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Support for Mortgage Interest etc (Security for Loans) Bill

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This paper has been prepared to inform consideration of the Support for Mortgage Interest etc (Security for Loans) Bill which was introduced by the Minister for Communities on 8 November 2021. It is a short Bill consisting of just two clauses, one of which is substantive. The purpose of the Bill is to allow regulations to impose a charge on a property in respect of which a Support for Mortgage Interest (SMI) loan is made and to provide for charges securing SMI loans to be registrable in the Statutory Charge Register. For contextual purposes, the paper provides background information on the Support for Mortgage Interest loan before exploring the substantive clause of the Bill in further detail.

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1 Introduction

The Support for Mortgage Interest etc (Security for Loans) Bill was introduced to the Northern Ireland Assembly by the Minister for Communities on 8 November 2021[1]. The Second Stage of the Bill took place on 16 November 2021. It is a Bill to provide for loans under Article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 to be charged on land and for the charges to be registrable in the Statutory Charges Register[2].

The Bill's associated documents, including its Explanatory and Financial Memorandum (EFM), are available from the Northern Ireland Assembly website here[3].

The Department for Communities (DfC) Statutory Charges on Loans (Loans for Mortgage) Interest Bill Section 75 screening document is available to download here[4].

Brief background and rationale for the Bill

In April 2018, Support for Mortgage Interest changed from a benefit to an interest-bearing loan. This is provided for under The Loans for Mortgage Interest Regulations (Northern Ireland) 2017[5], as amended. The regulations currently provide for these loans to be secured against the claimant's property through a charge against the property title[6]. However, the Bill's Explanatory and Financial Memorandum states that the differences in land law between Great Britain and Northern Ireland has meant that obtaining a similar level of security to protect recovery of the loans in Northern Ireland is difficult. The EMF goes on to explain why this is the case[7]:

> *"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 legal action to be taken by the Departmental Solicitor's Office. For properties where all the*

[1] Northern Ireland Assembly. Official Repot. 8 November 2021. http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/08&docID=356094#3724144
[2] Ibid.
[3] Northern Ireland Assembly. Support for Mortgage Interest etc. (Security for Loans) Bill. www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/support-for-mortgage-interest-etc-security-for-loans-bill/
[4] Department for Communities. Statutory Charges on Loans – Loans for Mortgage Interest Bill – screening. www.communities-ni.gov.uk/publications/statutory-charge-loans-loans-mortgage-interest-bill-screening
[5] The Loans for Mortgage Interest Regulations (Northern Ireland) 2017. www.legislation.gov.uk/nisr/2017/176/contents/made
[6] NI Direct. How to find property and land information. https://www.nidirect.gov.uk/articles/how-find-property-and-land-information
[7] Support for Mortgage Interest etc (Security for Loans) Bill. Explanatory and Financial Memorandum. www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/support-for-mortgage-interest-etc-security-for-loans/smi-bill---efm---as-introduced---full-print-version.pdf

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.

…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".

Hence, the purpose of Clause 1 of the Bill (as introduced), as stated in the EFM, is to (a) allow regulations to impose a charge on the property in respect of which a Support for Mortgage Interest loan is made, and (b) provide for charges securing Support for Mortgage Interest loans to be registrable in the Statutory Charge Register. Clause 1 is the only substantive clause of the Bill (as introduced). Clause 2 deals with the commencement date for, and short title of, the Bill.

This Bill Paper has been prepared to inform consideration of the Bill (as introduced). Highlighted throughout the paper are a number of issues that may merit further consideration. For ease of reference, the paper is divided into three sections:

Section 1: provides an **overview of Support for Mortgage Interest (SMI)**. It explores the eligibility criteria for SMI and includes data on the number of loan recipients in Northern Ireland. For contextual purposes this section also looks at the history of SMI, the transition of SMI from a benefit to an interest-bearing loan, the UK Government's rationale for this transition and, the reaction of a number of organisations to this change. The section concludes by looking at the current provisions in respect of SMI loans in Northern Ireland as provided for in The Loans for Mortgage Interest Regulations (Northern Ireland) 2017[8], as amended.

Section 2: explores the **provisions of Clause 1 (as introduced)** in some further detail. The paper provides information on some of the key terms included within the Bill and its EFM e.g. "Land Registry", "Registry of Deeds", "Statutory Charge" and "Statutory Charge Register".

Section 3: whilst SMI provides financial support on the interest on a mortgage it does not cover capital repayments. The issue of a **mortgage rescue scheme** for Northern was mentioned during the Bill's Second Stage. This section of the paper explores the issue of mortgage rescue schemes in other jurisdictions very briefly for contextual purposes. However, this issue is not within the remit of the Bill given that the purpose of the Bill is a technical amendment to the current SMI loan arrangements.

[8] The Loans for Mortgage Interest Regulations (Northern Ireland) 2017. www.legislation.gov.uk/nisr/2017/176/contents/made

Section 1: An overview of Support for Mortgage Interest (SMI)

What is Support for Mortgage Interest (SMI)?

The primary purpose of Support for Mortgage Interest (SMI) is to protect owner-occupiers receiving certain income-related benefits from the threat of repossession. In April 2018, SMI changed from a benefit that did not need to be paid back to a loan that must be repaid with interest. The loan is typically 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 the sale, death or transfer, the Department for Communities will write off any amount that cannot be repaid.

The interest payable on the loan can go up or down, but the rate will not change more than twice a year and the current rate is 0.6%[9]. A person also has the option to pay the loan more quickly by way of "voluntary repayments". However, the minimum voluntary repayment is £100 or the outstanding balance if it is less than £100. Further information on Support for Mortgage Interest (SMI) is available on the NI Direct website here. The information contained in the next sections on what the SMI loan will cover, eligibility criteria, and entitlement amount has been extracted from the NI Direct website.

What does the Support for Mortgage Interest (SMI) Loan cover?

SMI is normally paid directly to the lender. SMI **can help** towards mortgage *interest payments*[10]:

- for a mortgage.
- for a loan to buy.
- for certain loans taken out for repairs and improvements to the home.

However, SMI **cannot provide help with**:

- the amount borrowed (only the interest on the mortgage is paid).
- insurance policies.
- Missed mortgage payments (arrears).

What are the eligibility criteria?

A person may be eligible for SMI if they are a homeowner and are entitled to one of the following benefits:

[9] UK Government. Support for Mortgage Interest (SMI). www.gov.uk/support-for-mortgage-interest/repaying-your-loan
[10] NI Direct. Support for Mortgage Interest. www.nidirect.gov.uk/articles/support-mortgage-interest

- Income Support.
- income-based Jobseeker's Allowance (JSA).
- income-related Employment and Support Allowance (ESA).
- Universal Credit.
- Pension Credit.

A person in receipt of the above benefits may get a loan:

- After they have claimed Income Support, income-based JSA and income-related ESA for 39 consecutive weeks.
- From the date they start getting Pension Credit.
- After they have been getting Universal Credit for nine consecutive months. However, they should note that any earned income when on Universal Credit will affect the date when they can start to get SMI payments.

A person may also still be able to get SMI if they apply for one of the qualifying benefits above but cannot get it because their income is too high. The NI Direct website states that in *"this case you will be treated as getting the benefit you applied for"*.

How much SMI is an eligible person entitled to?

If a person is eligible for SMI, they will receive help paying the interest on up to £200,000 of their loan or mortgage. However, this figure is £100,000 if they receive Pension Credit or started claiming another qualifying benefit before January 2009. If a person already receives SMI and moves to Pension Credit within 12 weeks of stopping their other benefits, they will still receive help with interest on up to £200,000.

The amount a person will receive is not their actual interest rate but rather a standard interest rate. The standard interest rate is currently 2.09%. If they have a lower interest rate than this, they will receive more SMI than is needed to meet their interest payments. Support for Mortgage Interest works differently to a normal loan in that an eligible person will not receive a lump sum and the payments are typically made to the eligible person's mortgage lender or loan provider[11].

The example below provides a simple example demonstrating how the repayment of the Support for Mortgage Interest loan works[12]:

SMI Loan: Repayment Example:

You have a Support for Mortgage Interest (SMI) Loan of £10,000.

[11] NI Direct. Support for Mortgage Interest. www.nidirect.gov.uk/articles/support-mortgage-interest

[12] Example extracted from the Department for Work and Pension's 'Guidance: Get help from Support for Mortgage Interest: easy read'. Updated 25 November 2020. www.gov.uk/government/publications/easy-read-support-for-mortgage-interest-smi/get-help-from-support-for-mortgage-interest-easy-read. Note that social security is devolved to Northern Ireland but that due to the parity principle issues such as repayment criteria will be largely similar in GB and NI.

You sell or transfer ownership of your house.

After selling your house and paying of your mortgage you have £8,000 in equity.

The £8,000 can be used to pay back the Support for Mortgage Interest (SMI) loan.

The outstanding £2,000 will be written off.

How many people in Northern Ireland receive SMI? How many of these loans have been provided to loan recipients in unregistered properties?

The Department for Communities Section 75 screening document 'Statutory Charge on Loans – Loans for Mortgage Interest Bill – screening' states that the Department has provided a total of **1,409 SMI loans**. Of these loans **868** have been provided for **registered properties with all legal owners in the benefit unit**. The remaining **541 loans** have been provided to **unregistered properties** and those with legal owners outside the benefit unit. The screening document states that these unregistered properties do not have the security of a legal charge[13]. The document further states that at the **average of £5,000 per loan**, approximately **£2.7 million worth of loans are unsecured**. It maintains that the remaining 868 loan recipients with properties who have legal charge are not being treated equally to the 541 recipients who have unsecured loans and that this *"could result in a Judicial Review"*[14].

What is the policy context behind the transition of SMI from a benefit to an interest-bearing loan?

Financial assistance with mortgage interest payments has been made available for claimants of means-tested benefits for many years. However, the rules have changed on quite a number of occasions. The House of Commons Library has published a briefing paper on the 'Support for Mortgage Interest (SMI) scheme' that provides a very comprehensive chronology of the main changes to SMI from 1988 onwards[15]. However, please note that some of the timings in terms of the introduction of changes in the chronology may be different for Northern Ireland.

The transition of SMI from a benefit to an interest-bearing loan can be traced back to a Department for Work and Pensions informal call for evidence on Support for Mortgage Interest, published in December 2011. The call for evidence sought views on "*a number of ideas and future policy options for reforming SMI in the medium and longer term, to ensure that this support is cost-effective, simple to administer and provides*

[13] Department for Communities. Statutory Charge on Loans – Loans for Mortgage Interest Bill – screening. Date of screening 5 November 2021. www.communities-ni.gov.uk/publications/statutory-charge-loans-loans-mortgage-interest-bill-screening
[14] Ibid.
[15] Wilson, W.; Kennedy, S. & Keen, R. Support for Mortgage Interest (SMI) scheme. House of Commons Library Briefing Paper. 5 April 2018. https://researchbriefings.files.parliament.uk/documents/SN06618/SN06618.pdf

value for money for the taxpayer". One of the issues the call for evidence sought views on was transforming SMI from a benefit that did not require repayment to an interest-bearing loan that would be recouped by placing a charge on recipients' property. The call for evidence paper maintained that putting a charge on a property was a "straightforward process" that was used by other Government Departments to recover monies. For example, HMRC could use charging orders to recover debt and it could also be used by the then Child Support Agency to recover maintenance charges[16].

The Department for Work and Pensions set out in the 2011 call for evidence paper, the UK Government's rationale for transforming SMI from a benefit to a loan as follows[17]:

> *"The Government intends that SMI should provide short-term help to homeowners who are unable to make mortgage payments. SMI is time-limited for claimants receiving Jobseeker's Allowance but not for most claimants, and may be paid for lengthy periods of time. Under the present system, people who have reached the age to quality for and who are receiving Pension Credit and many disabled people may receive SMI indefinitely. They can either sell their property and potentially make profit from any equity that has built up over the years or decades after SMI has started, or leave the valuable asset to their heirs after death, with nothing paid back to the State for the help that was provided by way of SMI. This is unfair to taxpayers, many of whom are struggling to service their own mortgages or cannot afford to become owner occupiers.*
>
> *In circumstances where people need long-term help with their mortgages because they are disabled or have retired with outstanding mortgage liabilities, the Government believes that it is not fair to pay SMI indefinitely without recouping some of the cost to the taxpayers, through sharing in the asset gain to those individuals made possible by the support from the State.*
>
> *The Government believes that for new claims in the future, in exchange for supporting someone to live in their own home whilst they are on benefit for long periods, the best approach would be to put a charge on their properties to recoup SMI paid."*

Reaction to the UK Government's proposal on an SMI loan and property charge

The House of Commons Library [briefing paper] on SMI includes links to responses to the call for evidence from a selection of organisations such as the Social Security Advisory Committee (SSAC) and Shelter. The Social Security Advisory Committee (SSAC) response underlined that when considering changes to SMI there was a need

[16] Department for Work and Pensions. Support for Mortgage Interest. Informal call for evidence. December 2011. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220426/support-for-mortgage-interest-call-for-evidence.pdf

[17] Ibid.

to recognise the wider economic and social costs of any change, the state of the housing market, and the need to ensure that any changes did not undermine other initiatives to encourage mortgage lenders to exercise forbearance. Some responses also drew attention to the cost effectiveness of SMI and the relative lower cost of the scheme in comparison to alternatives to dealing with an increase in homelessness and/or providing support for rent through the benefits system[18].

With regards to the transition of SMI from a benefit to a loan, the briefing paper notes that reactions to the proposal to recoup SMI via a charge on the property were mixed. Citizens Advice, for example, were opposed to the introduction of a charge and argued that it would undermine the effectiveness of the mortgage "safety net" at preventing arrears and repossessions. Shelter felt that the introduction of a loan was setting a "worrying precedent" and doubted whether a charge would deliver value for money for taxpayers. The National Housing Federation (NHF) felt that whilst it was appropriate for the Government to consider ways of recouping the cost of SMI to the taxpayer, it argued that it was important to distinguish between those who required temporary assistance with housing needs and those with long term disabilities who used SMI to purchase a home shared through ownership schemes. NHF did not regard it as appropriate to impose a charge on the latter[19].

However, the UK Government continued to argue in favour of introducing a loan-based system for SMI. Its rationale was that[20]:

> *"Without the policy change a benefit is paid to those who are not working which enables continued build-up of equity in their homes. Support for homeowners, as for renters, when unemployed or sick is fair, but it is unfair to the taxpayer to subsidise assets for the homeowner. The policy increases the fairness of the welfare system by ensuring that the taxpayer recovers the value of payments made in support of an asset, instead of those benefits accruing solely to individuals. Maintaining the higher capital limit that was introduced as a temporary measure in January 2009 recognises the upward trend in house prices. A loan also ensures that individuals take responsibility for paying for their home, as it is an asset."*

Following the 2015 General Election, the Conservative Government announced in its 2015 Summer Budget that, from April 2018, SMI would convert from a benefit to an interest-bearing loan secured against the property and that payments would accrue interest at a rate lined to the Office for Budget Responsibility forecast of gilts[21]. Measures to convert SMI from a benefit to a loan in *Great Britain* were included in

[18] Wilson, W.; Kennedy, S. & Keen, R. Support for Mortgage Interest (SMI) scheme. House of Commons Library Briefing Paper. 5 April 2018. https://researchbriefings.files.parliament.uk/documents/SN06618/SN06618.pdf
[19] Ibid
[20] Welfare Reform and Work Bill: Impact Assessment for Converting Support for Mortgage Interest (SMI) from a benefit into a loan. July 2015. www.gov.uk/government/publications/welfare-reform-and-work-act-impact-assessment-for-the-benefit-cap
[21] HM Treasury. Policy Paper: Summer Budget 2015. www.gov.uk/government/publications/summer-budget-2015/summer-budget-2015

Sections 18 to 21 of the Welfare Reform and Work Act 2016 which received Royal Assent in March 2016. Regulations to implement the loan system in Great Britain, i.e. the Loans for Mortgage Interest Regulations 2017, were brought into force in July 2017. This section of the paper concludes by looking at the equivalent legislation introduced to replicate the new SMI loan provisions in Northern Ireland.

Support for Mortgage Interest: the COVID-19 pandemic and beyond - a call for change?

A number of financial institutions are reported to have called for changes to Support for Mortgage Interest (SMI) during the pandemic period, e.g. a reduction in the waiting period for SMI [22][23]. With regards to changing SMI from a loan to a benefit during the pandemic, the Department for Work and Pensions, in response to a question from Claire Hanna, MP (November 2020), stated that there were *"no plans to change the Support for Mortgage Interest scheme from a loan. The support provided is at the same rate as when SMI was paid as a benefit and therefore the scheme offers the same level of protection against repossession. Reversing the changes would not provide any additional assistance to home owners during the current pandemic"*[24].

A recent paper from the Centre for Policy Studies 'From SMI to Mortgage Support: How to help struggling homeowners through the pandemic' argues that there is a short term need to improve SMI to support home owners through the current crisis. The report's proposals include e.g. the abolition of the nine-month waiting period for SMI, that Government should encourage lenders to inform borrowers in arrears about SMI, that the first three months of SMI should be paid as a grant and not a loan, that no interest should be charged on the next nine months of any claim, there should be more flexibility for allowing people to claim SMI when moving into work, and that there should be a two-year time limit on claiming SMI for non-disabled claimants[25].

In Northern Ireland, Housing Rights are also continuing to campaign for changes to SMI. It has recently called for the re-instatement of SMI as a non-repayable grant, a reduction or removal of the waiting period for SMI, and change to enable working claimants in receipt of Universal Credit to claim SMI. It would also like to see an automatic referral system set up whereby an application for SMI would trigger a referral to independent housing and debt advice[26].

[22] BBC News. 'Covid: Banks call for an overall of mortgage support'. www.bbc.co.uk/news/business-57240532
[23] Corfe, S.; Norman, A. & Shepherd. Safe as houses? Strengthening the UK's mortgage safety net. 25 February 2021. www.smf.co.uk/publications/safe-as-houses/
[24] House of Commons. PQ 115842. Claire Hanna, MP "to ask the Secretary of State for Work and Pensions, if she will make it her Department's policy to reverse the changes to Support for Mortgage Interest due to the Covid-19 outbreak". 19 November 2020.
[25] Morton, A. & Heywood, J. From SMI to Mortgage Support: How to help struggling homeowners through the pandemic. September 2020. https://cps.org.uk/wp-content/uploads/2021/07/200926203111-SMITOMORTGAGESUPPORT1.pdf
[26] Housing Rights. 'Housing Rights' recommends changes to Support for Mortgage Interest loans. 18 February 2021. www.housingrights.org.uk/news/housing-rights-recommends-changes-support-mortgage-interest-loans

The introduction of loans for mortgage interest and repayment provisions in Northern Ireland

As previously stated, measures to convert SMI from a benefit to a loan in *Great Britain* were included in Sections 18 to 21 of the Welfare Reform and Work Act 2016 and subordinate regulations. Section 87 of the Northern Ireland Act 1998 places a duty on the Northern Ireland Minister for social security and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single system of social security for the United Kingdom (i.e. the "parity principle"). The legislation replicating the introduction of loans for mortgage interest for Northern Ireland is the Welfare Reform and Work (Northern Ireland) Order 2016 (Sections 13 to 16). The 2016 Order was facilitated via the Order in Council process rather than the full Northern Ireland Assembly legislative process. Further background information on the legislative context in respect of welfare reform legislation in Northern Ireland is available here[27] and from the 'Fresh Start' Agreement[28].

The Welfare Reform and Work (Northern Ireland) Order 2016 enabled regulations to be made that set out the detailed framework in respect of loans for mortgage interest in Northern Ireland. These regulations, The Loans for Mortgage Interest Regulations (Northern Ireland) 2017, as amended, provide for the loans to be secured against the claimant's property through a charge against the property[29]. The Explanatory Memorandum to the 2017 regulations set out a broad summary of how the loan payment scheme would operate for those moving from SMI as a benefit to a loan[30]:

> ***"Offer and acceptance of loan payments***
>
> *The offer process will begin with the Department for Communities sending eligible claimants a letter and an information leaflet. These documents will inform claimants about the introduction of the loan payments, explain when the change to SMI will take effect and inform claimants of various ways that may be available to them to meet their on-going owner-occupier commitments. It will explain that option to help claimants meet their owner-occupier payments will be to accept the offer of loan payments and will inform them of the steps they need to take in order to accept the offer.*
>
> *Before a claimant can accept the loan payments, they will also have to take part in a telephone conversation with a third-party provider that will provide more detailed information about the loan payments and alternative options that claimants may wish to explore to help them meet their owner-occupier*

[27] Explanatory Memorandum to The Loans for Mortgage Interest Regulations (Northern Ireland) 2017. www.legislation.gov.uk/nisr/2017/176/pdfs/nisrem_20170176_en.pdf

[28] A Fresh Start: The Stormont Agreement and Implementation Plan. 17 November 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf

[29] The Loans for Mortgage Interest Regulations (Northern Ireland) 2017.

[30] Explanatory Memorandum to The Loans for Mortgage Interest Regulations (Northern Ireland) 2017. www.legislation.gov.uk/nisr/2017/176/pdfs/nisrem_20170176_en.pdf

payments, including their mortgage commitments. Claimants who indicate that they want to take on the loan payments, or are undecided, will then be sent a loan agreement and charge form…

The loan payments offer will be formally accepted where the Department has received the loan agreement signed by the claimant (along with their partner, if they are a member of a couple and the documents referred to in regulation 5(2).

Can the Department confirm that the processes outlined above in regard to transfer from SMI as a benefit to a loan, as set out in the 2017 Explanatory Memorandum, were followed e.g. conversations with a third party provider who would explain the loan in further detail?

What current advice provision is available to loan applicants and recipients?

Do applications trigger a referral or signposting to independent advice organisations (e.g. who may be able to offer wider mortgage and benefits advice)? If not, what are the barriers to this?

The Explanatory Memorandum to the 2017 Regulations go on to explain how the loan repayment process would work[31]:

*"**Repayment***

The sum of the loan payments and accrued interest will become immediately due and payable where (i) the claimant's home is sold, (ii) legal or beneficial title in the property is transferred, assigned or otherwise disposed of, or (iii) on the claimant's death (where the claimant has no partner) or on the death of the last member of the benefit unit (where the claimant has a partner) (regulation 16).

Recovery will only be made from either the proceeds of sale, transfer, assignment or disposition or from the relevant person's estate (in the event of death), but repayment will be subject to certain limitations. For example, if the Department has obtained a legal charge over the claimant's property, repayment shall be limited to the available equity after prior charges on the property have been repaid. If there is insufficient equity to repay the total loan, we will write off any amount that cannot be repaid.

Claimants will be able to make voluntary repayments at any time. The lowest amount of repayment that will be accepted as a voluntary repayment will be £100. Unless the total owed is less than £100."

The Support for Mortgage Interest etc (Security for Loans) Bill's EFM states that whilst the 2017 regulations provide for loans for mortgage interest support to be secured

[31] Explanatory Memorandum to The Loans for Mortgage Interest Regulations (Northern Ireland) 2017. www.legislation.gov.uk/nisr/2017/176/pdfs/nisrem_20170176_en.pdf

against the claimant's property through a charge on the property, the difference in land law between Great Britain and Northern Ireland has created difficulties in terms of securing a similar level of security to protect those loans in Northern Ireland. In order to overcome this the Bill provides to allow regulations to impose a charge on the property in respect of which a Support for Mortgage Interest loan is made. Secondly, it provides for charges securing support for Mortgage Interest loans to be registrable in the Statutory Charges Register. The next section of this Bill Paper explores these provisions in further detail.

Section 2: The provisions of the Bill (as introduced)

The purpose of the Support for Mortgage Interest etc (Security for Loans) Bill is to provide for loans under Article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 to be charged on land and for the charges to be registrable in the Statutory Charges Register[32]. The section of the paper provides a brief overview of the difficultly experienced by the Department in obtaining security for some of the current SMI loans and how the provisions of the Bill intend to address those difficulties. To aid understanding of the issues, Table 1 provides an explanation of key terms such as "Statutory Charges" and includes links to further information.

How are SMI loans currently secured in Northern Ireland?

Recent figures show that the Department has provided a total of 1,409 SMI loans[33]. However, the Bill's Explanatory and Financial Memorandum (EMF) states that differences in land law between Great Britain and Northern Ireland has meant that obtaining a similar level of security to protect recovery of some of these loans has been difficult. It goes on to explain that it is only practicable to secure loans when the property is **registered** and appears on the Title Register in Land Registry (see Table 1 for an explanation of property title and Land Registry). A total of **868 of the 1,409** SMI loans have been secured this way.

The Department's section 75 screening paper indicates that the remaining **541 loans** do not have the security of a legal charge because they are either (a) **unregistered** or (b) relate to **properties with legal owners outside the "benefit unit"**[34]. However, the Bill's EMF states that Departmental officials have placed charges on properties **that are unregistered** through the Registry of Deeds and have currently **secured 156**

[32] Department of Finance. The Statutory Charges register. https://www.finance-ni.gov.uk/topics/land-registration/statutory-charges-register#:~:text=%20The%20Statutory%20Charges%20register%20%201%20The,%204%20Statutory%20Charges%20forms.%20%20More%20

[33] Department for Communities. Statutory Charge on Loans – Loans for Mortgage Interest – section 75 screening. www.communities-ni.gov.uk/publications/statutory-charge-loans-loans-mortgage-interest-bill-screening

[34] Ibid.

loans using this method (Table 1 provides an explanation of the Registry of Deeds). However, the EMF also states that:

> *"…the process of placing/removing a charge in these changes is cumbersome and can require action to be taken by the Departmental Solicitor's Office".*

Placing and removing a charge on the property on unregistered properties has been described as cumbersome. To aid the Committee's understanding of this difficulty, it might wish to consider requesting that the Department provide an overview of the processes involved in placing and removing a charge on unregistered properties.

The Bill also goes on to state that for properties where **all the legal owners are not included in the person's benefit claim (i.e. the benefit unit)**, it is also not currently possible to place a charge on the property.

Table 1: Overview of key terms and links to further information

RECORDS AND INFORMATION ABOUT LAND: WHAT IS THE TITLE REGISTER? WHAT IS THE REGISTRY OF DEEDS? WHAT IS THE STATUTORY CHARGES REGISTER?

Land and Property Service (LPS) holds three registries that hold records and information about land[35]:

- **Land Registry records map-based registrations in Northern Ireland and guarantees legal title.**
- **Registry of Deeds registers documents for unregistered land.**
- **Statutory Charges Register records certain restrictions.**

WHAT IS LAND REGISTRY?

Land Registry guarantees the validity of a property's legal title. Each property registered is said to have a unique folio number that describes the property, records who owns the property and gives details of mortgages or rights that may affect the property. Land Registry also produces a title plan, showing the location and extent of the land or property's legal boundary[36]. The NI Direct website highlights that when a property is sold in Northern Ireland, the title must be Registered in Land Registry, although there are certain exceptions to this. The website also highlights that there are a number of advantages to registered land e.g. legal title is guaranteed, covenants and mortgages are recorded, simple forms replace complicated deeds, disputes can be resolved more easily etc.

Further information on Land Registry is available from the NI Direct website here.

WHAT IS THE REGISTRY OF DEEDS?

The Department of Finance (DoF) website states that there has been a system of registration of documents relating to unregistered land (i.e. land which is not registered in Landlord Registry) since 1708. Under this system a written summary of the relevant document/deed is lodged in the Registry of Deeds. This summary is retained in the Registry and the original document

[35] NI Direct. How to find property and land information. www.nidirect.gov.uk/articles/how-find-property-and-land-information
[36] Ibid.

returned to the person who lodged it. The Registry does not guarantee that any document registered is valid or has any legal effect, it merely records the document's existence and its priority date. The DoF website also states that the "*Compulsory First Registration programme which was extended to all of Northern Ireland in 2003 will result in titles to land recorded in the Registry of Deeds migrating to the Land Register in the years ahead. This will ultimately lead to the phasing out of the Registry of Deeds*"[37].

Further information of the Registry of Deeds is available from the DoF website here.

The Department's section 75 screening paper outlines the financial and other potential repercussions relating to the unsecured loans:

> *"…At the current average of £5,000 per loan, approximately £2.7million worth of loans are unsecured with no secure methods to consider if recovery is possible. The remaining 868 loan recipients with a legal charge are not being treated equally to the 541 unsecured loan recipients and could result in a Judicial Review".*

In order to address the issue of the security of loans for mortgage interest, the Bill (as introduced) provide for loans under Article 13 of the Welfare Reform and Work (Northern Ireland) Order 2016 to be charged on land and for the charges to be registrable as statutory charges in the Statutory Charges Register. The next section of the paper provides a brief overview of Statutory Charges looking at some examples of their use by other Government Departments. It also explores the properties that will be subjected to Statutory Charges in respect of loans for mortgage interest support.

What are Statutory Charges? What is the Statutory Charge Register?

The Bill's EMF explains the purpose and effect of a Statutory Charge as thus:

> *"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 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."*

WHAT IS THE STATUTORY CHARGES REGISTER?

The Registry was set up in 1951 to provide purchasers of land with an easy method of checking whether a property is affected by certain statutory restrictions which could not easily be

[37] Department of Finance. Registry of Deeds. www.finance-ni.gov.uk/topics/land-registration/registry-deeds

discovered otherwise. Further information on the Statutory Charges Register is available on the Department of Finance website here[38].

An informative paper on Statutory Charges compiled by the former Registrar of Titles for Northern Ireland, notes that although they are formally referred to as statutory charges, this phrase actually embraces a variety of charges, restrictions and notices, which are listed in Schedule 11 to the Land Registration Act (Northern Ireland) 1970[39]. The paper helpfully sets the Statutory Charges that are currently registrable under a number of generic headings (e.g. agricultural property, amenity lands/conservation, historical monuments, matrimonial/civil partnership, roads/streets, housing etc). The paper also sets out how the application for the registration of Statutory Charges are made by public bodies and how they can be cancelled.

For illustrative purposes, provided below is an example of how a Statutory Charge can be used in other circumstances, for example, accordance with private tenancies law in Northern Ireland.

Example of use of a Statutory Charge – Article 25 of the Private Tenancies (Northern Ireland) Order 2006

The Private Tenancies (NI) Order 2006 permits a local council to serve a notice of unfitness or notice of disrepair on certain private rented sector properties that are unfit for human habitation. The notice of unfitness or notice of disrepair can require a person (e.g. a landlord) to remedy the issues included in the notice within a specified period of time. If a notice of unfitness or notice of disrepair is not complied with within the appropriate period, the district council may itself undertake the work required by the notice (under Article 25). Article 25 of the 2005 Order provides that any expenses and interest due to the district council under Article 25, may be recoverable by the council "summarily as a civil debt from the person upon whom notice is served". Schedule 4 of the 2006 Order provides that any charge created under Article 25(6), i.e. expenses incurred by the council to carry out the works in the notice of fitness or notice of disrepair, are to be included in Schedule 11 (matters to be registered in the Statutory Charges Register). That is, placed as a Statutory Charge on and payable, for example, out of the estate of the person responsible for the property (e.g. the landlord). An application for registration of such a charge should be made by the relevant district council within 2 months from the date when a demand is served under paragraph 4 of Article 25.

The Bill's EFM states under "Options Considered" that the option of not making the amendment e.g. to use Statutory Charges, was considered but that *"…considering the possible different 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".*

Statutory Charges and enforcement powers

The Bill's EFM states that the Department's enforcement powers as the holder of a charge created by the regulations will be capable of being exercised if an SMI loan is

[38] Ibid.

[39] Moir, Arthur. A Concise Guide to Statutory Charges. https://moirlegal.com/wp-content/uploads/2015/04/Statutory-Charges-Folio-Article.pdf

not repaid after having become repayable under the regulations and the terms of the agreement under which the loan recipient(s) accepted the loan. It goes on to explain that "*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"*. It also states that 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 a loan recipient (or their partner), if the Support for Mortgage Interest loan has not been repaid despite having become repayable.

In the interests of equality and the avoidance of a two-tier system, are the enforcement powers in respect of Statutory Charges the same as the enforcement powers currently associated with the legal charge on the registered properties of SMI recipients?

Statutory Charges and the transfer of SMI loan to another property

The EFM further states that introducing a Statutory *Charge "to be registered in respect of Support for Mortgage Interest 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"*. Currently, for **SMI loan recipients in Great Britain (from March 2021) it is possible to transfer the SMI loan to another property** without having to repay it when an owner occupier sells their home and purchases another property[40]. However, in order to be eligible to transfer a loan a number of conditions must be met under new regulations (i.e. The Loans for Mortgage Interest (Amendment) Regulations 2021[41]. The ability to transfer an SMI loan to another property does not yet apply to Northern Ireland. However, the Department's section 75 screening paper maintains that Statutory Charges will be beneficial to facilitating the transferring of SMI loans[42]:

"The introduction of a Statutory Charge will also aid in the implementation of future proposed beneficial amendments to SMI subordinate legislation which will allow a loan recipient to transfer their loan from one property to another. The original policy was that the loan should be repaid upon sale/transfer/death and therefore was not transferable. Allowing a Statutory Charge to be registered for SMI loans will simplify the process of transferring the loan in NI and will aid this beneficial change."

The paper maintains that ability to transfer the SMI loan between properties will impact positively on older people, people with disabilities and people with dependents who may require a move to more suitable accommodation due to changing circumstances.

[40] UK Government. Support for Mortgage Interest. www.gov.uk/support-for-mortgage-interest/repaying-your-loan
[41] See Shelter. Support for Mortgage Interest: transferring SMI to another property. https://england.shelter.org.uk/professional_resources/legal/benefits/support_for_mortgage_interest#title-14
[42] Department for Communities. Statutory Charge on Loans – Loans for Mortgage Interest – section 75 screening. www.communities-ni.gov.uk/publications/statutory-charge-loans-loans-mortgage-interest-bill-screening

Statutory Charges and the benefit unit

As previously stated, the Bill's EFM states that it is currently not possible to place a charge on a property if all the legal owners are not included in the person's benefit claim (i.e. the benefit unit). The EFM maintains that using a Statutory Charge would overcome this issue:

> *"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.*
>
> *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."*

What properties will Statutory Charges be applied to?

Clause 2 provides for the Bill to come into operation once it has received Royal Assent. However, the Bill's EFM states that no charges will be created over any properties until the Department for Communities had made the necessary regulations and those regulations have come into operation. In terms of which properties a Statutory Charge will be applied to, the EFM states that:

> *"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 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"*

Furthermore, during Second Stage of the Bill the Minister stated that[43]:

> *"Unsecured loans will be registered in tranches so as to ensure that the resources in my Department and Land Registry can be managed. My officials will be in contact with Land Registry and will maintain contact as the Bill progresses".*

To aid understanding of the Bill, what are the processes involved in (a) placing and (b) removing a Statutory Charge. Can the Department provide assurances that a Statutory Charge will be

[43] Northern Ireland Assembly. Official report. 16 November 2021.
http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/16&docID=356899#3743315

removed expeditiously once the SMI loan has been repaid on the property e.g. so that a sale of the property can progress in a timely manner?

The Minister stated that unsecured loans will be registered in tranches to ensure that resources in the Department and in Land Registry can be managed. Is there a tentative timeframe for this to be completed should the Bill become law and subordinate legislation be put in place?

Regulatory and Impact Assessments

The information in the table below is extracted directly from the Bill's Explanatory and Financial Memorandum (as introduced).

Financial Effects of the Bill	As it currently stands, 541 loans of the 1,409 loans, are loans which do not have the security of a legal charge. At the current average of £5,000 per loan, approximately £2.7 million worth of loans are unsecured with no secure method to consider if recovery is possible.
Human Rights Issues	The provisions of this Bill are compatible with the Convention of Human Rights.
Equality Impact Assessment	A screening exercise was undertaken on the proposal for a Statutory Charge to be registered in respect of SMI loans in accordance with Section 75 of the Northern Ireland Act 1998 and did not identify any issues adversely affecting any Section 75 groups.
Regulatory Impact Assessment Summary	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	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	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.

The EMF notes that a screening exercise was undertaken on the proposal for a Statutory Charge to be registered in respect of SMI loans in accordance with Section 75 of the Northern Ireland Act 1998 and did not identify any issues adversely affecting any Section 75 groups. However, the screening exercise paper does note that "*the Department for Communities does not hold specific data in relation to persons pertaining to individual Section 75 categories. Consequently there is limited information relating to those claimants who have applied or are in receipt of a SMI loan*"[44].

The screening exercise maintained that the introduction of a Statutory Charge would assist the implementation of future proposed amendments to SMI subordinate

[44] Department for Communities. Statutory Charge on Loans – Loans for Mortgage Interest – section 75 screening. www.communities-ni.gov.uk/publications/statutory-charge-loans-loans-mortgage-interest-bill-screening

legislation to allow a loan recipient to transfer their loan from one property to another. It stated that facilitating the transfer was likely to be particularly beneficial to people who may require a move to more suitable accommodation due to age, disability, or dependents.

Does the Department intend to gather section 75 data on current SMI loan recipients? If not, does it intend to gather section 75 data on future SMI loan applicants and recipients?

The screening exercise maintains that the introduction of Statutory Charges would assist in the implementation of future proposed amendments to subordinate legislation that would permit loan recipients to transfer a loan from one property to another. To aid understanding of the Bill, what is the current process for SMI loan recipients who are seeking to move home but wish to continue receiving an SMI loan?

When does the Department anticipate that subordination legislation facilitating the transfer of an SMI loan from one property to another will come into effect?

Public consultation

No Northern Ireland-specific consultation was conducted on the conversion of SMI from a benefit to a loan prior to its introduction. However, the Department for Work and Pensions launched a UK-wide informal call for evidence on Support for Mortgage Interest that ran from 6 December 2011 to 27 February 2012. The call for evidence document called for views on introducing a repayable loan for SMI.

The EFM for the Support for Mortgage Interest etc (Security for Loans) Bill states that no consultation has been carried out in relation to allowing a Statutory Charge to be registered in respect of Support for Mortgage Interest 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"*.

Prior to the introduction of the Bill, has the Department had any contact with any independent advice organisations regarding the potential introduction of Statutory Charges. If so, what was the feedback from those organisations?

The absence of a consultation on the proposals of the Bill was highlighted by the Chair of the Committee for Communities during the Second Stage of the Bill on 16 November 2021. The Chair stated that *"it is clear that the Committee needs to conduct a proper Committee Stage on the Bill in the absence of any prior consultation".* She noted that the Committee would be issuing a call for evidence and views and would be "*guided by the outcome of those to determine whether there are any key issues on which we need to take oral evidence"*.

Section 3: government support for mortgage payments and repossession prevention

Support for Mortgage Interest (SMI) provides financial support in respect of the mortgage interest but not the capital repayments. The issue of a mortgage rescue scheme for Northern Ireland was raised during the Second Stage of the Bill[45]. However, the Minister for Communities highlighted that the purpose of the Bill was to introduce a technical amendment to an existing policy but that:

> *"We are doing work with Ulster University and others to look at the broader issues that need to be addressed, but I am not going to address those in a technical amendment to a Bill that is about making sure that we treat everybody fairly".*

Therefore, the scope of the Bill is specifically confined to the technical amendments to the current Support for Mortgage Interest loans scheme. This section of the paper provides a brief overview of the position in regard to government support for mortgage payments in Northern Ireland and other jurisdictions. This information is provided for contextual/background purposes only, as this does not form part of the Bill's remit.

Northern Ireland

Northern Ireland does not have a "mortgage rescue" scheme. The Department had previously considered a mortgage rescue scheme in 2016[46]. A feasibility study and options appraisal on a potential mortgage rescue scheme was one of the recommendations of the Housing Repossessions Taskforce. The Taskforce was established in 2014 to investigate the impact of repayment arrears, repossessions and negative equity in Northern Ireland. Its final report, including a wide range of recommendations, was published in February 2015.

In an answer to an Assembly Question in June 2021, the Minister stated that given the low interest rates and market forecasts at that time, it was concluded that a mortgage rescue scheme should not be pursued. However, the Minister went on to state that[47]:

> *"…The economic impact of the COVID pandemic has refocused attention on this area. My officials are closely monitoring the position of borrowers and have commissioned research by the Ulster University Economic Policy Centre. Their initial findings are expected later this month. The research will help inform my decision on the best way to support home owners in the future."*

[45] Northern Ireland Assembly. Official Report. 16 November 2021. http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/11/16&docID=356899#3743315

[46] Northern Ireland Assembly. Question for Oral Answer. AQO 2002/17. http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=337190

[47] Northern Ireland Assembly. Question for Oral Answer. AQO 2002/17. http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=337190

In response to a recent Assembly Question, the Minister stated that the Ulster University Economic Policy Centre report did not recommend a mortgage rescue scheme but did discuss a range of other mitigations that could be considered[48]:

> *"You will be aware that my Department commissioned the University of Ulster Economic Policy Centre to complete research on housing stress as a result of the onset of the pandemic.*
>
> *While the research report discusses a range of mitigations that could be considered it does not recommend a Mortgage Rescue Scheme but suggests that other interventions have been shown to have a greater impact, are more appropriate, e.g. mortgage holidays.*
>
> *Lessons learned from other jurisdictions must also be carefully considered.*
>
> *We are very much still in the midst of this pandemic and face many economic uncertainties. I am determined that my Department will do everything it can to help those in society who need our help the most."*

The Minister further stated in a response to another Assembly Question requesting an update on the establishment of a mortgage rescue scheme that[49]:

> *"Officials are considering the findings of the Ulster University Economic Policy Centre (UUEPC) Report, 'An assessment of housing affordability stresses resulting from the COVID-19 Pandemic'. This work will help determine the most suitable form of government intervention to support those experiencing housing stress due to the pandemic.*
>
> *My Department continues to provide funding to Housing Rights to provide free independent advice on a range of housing issues including mortgage debt related queries and I would encourage anyone experiencing difficulties with paying their mortgage to seek assistance at the earliest opportunity".*

The Housing Rights Housing Advice website contains a specific section on 'Mortgage Debt Advice' as well as including contact details for its free advice line. The website provides information on:

- Problems paying your mortgage
- Going to court for mortgage arrears
- Getting help with mortgage debt
- Help to pay your mortgage or secured loan

[48] AQO 2828/17-22. Mr Matthew O'Toole MLA to the Minister for Communities. Tabled on 18 November 2021, answered on 1 December 2021.
[49] AQW 25649/17-22. Mr Mark Durkan MLA to the Minister for Communities. Tabled 11 November 2021, answered on 23 November 2021.

There is a range of information, advice and support on mortgage arrears, property repossession and debt available for homeowners on the NI Direct website:

- Housing advice – representation in court
- Mortgage arrears or payment difficulties
- Property repossession – the role of the court
- When the lender takes action against you

Other independent advice agencies also provide advice and support on issues such as benefits and debt. The Financial Conduct Authority website also provides information on COVID-19 and what it means for mortgages, insurance and personal loans.

Other jurisdictions

The table below sets out the position with regards to mortgage rescue schemes in other jurisdictions. This is for information purposes only, the paper does not provide any analysis or evaluation of the success of these schemes.

Table 2: Mortgage Rescue Schemes in other jurisdictions

Jurisdiction	Scheme overview
Scotland	The Home Owners' Support Fund consists of two schemes: **Mortgage to Shared Equity** – the Scottish Government buys a stake in the property so that the recipient can reduce the amount on their secured loan. **Mortgage to Rent** – this allows a social landlord to buy the property and the former homeowner can live there as a tenant. Further information on the two parts of the scheme, including eligibility criteria, are available here.
England	The UK Government had previously launched a mortgage rescue scheme for England. It was introduced as a response to the financial crisis of the early 1990s, **but the scheme has now ended.** The scheme previously comprised of: A "**mortgage rescue equity loan'** in which a housing association would lend the home-owner an interest free loan which is secured against the home. The loan amount was between 25% and 75% of mortgage costs depending on how much help was needed by a person to reduce their monthly housing costs. It also offered a '**Mortgage to Rent**' option in which a housing association would buy the property and their former homeowner could remain there as a tenant. Further archived information on the scheme is available here. The House of Commons Library have also produced an informative

	briefing paper (Nov 2021) outlining the history and context of the schemes.
Wales	According to Shelter Cymru a few local authorities and housing associations in Wales independently operate mortgage rescue schemes. For further information see the Shelter Cymru website here. There does not appear to be a Welsh Government mortgage rescue support package. However, in a speech to the Senedd (Welsh Parliament) in September 2020, the Minister for Housing and Local Government stated that she would want to look at the issue of mortgage rescue "further down the line" if the recession deepens in order to "see what we could do to help [homeowners] out by way of allowing them to convert their mortgage into rent payments, and take those homes into social ownership." She noted, however, that she wasn't in a position to elaborate more on this issue at that time[50].

[50] Senedd Business. Plenary – Fifth Senedd. September 2020. https://record.senedd.wales/Plenary/6563#C307368