EXPLANATORY MEMORANDUM TO

THE LOANS FOR MORTGAGE INTEREST (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2023

S.R. 2023 No. 31

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities (DfC) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 13(1), (2) and (3) and 14(1), (3)(b) and (e) of the Welfare Reform and Work (Northern Ireland) Order 2016, and is subject to the negative resolution procedure.

2. Purpose

2.1 This Rule makes amendments to the Loans for Mortgage Interest Regulations (Northern Ireland) 2017 to extend the Support for Mortgage Interest (SMI) loan scheme by reducing the qualifying period from 9 months to 3 and extend eligibility to Universal Credit (UC) claimants with earnings. Current regulations require UC claimants to serve a 9 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. Background

What is being done and why?

3.1 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.

3.2 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 9 month qualifying period before SMI can be paid, Pension Credit (PC) claimants are not required to serve a qualifying period.

3.3 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.

3.4 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

3.5 Current Regulations require working age claimants to serve a qualifying period of 9 months before they become entitled to a SMI loan.

3.6 Reducing the qualifying period to 3 months will provide support quicker to ensure homeowners have better protection against repossession and build-up of arrears.

UC claimants in work

3.7 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.

3.8 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.

3.9 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

3.10 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-age 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 MACs will not be eligible to receive PC and will have to claim UC instead.

3.11 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 SMI loan, that eligibility would not transfer to their new UC claim, and they would have to serve the qualifying period from the beginning.

3.12 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.

4. Consultation

4.1 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 infavour 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 in the UK and have not highlighted any issues with the revised process.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has considered a screening exercise on the legislative proposals for these Regulations and as they are extending the SMI scheme by reducing the qualifying period from 9 months to 3, removing the zero earnings rule, introducing a re-claim rule and allowing mixed-age couples to retain their eligibility to SMI, has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The proposed Rule does not apply to activities that are undertaken by small businesses. A Regulatory Impact Assessment has not been prepared for this Rule as there is no, or no significant, impact on business, charities or voluntary bodies or on the public sector.

7. Financial Implications

7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule –

(a) is not incompatible with any of the Convention rights;

(b) is not incompatible with Community law;

(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion; and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

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

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain provisions are the Loans for Mortgage Interest (Amendment) Regulations 2023 (S.I. 2023/226) which were laid on 1st March 2023 and come into force on 3rd April 2023. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998. It was therefore necessary to make these Regulations during the period of interregnum.

11. Additional Information

11.1 Internal guidance for staff at the Department for Communities will be updated to take account of these changes.