SUPPORT FOR MORTGAGE INTEREST ETC (SECURITY FOR LOANS) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department for Communities in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It does not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The primary purpose of Support for Mortgage Interest is to protect owner-occupiers receiving an income-related benefit from the threat of repossession. The Support is currently available not only for mortgage interest but also for corresponding sums under arrangements that do not involve the payment of interest. In April 2018, Support for Mortgage Interest changed from a benefit to an interest-bearing loan. Unless a default event occurs, the current regulations and loan agreements provide that a loan is only recoverable from any equity on the sale or transfer of ownership of the property or when the claimant (or their partner) dies. If there is insufficient equity to repay the total of the loan after sale/transfer/death, the Department will write off any amount that cannot be repaid.

4. The primary power for Support for Mortgage Interest in Great Britain was included as part of the Welfare Reform and Work Act 2016 and those provisions were replicated in Northern Ireland within the Welfare Reform and Work (Northern Ireland) Order 2016. The current regulations under the primary power in Northern Ireland are the Loans for Mortgage Interest Regulations (Northern Ireland) 2017, as amended. The regulations provide for the loans to be secured against the claimant's property through a charge against the property title.

5. The differences in land law between Great Britain and Northern Ireland mean that obtaining a similar level of security to protect recovery of the loans is difficult. This is because it is only practicable to secure loans when the property is registered and appears on the Title Register in Land Registry. Departmental officials have placed charges on properties that are unregistered through the Registry of Deeds and currently have secured 156 loans using this method. However, the process of placing/removing a charge in these cases is cumbersome and can require action to be taken by the Departmental Solicitor's Office. For properties where all the legal owners are not included in the person's benefit claim (benefit unit), it is currently not possible to place a charge on the property.

6. A Statutory Charge is a way of protecting a restriction over a property (and enabling purchasers to find out about the restriction), and is for the most part created by or in favour of government departments or local authorities. The effect of registering a Statutory Charge is the same as the effect of registering a legal charge against a registered title or (in the case of unregistered land) of registering a deed in the Registry of Deeds (see section 88 of the Land Registration Act (Northern Ireland) 1970). Land and Property Services maintains the centralised Statutory Charges Register which includes restrictions on properties held in both the Title Register and the Registry of Deeds.

7. Statutory Charge would provide a method of security to allow the Department to consider recovery of all loans provided for all properties/land in Northern Ireland because Statutory Charges can affect both registered and unregistered land irrespective of the make-up of the benefit unit. It is a map-based system registered against the property regardless of the owners/occupiers.

8. The registration of a Statutory Charge in respect of Support for Mortgage Interest loans will ensure the Department can meet the original policy intention to consider recovery of loans providing there is available funds. It will also ensure that all loan recipients are treated equally, regardless of the land registry status of their property or make-up of their benefit unit.

9. Great Britain have introduced a change to Support for Mortgage Interest to allow loan recipients to transfer the loans from one property to another. Due to the differing land law between here and Great Britain, a Statutory Charge would simplify the process in Northern Ireland.

10. This Bill will amend Article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 to allow a loan provided under that Article to be charged on the property in respect of which that loan is made, and will amend Schedule 11 to the Land Registration Act (Northern Ireland) 1970 to enable a charge securing a loan provided under Article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 to be registrable in the Statutory Charge Register. This is in line with the policy intention to ensure that a loan is recovered if there is available equity when it becomes repayable.

CONSULTATION

11. No consultation has been carried out in relation to allow a Statutory Charge to be registered in respect of Support for Mortgage Interest loans. This is because loan recipients have been notified of the possibility of a loan being secured by a Statutory Charge as it is contained in the Support for Mortgage Interest loan agreement.

OPTIONS CONSIDERED

12. Support for Mortgage Interest changed from a benefit to a loan in 2018, with the purpose of providing the same level of protection against repossession whilst providing support that

is more sustainable and fairer for tax payers, many of whom cannot afford homes of their own.

13. The complexities of land law in Northern Ireland has resulted in difficulties providing the same level of protection, as in Great Britain, to allow the Department to consider if recovery is possible from the available equity.

14. The option of not making this amendment was considered however considering the possible differing treatment of loan recipients and the more simplistic method of transferring loans from one property to another this amendment allows, the option of not making this amendment was not taken forward.

15. Introducing a Statutory Charge to be registered in respect of Support for Mortgage Interest loans will ensure that the Department can consider if recovery is possible from the available equity and also offer a more flexible product to people with a loan by enabling a process for a person to transfer a loan from one property to another as their circumstances change.

16. Therefore, no other options have been considered.

OVERVIEW

17. The Bill contains two clauses. The first allows regulations to impose a charge on the property in respect of which a Support for Mortgage Interest loan is made, and provides for charges securing Support for Mortgage Interest loans to be registrable in the Statutory Charge Register. The second deals with the commencement date for, and the short title of, the Bill.

COMMENTARY ON CLAUSES

Clause 1: Security for loans for mortgage interest etc

The changes in clause 1 mean that the power of the Department for Communities to make regulations about Support for Mortgage Interest loans will now include power to charge a loan (and the interest on it) on the property in respect of which the Department makes the loan. The changes also mean that a charge created by the regulations in respect of a loan provided by the Department will be registrable on the Statutory Charge Register. The Department's enforcement powers as the holder of a charge created by the regulations will be capable of being exercised if a Support for Mortgage Interest loan is not repaid after having become repayable under the regulations and the terms of the agreement under which the loan recipient(s) accepted the loan. Those enforcement powers are, most relevantly, the right to seek possession of the property concerned with a view to exercising the power of sale given by section 19 of the Conveyancing Act 1881 (formerly called the Conveyancing and Law of Property Act 1881 but renamed by the Conveyancing Act 1911). Those enforcement powers are for use where there has been a default event, or where the property has been sold or transferred, or after the death of the loan recipient (or their partner), if the Support for Mortgage Interest loan has not been repaid despite having become repayable

Clause 2: Commencement and short title

Although clause 2 provides for the Bill to come into operation once it has received Royal Assent, no charges will be created over any properties until the Department has made the necessary regulations and those regulations have come into operation. Once the regulations have been made and come into operation, any charge created by the regulations will be registrable in the Statutory Charges Register. It is not intended that that the regulations will impose a statutory charge in respect of past or future loan payments under an existing loan agreement for so long as they continue to be secured by an existing legal charge.

FINANCIAL EFFECTS OF THE BILL

18. As it currently stands, 541 loans of the 1,409 outstanding loans, are loans which do not have the security of a legal charge. At the current average of £5,000 per loan, approximately £2.7million worth of loans are unsecured with no secure method to consider if recovery is possible.

19. A Statutory Charge provides a method of security to allow the Department to consider recovery of all loans provided for all properties/land in Northern Ireland.

HUMAN RIGHTS ISSUES

20. The provisions of this Bill are compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

21. A screening exercise was undertaken on the proposal for a Statutory Charge to be registered in respect of Support for Mortgage Interest loans in accordance with Section 75 of the Northern Ireland Act 1998 and did not identify any issues adversely affecting any Section 75 groups.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

22. No Regulatory Impact Assessment has been carried out as this Bill will have no impact in terms of costs on business, charities or voluntary bodies.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

23. The Article 36(4) Enquiry Form in relation to the General Data Protection Regulation (GDPR) has been completed as part of the process of consulting with the Information Commissioner’s Office (ICO). Due to the content of this Bill a Data Protection Impact Assessment is not required at this time.

RURAL NEEDS IMPACT ASSESSMENT

24. A rural needs impact assessment has been carried out and the impact on people living in rural areas will not be greater than the impact on people living in urban areas.

LEGISLATIVE COMPETENCE

25. At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

> *"In my view the Support for Mortgage Interest etc (Security for Loans) Bill would be within the legislative competence of the Northern Ireland Assembly."*

Northern Ireland Assembly

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