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Dear Janice

Departmental response on Support for Mortgage Interest (Security for Loans) Bill.

Thank you for your letter dated 02 February requesting further clarification on queries raised by the Committee Members during the public session with Departmental Officials.

Queries

- *Information detailing the debt management process i.e. the process of write-off and removal of legal charge – this has now been received and circulated to Members (Loan Management Guidance); and*
- *Information on the operational processes currently in place for the registration and removal of a statutory charge (it is now presumed that the Loan Management Guidance covers the removal of the charge so please provide any relevant operational information regarding the registration of the charge).*

The Loan Management guidance provided to the Committee also contains the guidance regarding the registration of the charge. Please refer to paragraphs 8 & 9.

The Committee requests that with regards to the discussions regarding the potential to amend Article 13(9) (so that regulations would be draft affirmative rather than negative resolution) that Officials liaise with OLC and DSO as appropriate and report back to Committee, as it is recognised that this could have unintended consequences for regulations that are not within the scope of this Bill.

The Department believes that this would create an unnecessary burden when making amendments to Support for Mortgage Interest legislation. NI social security is bound by the parity principal and regularly operates to tight deadlines with regards to social security legislation changes. If NI regulations were draft affirmative resolution, any changes DWP implement to the

legislation could be delayed in NI due to Assembly timetabling and debates, which could come at a detrimental cost to SMI loan recipients and the NI block grant.

For example, The Loans for Mortgage Interest (Amendment) Regulations (Northern Ireland) 2021 (S.R. 2021 No.28) amended the Loans for Mortgage Interest Regulations (Northern Ireland) 2017 to clarify that claimants, who have fled the accommodation for which they receive support for mortgage interest loan payments due to fear of violence in the home, will be able to continue receiving loan payments for that accommodation for a specified period of time.

They also amended the Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988 to clarify which conditions a claimant, who receives support for mortgage interest loan payments and is treated as entitled to state pension credit, needs to meet in order to be entitled to a cold weather payment.

These amendments would have required the use of the draft affirmative procedure had Article 13(9) required that Assembly control, delaying the beneficial changes mentioned above.

All proposed amending Regulations are passed to the Committee (SL1) for their consideration/discussion prior to their making and once made the Statutory Rule is sent for their scrutiny. If there is any disagreement with current amending regulations subject to the negative resolution procedure, they can be annulled if a resolution of annulment is passed within the statutory period and the Statutory Rule becomes void.

As Per 10.6 in the Handbook on Subordinate Legislation - A Guide to Departments on the drafting of Statutory Rules of Northern Ireland - "In choosing the appropriate procedure, Departments will also wish to be guided by that used in the making of any corresponding regulations in Great Britain." Corresponding GB Regulations from the respective sections of the Welfare Reform and Work Act 2016 also require the same Parliamentary control being subject to annulment in pursuance of a resolution of either House of Parliament.

The Office of Legislative Council (OLC) further comments, it is worth noting that the regulations under Article 16 (transitional provision) and 22 (power to make consequential amendments) are also subject to negative resolution. The approach taken in the 2016 Order, whereby the exercise of power is subject to negative resolution, seems to be common in social security legislation, although this is obviously subject to exceptions where an important or potentially controversial exercise of power is contemplated. The approach taken follows the corresponding provisions in the Welfare Reform and Work Act 2016.

It's perhaps worth confirming that this [amendment to Article 13(9)] could be done. However, specific provision would need to be included if the Department would want to make, **in one instrument**, (i) regulations which would otherwise be subject to the negative procedure and (ii) regulations which are subject to greater Assembly control (i.e. the draft affirmative procedure).

The effect is that unless the regulations could be split, then in practice they would all be subject to the more stringent procedure. For example, both amendments within The Loans for Mortgage Interest (Amendment) Regulations (Northern Ireland) 2021 (S.R. 2021 No.28), see above, would have been subject to draft affirmative procedure or split into two Statutory Rules.

As regards whether an amendment to make all regulations under Article 13 subject to draft affirmative procedure would be within scope, there is greater room for uncertainty and it is always difficult to say with confidence what way the Speaker will rule, but our sense is that an amendment of this kind probably would be considered within scope.

The Departmental Solicitor's Office has agreed with the comments made by OLC and have commented - the power being given to the Department by the Bill is the power to make regulations providing for the repayment of a loan to be secured by way of Statutory Charge - providing the taxpayer with another method of security within the existing SMI framework. The Bill is not changing DfC policy on providing assistance to homeowners by paying interest on their mortgage.

The Bill is essentially fulfilling the policy intent that all loans are to be secured. This is/was proposed by DWP and it was to be implemented throughout the UK. The fact that NI had a different land registration system made securing all loans impossible and this new power is bringing that policy aim to fruition. The Bill is of limited scope and sits within the existing framework of loans, their security and repayment.

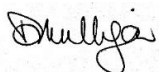
In conclusion, while making an amendment to Article 13(9) to change the Assembly control for regulations made under Article 13 may be within the scope of the Bill, it is the view of the Department that the wider consequences could have negative impact on the Department's ability to make regulations to fulfil the parity principal, which could negatively impact on SMI loan recipients and the NI block grant. It may also have unintended consequences and delays to Statutory Rules that make amendments to more than SMI legislation.

The Department believes that the current processes, Committee consideration prior to regulations being made, scrutiny after they are made and the ability to have the Statutory Rule annulled ensures that all Statutory Rules subject to negative resolution receive adequate consideration and scrutiny.

The Department is aware and grateful for the interest the Committee has shown during its deliberation of the Support for Mortgage Interest Bill and the overarching SMI policy. Departmental officials would be happy to brief the Committee when it is in a position to discuss the regulations subsequent to the Bill.

I hope this is helpful to the members.

Yours sincerely



Diane Mulligan

Departmental Assembly Liaison Officer

Private Office