 By removing the zero earnings rule and extending eligibility to UC claimants with earnings, we will remove a disincentive for existing SMI claimants to move into work and better support themselves. We will be providing support to in-work homeowners, ensuring they have vital protection against repossession.

7.9 As part of removing the zero earnings rule, we are also looking to link the regulations that will allow a claimant to flow off UC but retain their eligibility to SMI should they

restart their UC claim within 6 months. This provides a better incentive for people to look for employment as they may take on seasonal employment allowing them to work for a few months, flow off UC and then return should they require the help. This would not mean that the claimant will have to re-serve their qualifying period as long as they return within that 6-month period.

Mixed Age Couples

7.10 Until May 2019, a couple formed between a person of pension age and one of working age could claim PC if they required income related support. PC is more generous than the working age benefits and, as a result, these mixed aged couples (MACs) almost always chose to claim it. In May 2019, the Government implemented its new MAC policy. These arrangements protect MACs who were in receipt of PC at the date of change, allowing them to remain on that benefit. However, any newly formed mixed age couples (MAC) will not be eligible to receive Pension Credit (PC) and will have to claim Universal Credit (UC) instead.

7.11 One consequence of this change is that a single person claiming PC will lose entitlement to that benefit if they form a partnership with a working age person. If the couple still require income-related support, they will have to claim UC. The problem this then presents is that, in cases where the pension age claimant was eligible to receive a Support for Mortgage Interest (SMI) loan, that eligibility would not transfer to their new UC claim, and they would have to serve the qualifying period from the beginning.

7.12 By allowing these PC claimants to retain their eligibility, or continue from where they were, the policy intent would be removing the need of having to re-qualify to become entitled to the loan again

8. European Union Withdrawal and Future Relationship

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 Over the last few years, the Department of Work and Pensions has developed a great relationship with the lending industry and has been informally consulting with UK Finance and Building Societies Association (BSA) who have been consistently pushing for these changes. Consequently, they are very receptive, supportive and in-favour of all the outlined changes. UK Finance and BSA are experts in the lending industry and account for all major lenders in the mortgage market and have not highlighted any issues with the revised process.

10.2 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 is being developed for the changes.

11.2 Information will be made available on gov.uk for any possible loan holders about the changes to the Support for Mortgage Interest loan.

11.3 Guidance for solicitors conducting all the necessary activity to the changes on behalf of the Support for Mortgage Interest loan holder have been developed and will be issued along with the necessary forms.

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 A full 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 the changes 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 Support for Mortgage Interest scheme continues to meet His Majesty's Treasury Management Public Money guidance.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Daoud Zafar at the Department for Work and Pensions, email: daoud.zafar@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 Mims Davies at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.