EXPLANATORY MEMORANDUM TO

THE LOANS FOR MORTGAGE INTEREST (TRANSACTION FEE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020

SR 2020 No. 125

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities (DfC) on behalf of the Department for Work and Pensions, 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 (Northern Ireland) 2017 to remove the requirement for the Department to levy a charge on mortgage lenders who receive direct payments under the Support for Mortgage Interest scheme.

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 Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

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 (Northern Ireland) 2017 to remove the requirement for the Department to levy a charge on mortgage lenders who receive direct payments under the Support for Mortgage Interest scheme. The regulations will remove the requirement under Paragraph 6 of Schedule 4 to those Regulations[1].

6.2 These changes are being made following agreement from HM Treasury and Ministers that the charge is no longer necessary. This is because administration of the charge

[1] https://www.communities-ni.gov.uk/services/law-relating-social-security

exceeds the amount of the funds recovered. This Statutory Rule makes the appropriate changes to support this change.

6.3 Section 87 of the Northern Ireland Act 1998 ("the 1998 Act") places a statutory duty on the Minister for Communities and Secretary of State for Work and Pensions to consult with one another with a view to securing, to the extent agreed between them, a single social security system for the United Kingdom. Though certain aspects of social security were devolved to the Scottish Government under the Scotland Act 2016, the Minister for Communities and the Secretary of State for Work and Pensions continue to work together in order to ensure parity between the benefit system in Northern Ireland and those benefits which are reserved in Great Britain, or in England and Wales. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.

6.4 The Welfare Reform Act 2012 provided, amongst other things, for the introduction of Universal Credit (UC) and Personal Independence Payments (PIP)

6.5 The Welfare Reform and Work Act 2016 made further provision in connection with social security, including amendments in relation to the benefit cap, employment and support allowance, and universal credit. It also introduced loans for mortgage interest.

6.6 On 17 November 2015 "A Fresh Start: The Stormont Agreement and Implementation Plan" was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The Northern Ireland (Welfare Reform) Act 2015 provided a time-limited power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council could then confer power on the Secretary of State or a Northern Ireland Department to make further provision regarding these matters by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 was made on 9 December 2015 making provision corresponding to the Welfare Reform Act 2012. The Welfare Reform and Work (Northern Ireland) Order 2016 was made on 12 October 2016 making provision corresponding to the social security provisions of the Welfare Reform and Work Act 2016.

6.7 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, and with the agreement of the Department for Communities, the Department for Work and Pensions is laying this instrument on behalf of Northern Ireland in order to deliver the changes equally across both Great Britain and Northern Ireland.

7. Policy background

What is being done and why?

7.1 Owners occupiers in receipt of an income-related benefit can receive help towards their mortgage payments through Support for Mortgage Interest (SMI). SMI is provided through an interest-bearing loan repayable when the property is sold or the ownership is transferred. The policy objective is to provide a level of support that is sufficient to avert the threat of repossession by their lender. SMI payments are calculated by applying a set rate of interest to the claimant's outstanding mortgage, up to a set capital limit.

7.2 SMI loan payments are paid direct to mortgage lenders to encourage lender forbearance where payments do not meet the full cost of the mortgage, and ensure the funds are used to meet mortgage liabilities. In return a charge has been levied on lenders in accordance with the general principles in Her Majesty's (HM) Treasury's guidance for Managing Public Money.

7.3 In 2017/18 Ministers approved a rate of £0.39 for each transaction. This was frozen for 2018/19 and 2019/20. There has since been a fall in the SMI caseload following the transition of support to an interest bearing loan. Costs are spread across fewer transactions and the cost of recovering the charge was more than it recovered. The efficiency savings achieved by abolishing the charge were calculated on the basis of the staff and non-staff costs dedicated to the process of costing and administrating the charge. A large increase in the transaction fee to recoup the full cost of administering the charge may have jeopardised the important relationship with lenders who exercise forbearance when SMI does not meet the whole of a person's mortgage liability.

7.4 HM Treasury agreed to its abolition and this decision was confirmed by Ministers who agreed there should be no charge from the 2020/21 financial year onwards.

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 This instrument will be informally consolidated in the Law relating to Social Security (Northern Ireland) or ("Blue Volumes"). It will be available to the public at no cost via the internet at: https://www.communities-ni.gov.uk/services/law-relating-social-security

10. Consultation outcome

10.1 None

11. Guidance

11.1 Internal guidance for staff at the Department for Communities has been amended to remove the invoicing process that has supported the recovery of the charge.

11.2 The mortgage lending industry has been informed about the cessation of the charge through lenders trade associations UK Finance and the Building Society Association.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies. There is a positive but not significant impact on business because mortgage lenders will no longer be subject to the charge.

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 as there is no significant impact on business.

13. Regulating small business

13.1 There will be a positive but not significant impact for small business who are mortgage lenders because they will no longer be subject to the charge.

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 HM Treasury Management Public Money guidance.

14.2 There is a primary power to charge lenders a fee so this could be re-instated by regulations at a later date.

15. Contact

15.1 Anne McCleary at the Department for Communities. Telephone: 02890 839332 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.

15.2 Andrew Latto, Deputy Director for Devolution, Carers and Pensioner Benefits can confirm that this Explanatory Memorandum meets the required standard.

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