Support for mortgage interest – from benefit to loan

Summary

Currently, an owner-occupier who is in receipt of an eligible benefit can claim help towards the interest on a mortgage secured against the home in which they normally reside. This is commonly referred to as Support for Mortgage Interest (SMI).

From April 2018, SMI will cease to be paid as a benefit. Instead, owner-occupiers who are entitled to the same benefits will be offered a loan for mortgage interest instead.

Loan payments will be paid at the same rate as under the current system, and will in most cases be paid directly to the lender.

Conditions for entitlement remain largely the same. There is a change however in that the loan payments can continue indefinitely for all claimants – unlike under the current system where there is a two-year limit for claimants in receipt of jobseeker's allowance.

To ensure repayment, claimants must agree to a charge being registered on the property in favour of the DWP. Existing mortgages and other charges will still take priority however.

The full amount of the loan – plus interest – will become due when the property is sold, or ownership is otherwise assigned or transferred, or when the claimant dies. If there is not enough equity in the property to cover the full amount owed, then any extra will be written off.

Claimants can make early repayments if they choose to, providing each payment is of at least £100 (unless the total amount outstanding is less than this.)

Between now and April, existing SMI claimants will be contacted by Serco, who the Government has appointed as an information provider. They will be given information on the changes and will have the opportunity to agree to the loan at that point (although the loan payments will not begin until after 6th April 2018.) Alternatively, claimants can contact the DWP at a later date to agree to the loan.

If an existing claimant does not agree to accept the loan, their SMI will stop after 6th April 2018.

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Overview

As of April 2018, Support for Mortgage Interest will cease to be paid as a benefit, and will instead by replaced by a loan for mortgage interest. Loan payments will be made directly to the lender on an ongoing basis and to ensure repayment, a charge will be registered on the claimant's property. The full balance – plus interest – will then be repayable when the property is sold or ownership is transferred.

The DWP estimate that there are approximately 124,000 claimants receiving SMI at a cost of £170 million per annum. Around 52% are of pension age, a factor that the DWP highlights as a reason for making these changes.

The Government has appointed Serco to act as an information provider to contact existing claimants regarding the new changes.

The current system

Currently, an owner-occupier or their partner who is in receipt of an eligible benefit can claim help towards the interest on a mortgage secured against the home in which they normally reside. This is commonly referred to as Support for Mortgage Interest (SMI)

The eligible benefits are income support, income-based jobseekers allowance income related employment and support allowance, and pension credit.[1] Claimants who receive

[1] Sch.3 Income Support (General) Regulations 1987 SI 1987/1967; Sch.2 Jobseeker's Allowance Regulations 1996 SI 1996/207; Sch.6 Employment and Support Allowance Regulations 2008 SI 2008/794; Sch.2 State Pension Credit Regulations 2002 SI 2002/1792

Universal Credit in a full-service area can also claim the housing costs element for owner occupiers on a similar basis.[2]

Payments are based on the Bank of England standard interest rate (set at 2.61% as of 18th June 2017,) and can be made on loans of up to the value of £200,000 (or £100,000 for pension credit claimants).[3]

A waiting period of 39 weeks before SMI can be paid applies to claimants receiving IS, IB-JSA, or IR-ESA.[4] Claimants in receipt of IB-JSA can only receive SMI for a maximum of 2 years.[5]

The new legislation

In the 2015 Summer Budget the Government announced that SMI would be changed from being a benefit to a loan.[6] An impact assessment on the policy stated as justification for the change, the fact that *'previous recipients have benefited from house price gains whilst receiving public support for their housing, which is not fair to the taxpayer'.*[7]

Sections 18-21 of the Welfare Reform and Work Act 2016 gave the Secretary of State the power to make regulations providing for the change to a loan system.[8] On 7th June 2017 the Loans for Mortgage Interest Regulations 2017 were published, the provisions of which come into force in part on 27th July 2017 and the remainder on 6th April 2018.[9]

The loan

The regulations provide that the DWP may make an offer of loan payments in respect of payments the claimant is liable, or treated as being liable, to pay. The claimant does not have to accept the loan, but since SMI as a benefit will no longer be available, their other options may be limited.

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[2] Sch. 5 part 4 Universal Credit Regulations 2013 SI 2013/376
[3] Parts 2 and 3 Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 SI 2008/3195, as amended by Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 SI 2009/3257, Sch. 5 Part 4 paras 10-11 Universal Credit Regulations 2013 SI 2013/376
[4] Social Security (Housing Costs Amendments) Regulations 2015 SI 2015/1647.
[5] regs.6 and 11 Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 SI 2008/3195, as amended by Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 SI 2009/3257
[6] https://www.gov.uk/government/publications/summer-budget-2015
[7] Welfare Reform and Work Bill: Impact Assessment for Converting. Support for Mortgage Interest (SMI) from a benefit into a Loan (2015)
[8] Ss 18-21 Welfare Reform and Work Act 2016
[9] Loans for Mortgage Interest Regulations 2017 SI2017/725

Both the claimant and their partner (or both claimants if it is a joint claim) must sign a loan agreement and return and execute a form allowing a charge to be registered against the property in favour of the DWP.[10]

Where all of the legal owners are included in the claim, this would take the form of a legal mortgage against the property. Where one or more legal owners are not included in the claim (e.g. where one has moved out following a relationship breakdown) then the claimant must consent to an equitable charge being registered in respect of their beneficial interest in the property.[11]

Any existing charges or mortgages will take priority over the new charge.[12]

A loan will be offered irrespective of the level of equity in the property. Even if the property is in negative equity, a loan offer will still be made, and if it is accepted, a charge will be registered.

Loan payments

If the claimant accepts these conditions, then loan payments will be made by the DWP. If the lender is a 'qualifying lender' then payments will be made to them directly.[13] (It seems likely that most lenders will be classed as qualifying lenders).

Payments will be made at 4 weekly intervals in arrears where the claimant receives IS, IB-JSA, IR-ESA ('legacy benefits'), or PC, and at monthly intervals in arrears where the claimant receives UC.[14]

The level of payments will be calculated in the same way as under the current system – based on the Bank of England standard interest rate. The capital limit on qualifying loans also remains the same - £200,000 where the claimant receives IS, IB-JSA, IR-ESA or UC, and £100,000 where the claimant receives PC. Non-dependent deductions continue to apply to legacy benefits and SPC, with the same exemptions (e.g. where the claimant is registered blind).[15]

[10] reg 4 Loans for Mortgage Interest Regulations 2017 SI2017/725
[11] reg 5 Loans for Mortgage Interest Regulations 2017 SI2017/725
[12] reg 16 Loans for Mortgage Interest Regulations 2017 SI2017/725
[13] reg 17 Loans for Mortgage Interest Regulations 2017 SI2017/725
[14] reg 7 Loans for Mortgage Interest Regulations 2017 SI2017/725
[15] regs 10-14 Loans for Mortgage Interest Regulations 2017 SI2017/725

Loan payments will continue indefinitely, irrespective of what benefit the claimant is receiving.[16] This marks a change from the current system where JSA claimants are limited to two years' assistance.

Entitlement and waiting periods

Conditions for entitlement to loans for mortgage interest remain the same as under the current SMI system. Claimant's must still be in receipt of the same benefits, and in the case of Universal Credit, the claimant or their partner must not be engaged in remunerative work. Some claimants will no longer be entitled to an income-related benefit once SMI ceases to form part of their award – the regulations provide they will continue to be treated as liable in order to receive the loan offer.

Similarly, the same rules apply on when a claimant is treated as occupying the property as a home, and when they are treated as being liable. The definition of a qualifying loan also remains the same.[17]

Alternative finance arrangements (Islamic mortgages)

Under the current system, people with Islamic-compliant mortgages (referred to as Alternative Finance Arrangements) can get help with their housing costs if they are in receipt of Universal Credit. People receiving IS, IB-JSA, IR-ESA or PC cannot get help with these housing costs, and they are excluded from housing benefit.

Payments under an Alternative Finance Arrangement are eligible for help under the new loan system, but only for claimants receiving Universal Credit or Pension Credit. The rationale is that the intention is that the other 'legacy' benefits will be phased out in due course.

The payments are calculated in a similar way to under the current UC system – the purchase price of the property (of up to £200,000, or £100,00 for PC claimants) is multiplied by the standard rate, and then divided by either 12 or 52 depending on whether the claimant is getting UC or PC.[18] (Other income and non-dependent deductions are also taken into account)

[16] reg 9 Loans for Mortgage Interest Regulations 2017 SI2017/725
[17] Schedules 1-3 Loans for Mortgage Interest Regulations 2017 SI2017/725
[18] reg 12 Loans for Mortgage Interest Regulations 2017 SI2017/725

Interest

The loan being offered is not interest free. Compound interest will be accrued daily and will be added on a monthly basis to the total amount to be repaid. The interest rate charged will be based on the Office for Budget Responsibility's forecast of gilt rates.[19] This can be found in the OBR's Economic and Fiscal Outlook publication and is currently set at 1.5% as specified in the latest Economic and Fiscal Outlook published on the 22nd November 2017 by the OBR.

Repayment

The total outstanding loan amount along with the interest will be immediately due in the following circumstances:[20]

- when the property is sold
- When the claimant dies, or if they have a partner, when both have died
- When the legal or beneficial title is otherwise transferred, or assigned

There are two exceptions to this last category, which are:[21]

- if the claimant dies and the title is transferred to their partner, who is living in the accommodation
- Where the title has been transferred to the claimant from a former spouse or civil partner under a court order or an agreement for maintenance, and the claimant is living in the accommodation.

If there is insufficient equity in the property to cover the outstanding amount (after other pre-existing mortgages and charges have been paid off) then repayment is limited to the available amount.[22] Any extra still owed is written off.

Where only one of multiple legal owners is included in the claimant's benefit unit, then repayment is limited to the claimant's equitable interest (the share they would be entitled to on the same of the property) [23]

Early repayment

If the claimant wants to repay the debt voluntarily before it becomes due, then they can do so. Each repayment they make must be £100 or more, unless the total outstanding amount is less than £100, in which case they can repay that sum in one single repayment.[24]

[19] reg 15 Loans for Mortgage Interest Regulations 2017 SI2017/725
[20] reg 16(1) Loans for Mortgage Interest Regulations 2017 SI2017/725
[21] reg 16(3) Loans for Mortgage Interest Regulations 2017 SI2017/725
[22] reg 16(4) Loans for Mortgage Interest Regulations 2017 SI2017/725
[23] reg 16(5) Loans for Mortgage Interest Regulations 2017 SI2017/725

Existing claimants

Existing claimants of SMI will not be automatically transferred on to the new loan system. Instead they will need to agree to accept the loan and a charge on their property. If they have not accepted the offer of an SMI loan, then the current benefit will stop at some point after 6th April 2018.

The Government has appointed Serco to act as an information provider. They will attempt to contact current claimants between now and 5th April 2018 to inform them of the change.

Serco will send the claimant's a letter and information booklet and will also attempt to contact them by telephone. They will try three times to contact the claimant – although claimants can book a specific time for the call.

The call and letter should inform the claimants of:

- The fact that SMI as a benefit is ending and the consequences
- The offer of a loan, what this means and how they can accept it
- Examples of alternatives to accepting a loan
- Details of organisations who offer free help and support (who may include Shelter and Citizens Advice)

Serco can only give factual information and will not provide advice. Mortgage lenders are also likely to only provide limited factual information and will direct their customers to Serco or advice agencies.

Importantly, both the claimant and their partner must receive the phone call in order to be offered the loan. This is because both the claimant and their partner have to give consent to the loan being offered and the charge being made.

If the claimant wants to accept the loan offer they can do so during the phone call or by contacting DWP directly afterwards. They should then receive a written summary of the conversation, as well as the loan agreement document, and a document giving consent to a legal charge on the property, to sign and return.

Transitional rules for existing claimants

The regulations make provisions that the existing rules will be treated as still being in force for existing claimants until a certain date (i.e. that the current benefit will still be paid). [25]

[24] reg 16(8), 16(9) Loans for Mortgage Interest Regulations 2017 SI2017/725
[25] Reg 19 Loans for Mortgage Interest Regulations 2017 SI2017/725

Unless the claimant stops being entitled to a qualifying benefit earlier, the earliest date that the existing claim would cease is the day immediately following the end of the first benefit week (or first assessment period for UC claimants) ending after 6th April 2018.

If the claimant has not received an offer of a loan (for instance because they cannot be contacted) then the claim will cease on this date.

If the claimant refuses the offer of a loan the claim will cease on the day immediately following the day when the DWP receive notification of the refusal (assuming this is after the end of the first benefit week/assessment period after 6th April)

If the offer of a loan is accepted and the documents have not been returned within six weeks from when the offer was made, then the claim will cease on the day after the end of the 6-week period (assuming this is after the end of the first benefit week/assessment period after 6th April)

If the offer of a loan is accepted and the documents are returned, then the claim will cease 4 weeks and a day from the date the DWP received the documents (assuming this is after the end of the first benefit week/assessment period after 6th April)

Claimants who lack mental capacity

Where a person lacks mental capacity, and they do not have a Deputy or person with Power of Attorney appointed by the Court of Protection, the DWP/local authority can appoint a person as an Appointee. The Appointee can accept and manage benefits on their behalf but has no role beyond this. As such, agreeing whether or not to accept a loan for mortgage interest would be beyond their legal powers. Instead this would have to be done by a Legal Deputy or person with Power of Attorney.

Transitional protections apply where an existing claimant is known to lack capacity and an application has been made for Deputyship/Power of Attorney.

If that application was made on or before 5th April 2018, or afterwards but still within 6 weeks of the loan payments offer date, then the current rules will continue to apply until: [26]

- the day after the end of the first benefit week/assessment period after 6th April, or
- 6 weeks + 1 day after a determination has been made to make a decision on Deputyship/Power of Attorney, or the application for that decision has been withdrawn.

[26] Reg 20 Loans for Mortgage Interest Regulations 2017 SI2017/725