The Social Security
(Housing Costs Special Arrangements) (Amendment and Modification)
Regulations 2008
(S.I.2008 No.3195)

The Social Security
(Housing Costs Special Arrangements) (Amendment)
Regulations 2009
(S.I.2009 No.3257)

Report by the Social Security Advisory Committee under Sections 173(4) and 174(2) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Sections 173(4) and 174(2) of that Act.

Presented to Parliament by the Secretary of State for Work and Pensions pursuant to Sections 173(4) and 174(2) of the Social Security Administration Act 1992

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The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 and The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009.

Introduction

1. On 2 September 2008, in response to the economic downturn, the Government announced a package of measures to support vulnerable homeowners and the housing industry, aimed at reducing the likelihood of repossession action. This package included a number of temporary changes for working age customers to Support for Mortgage Interest (SMI), which is administered by the Department for Work and Pensions. James Purnell, the then Secretary of State for the Department for Work and Pensions, further announced on 20 October 2008, that the SMI changes would be brought forward from April 2009 and introduced in January 2009, to enable people to access the extra help as soon as possible.

2. The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 were made and laid on 15 December 2008, and came into force from 5 January 2009. The Regulations were not referred to the Social Security Advisory Committee in accordance with section 173(1)(a) of the Social Security Administration Act 1992 as the then Secretary of State decided that it was inexpedient to refer them to the Committee because of the urgency of the matter. The Regulations were subsequently referred to the Committee on 7 January 2009 in accordance with section 173(2) of the Social Security Administration Act 1992.

3. The Regulations were intended to introduce a number of measures for all new and some repeat[1] working age claims from 5 January 2009:

- the waiting period before which full Support for Mortgage Interest (SMI) on eligible loans is paid in Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)) and income-related Employment and Support Allowance (ESA(IR)), was shortened from 39 or 26 weeks to 13 weeks;

[1] Those that do not link under existing rules to previous claims

- vulnerable customers[2] who previously received 50% of their housing costs under SMI after 8 weeks and 100% of housing costs after 26 weeks, now serve a 13 week waiting period before receiving 100% of their housing costs;

- the capital limit up to which mortgage interest can be met was increased from £100,000 to £200,000;

- a two year time limit on payment of SMI was introduced but only for new and some repeat income-based JSA claims; and

- those with a capital limit of £200,000 can keep the higher capital limit when they move onto State Pension Credit (SPC) within 12 weeks of leaving a working age benefit, for as long as they remain entitled to SPC.

The Government also froze the Standard Interest Rate (SIR) used as the basis of the SMI calculation at 6.08% for six months, for all existing and new SMI customers, including those claiming SPC. In his Budget on 22 April 2009, the Chancellor announced that the SIR will remain at 6.08% until the end of December 2009 to provide continued help for homeowners. The Chancellor announced a further six-month extension of this rate in his Pre-Budget Report on 9 December 2009.

Additionally, those in receipt of relevant benefits[3] part way through a SMI waiting period at 5 January 2009, but who had not completed serving their full 26 or 39 weeks benefited from the changes set out below:

- customers who had served 13 weeks or more of their waiting period by 5 January 2009 became entitled to SMI on eligible housing costs from that date;

- those who had served a period of less than 13 weeks at 5 January received SMI on eligible housing costs at the point at which they had served a full 13 weeks;

- those in vulnerable groups received the 50% rate on capital up to £100,000 until the 13 week point when they received the full rate on capital up to £200,000; and

[2] Vulnerable customers are:
- a lone parent who has claimed benefit because his/her partner has abandoned him/her or died
- a person claiming and who is getting carer's allowance; or is caring for someone who is getting Attendance Allowance (AA) or Disability Living Allowance (DLA) highest or middle rate care component; or cares for someone who has been awarded AA or the highest or middle rate of DLA care component on an advance claim but has not yet gone into payment; is caring for someone who has claimed AA or DLA - this applies for 26 weeks from the date of that claim, or until it is decided if this is sooner; or for IS only, if it is not more than 8 weeks since the claimant ceased to meet those conditions (above) or has stopped being a carer;
- a person claiming IS and is in prison awaiting trial or sentence, and;
- a person who has been refused payments under a mortgage payment protection insurance policy due to a pre-existing medical condition or because he/she is HIV positive.

[3] Income Support, Jobseeker's Allowance or Employment and Support Allowance

- the higher capital limit of £200,000 also applies to these groups as well as the two year time limit for those on Jobseeker's Allowance.

4. The Government has made clear that this is a temporary package of measures, which will be reviewed once housing market conditions improve.

5. DWP officials discussed the Regulations with the Social Security Advisory Committee (SSAC) on 7 January 2009. After scrutiny, the Committee selected the Regulations for formal referral, and requested some further information from the Department to support this process. Shortly thereafter, officials advised that there were a number of unintended consequences for some potential SMI recipients that arose from the first set of Regulations. A set of proposed amending Regulations, the Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009, was referred to the Committee on 4 March, in accordance with section 172(1) of the Social Security Administration Act 1992. The draft amending Regulations:

- incorporate minor amendments to make the legislation gender neutral in order to ensure consistency with current drafting practice;

- ensure that a claimant already in receipt of a relevant benefit which includes housing costs under the old rules continues to receive support calculated on this basis when moving to another relevant benefit where there is no gap in entitlement, rather than receiving support under the new rules;

- ensure that a claimant who is continuously entitled to the same benefit which includes support for housing costs under the old rules, continues to be dealt with under those rules; and

- ensure that a claimant who is in continuous receipt of a Jobseeker's Allowance cannot access a new 104 week period of payment of housing costs[4] immediately after having already received 104 weeks of payments. This restores the policy intention that customers making repeat claims to JSA whose claims do not link would be required to serve a 13 week waiting period to qualify for SMI. In these circumstances they would be able to start a new period of SMI entitlement of up to 104 weeks provided that they had left JSA and the new claim did not link to a previous claim.

6. The Committee published both sets of Regulations for consultation on 9 March. The consultation period ended on 5 April and the Committee subsequently issued its report on 13 May 2009.

[4] excluding other housing costs as set out in paragraph 16 of Schedule 2 to the JSA Regulations 1996 (SI 1996/207)

7. I am very grateful both to the Committee and to those who made representations to it. The arguments for amending the legislation have been advanced in a clear and forceful way and I have taken time to consider these very carefully.

8. This statement sets out, in accordance with sections 173(4) and 174(2) of the Social Security Administration Act 1992, my reasons as to why I have not felt it appropriate to give effect to the Committee's recommendations in full on this occasion. I have been unable to accept all the Committee's main recommendations. In particular I do not share the Committee's view that the 104 week limit for SMI for those receiving Jobseeker's Allowance should be revoked. Neither do I think that the Regulations should be extended to those claimants in receipt of Incapacity Benefit at 4 January 2009 and in the waiting period for housing costs, and to other claimants already in receipt of housing costs before the Regulations were brought into force. However, I have been able to address some of the concerns expressed by the Committee, and have consequently decided to make some changes to the original proposals.

The Committee's Report and the Government's response

Introduction

9. **When the SMI changes were first announced on 2 September 2008, the Committee were entirely supportive of the Government's case for offering increased support to those home owners who had lost their jobs in the economic downturn, and would have difficulty meeting their housing costs. The Committee believed it was evident that a rapid response was required, and understood why the urgency procedures were used in respect of the new package of support.**

10. The Government is grateful that the Committee recognised that it was appropriate for the urgency procedures to be used on this occasion for the majority of measures introduced. This decision was not taken lightly and the Government welcomes the Committee's acknowledgement that it was important and necessary to take immediate steps to temporarily reform the SMI scheme in light of the economic downturn, to ensure repossessions were avoided as far as possible.

The time limit

11. **However, from the outset, the Committee could see no justification for the use of urgency in respect of the introduction of a two-year limit on the payment of SMI for customers claiming JSA. With respect to the time limit, the Committee were concerned that, for the first time, a benefit was to be introduced that included an element that would be subject to an arbitrary cut-off point, and they could see no rationale for such a restriction. The Committee were concerned this represented a major shift in policy, and that it was to take effect without a full scrutiny and debate. The Committee made the case strongly in discussions with both ministers and officials, and in correspondence, that the time limit was neither appropriate nor necessary.**

12. The Government notes the Committee's concerns but believes that it was appropriate to introduce the two-year time limit and to include it in the package of SMI-related amendments so that all the planned measures were transparent. This time limit is not intended to set a precedent.

13. It is important that customers understand what impact any changes are likely to have on them from the outset so that they can plan accordingly and make choices. Introducing this particular provision in isolation through a separate set of Regulations would have been an inefficient way in which to bring in legislation and would not have provided clarity on the content of the whole package of measures from the outset. That is why all the measures were introduced together. The whole package of measures is temporary, including the time limiting aspect.

14. The time-limit on payment of SMI to JSA customers is underpinned by the principle of providing short-term help through the benefits system. It is not

considered appropriate that this help is provided indefinitely and it is important to be clear to customers on this from the start. The purpose of the time limiting is to ensure that there is an incentive for people to return to work. We want to focus the help that is given through the benefit system to those on low incomes at a time when they need it most. But, it is essential that customers are clear about their rights and responsibilities. The Government expects that those who can work should do so and that they take their part in pursuing opportunities open to them. Evidence from historical data shows that a majority of JSA customers spend less than six months on the benefit, with less than one per cent remaining on JSA for two years or more. While early evidence suggests that the downturn has caused an increase in the average duration of a JSA claim, we expect the proportion of cases lasting longer than two years to remain very low.

15. Individuals who can work should use their own efforts, or available routes such as the New Deal programmes offered by Jobcentre Plus to retrain, where appropriate, and return to work as soon as possible to sustain their housing situation. The decision to limit payment of eligible mortgage interest to customers claiming JSA to two years is based on the expectation that this will allow them a considerable period of time in which to re-enter and become established in the labour market. The two year limit is not absolute; claimants who make repeat claims that do not link can access a further two year period[5]. With the additional money that the Government is investing in helping to continue delivering effective support to get people back into work, this expectation is considered realistic.

16. **The Committee were also concerned that no plans had been made for the management of a seemingly two-year scheme, and dealing with the potential consequences of the cliff edge effects of terminating the temporary reforms.**

17. When the SMI changes were announced, the Government said that they would be reviewed when the housing market recovers. The Government is committed to monitoring and evaluating the package of changes, including the two year limit. This work will be completed towards the end of 2010 and before 5 January 2011, the earliest date from which the 104 week limit could impact on customers. It is not possible at present to estimate how long the measure might apply. We will keep this under review and will also consider carefully options for withdrawing the additional support offered by these reforms.

[5] For example, where a customer is in receipt of SMI and they or their partner move into work or undertake programmes such as New Deal, there is a 52 week linking period in place. In such cases the customer is treated as having been in continuous receipt of benefit and receives housing costs from day one of any repeat claim if they reclaim within 52 weeks. If there is a break of more than 52 weeks, the claim does not link. For example, a customer claims benefit and is awarded income-based JSA and receives SMI. The two year award of SMI is exhausted on 10 April 2011. The customer subsequently stops claiming benefits and starts work on 15 June 2011. The customer becomes unemployed and reclaims benefit from 20 June 2012. As there is a gap of more than 52 weeks between the claims, it does not link and the customer may establish entitlement to SMI afresh after serving the relevant qualifying period.

18. **The Committee also believe that the use of the urgency provisions risked compromising what would be complex policy and practice changes. As the Government decided to introduce the measures in January rather than April 2009, it was evident to the Committee that a number of aspects of the provisions were neither simple nor clear-cut. Stakeholders and welfare rights advisers were concerned about how the regulations would work in practice. The Committee believe that this resulted in uncertainty and confusion, and that illustrates the risks of using the urgency provisions for anything other than straightforward changes to regulations. The Committee further note that DWP officials swiftly turned to preparing amending regulations, and believe that is also an indication that insufficient time was made available to produce a fully worked-through policy before the original regulations were laid.**

19. The Government notes the risks of using the urgency provisions, and is committed to following due process in all cases except in those very rare circumstances where there are very strong reasons to deviate from the usual protocols. The Committee accepted that it was appropriate to use the urgency provisions for the SMI changes, other than the two year time limiting, and the then Secretary of State wrote to and met with Sir Richard Tilt (Chair of the Committee) to discuss the use of the urgency provisions in advance of the reforms being introduced. The Government acknowledges that some of the SMI amendments were technically complex but that was unavoidable and primarily due to the complex nature of the existing SMI rules and associated regulations.

20. Whilst amendments to the original regulations have been required, which with more time and scrutiny may have been avoidable, the general rules are clear and work as intended for the vast majority of cases. DWP officials did take steps to issue a question/answer brief about the operation of these changes to welfare rights groups in advance of the changes coming into force. As is usual following the introduction of changes to policy and legislation, further support to clarify the operation of the new rules was provided to advisers as and when required.

The Committee's initial response to the regulations and the proposed amendments

21. **The Committee raised a number of issues at the January meeting when they considered the regulations that had already come into effect, including:**

- **the principle of time-limiting an element of benefit entitlement, and the rationale for setting the cut-off point at two years; and**
- **the linking of claim periods, and the potential perverse incentives on people who are entering employment on a short-term or part-time contract basis.**

22. The points on time-limiting are addressed at paragraphs 12 to 15 and in the section of this report that covers the Committee's recommendations. No specific changes have been made to the housing costs rules about the way in which claim periods link and these continue to operate as they did before the introduction of the new support measures.

23. **The Committee queried the lack of detail in the information that the Department could provide about the numbers and groups who might be potentially affected.**

24. Government officials did provide an Explanatory Memorandum and an Equality Impact Assessment to the Committee, but the Government acknowledges that the information contained in those documents is limited due to a lack of reliable data. However, DWP officials are developing an integrated package of monitoring and evaluation activity, with a full evaluation to be carried out towards the end of 2010, in order to determine the effectiveness of the reforms. The Equality Impact Assessment will be updated once more data is available.

25. **The Committee also questioned the impact of the changes on lone parents and people on Employment and Support Allowance who are in receipt of SMI and who move on to JSA; and the impact on 'vulnerable customers' of a move from a 8/26 week waiting period to a 13 week waiting period which would appear to leave them worse off. Under the old rules, these customers received 50 per cent of their housing costs after 8 weeks, followed by 100 per cent eligible housing costs after 26 weeks.**

26. There is protection for customers such as carers, lone parents and partners who move from Income Support or Employment and Support Allowance to income-based JSA within 12 weeks or less. These customers do not have their SMI time-limited.

27. Under the temporary SMI reforms, the Government brought the waiting period for vulnerable groups into line with the waiting period for all other working age customers. This means that vulnerable groups will receive 100 per cent of eligible interest after a waiting period of 13 weeks. This rationalises our approach to all working age customers, and would only adversely affect those vulnerable customers who stop claiming SMI very early on. Overall, the measure is beneficial for vulnerable groups as they will receive, on average, four weeks more SMI over the first 26 weeks of their claims than under the previous system.

28. **At the Committee's meeting in March, scrutiny of the proposed amending regulations raised two further specific issues. The Committee were concerned about the inequity created by the inclusion of ESA claimants, and the exclusion of Incapacity Benefit (IB) claimants, from the groups to benefit from the changes to the waiting period. There was also concern around whether those claimants with an underlying entitlement to 'a relevant benefit' would benefit from the changes to SMI. The Committee further raised the general point that in the haste to make**

changes to the SMI provisions, they believed that a number of policy and practice issues had either been ignored or over-looked.

29. The specific concerns were carried forward into the Committee's conclusions, which are covered below. On the Committee's general point the Government acknowledges that the relevant legislation governing SMI is complex and that the changes, for good reason as explained earlier, were introduced quickly. It is unfortunate that amending Regulations are needed to clarify some areas of policy but the Government does not agree that any policy or practice issues have been ignored.

Summary of Responses to the Consultation

30. **The Committee's report summarises the responses received to their consultation, and points out that a total number of five responses were received. The respondents broadly welcomed the major beneficial elements in the original package of regulations. In particular, they supported the increase of the capital limit for SMI from £100,000 to £200,000, and the reduction in the waiting period to 13 weeks. These were seen as an important, well-targeted response to the economic downturn.**

31. However, respondents had concerns about the following issues that the Committee mention in their conclusions:

- **there was no support for either the two-year time limit or the use of the urgency provisions to effect its introduction** (see paragraphs 12 to 15 above, and paragraph 42 below);
- **questions were raised about the practical application of the regulations, in particular with regard to the transition between the old and the new regulations and their application of the latter to new claimants to JSA** (see paragraph 26 above);
- **the Government should follow through these temporary measures with a review of support for home-owners, to take place alongside the current review of Housing Benefit** (see paragraphs 39 and 61 below);
- **those with no actual entitlement to a relevant benefit until SMI is included will not gain from these changes unless they reduce their working hours or give up their part-time work completely** (see paragraphs 58 and 59 under the Committee's recommendations);
- **that existing customers approaching retirement age will not benefit when they claim Pension Credit** (see paragraph 47 below);
- **the new measures have created a situation in which claimants in identical positions are now treated differently depending upon the date they claimed and whether or not they are (or were) receiving a relevant benefit during their waiting period** (see paragraphs 58 to 60 in the section covering the Committee's recommendations);

32. The respondents raised a number of other concerns:

- **those who make new claims, and who would previously have claimed Income Support (e.g. lone parents) are now required to claim JSA and will subsequently be caught by the 2 year limit;**

- **the period of the freezing of Standard Interest Rate (six months) may be too short, and consideration should be given to extending the period as many people are locked into fixed interest rates in the longer term; and**

- **there will be adverse impacts following from the removal of SMI at 8 weeks from the most vulnerable claimants who will now have to wait for 13 weeks before entitlement begins.**

33. It is the case that some people who would previously have claimed Income Support will now be required to make a new claim for JSA instead[6]. They will, however, benefit from the reduced waiting period of 13 weeks and the increased capital limit of £200,000 even though they would be subject to the two-year limit on payment of SMI, like any other new SMI customer who claims JSA.

34. As explained at paragraphs 14 and 15 above the Government expects that individuals who are able to work should do so as soon as possible to sustain their housing situation; this measure is consistent with that policy. With the substantial additional investment we have made since November 2008 to help those on out-of-work benefits get back to work it is reasonable to expect that they should find work within two years. Increased support to help lone parents move into work through the New Deal for Lone Parents has helped over 625,000 people and we will continue to offer a range of support to this group.

35. On the point about freezing the Standard Interest Rate (SIR) used to calculate SMI, the Chancellor announced in the Pre-Budget Report on 24 November 2008 that the then changes in the base rate should not be reflected in the SIR for six months. This is because the reduction in the rate would have reduced SMI payments, and thus the amount of help available to homeowners. The SIR was frozen at 6.08% for all existing and new SMI customers, including those claiming Pension Credit.

36. The Regulations, which introduced the SIR of 6.08% used to calculate SMI, do not have an end date. In the Budget, on 22 April 2009, the Chancellor announced the extension of the freeze of the SIR at 6.08% until the end of December 2009, to provide continued support for homeowners. The Chancellor recently announced a further six-month extension of this rate in his Pre-Budget Report on 9 December 2009.

[6] From 26 October 2009, lone parents with a youngest child aged 10 or over, will no longer be able to claim Income Support but will claim Jobseeker's Allowance if they are capable of work, or Employment and Support Allowance if their capability for work is limited by a disability or health condition.

37. The Government's response to respondents' concern about the changes in the waiting period for vulnerable customers is set out at paragraph 27 above.

The case for a review of support for owner occupiers in the benefit system

38. **The Government is currently reviewing Housing Benefit. One respondent (Citizens Advice) argued that this opportunity should be used to review support for housing costs in the round, those of both tenants and owner occupiers.**

39. The Government's Housing Benefit Review will focus on arrangements for tenants in the rented sector. There are no plans to review the existing arrangements for SMI customers beyond those changes that form part of the temporary package aimed at helping to minimise the numbers of repossessions in the downturn.

The Committee's Conclusions

40. **The Committee welcomes the Government's early action to address the consequences of the deteriorating housing and labour markets, but remain of the view that a commitment to review the operation of the main elements of the new SMI scheme in the light of the changing labour and housing markets would have been sufficient to indicate that these changes were not intended to be permanent. They can see no need or justification for an arbitrary two year cut-off point, and noted that the estimated savings are relatively modest. Nor can the Committee see anything 'urgent' about its introduction as part of this package of regulations, and would question whether a measure that will not impact upon claimants before January 2011 can satisfy the urgency provisions under Section 173 (1) (a) of the Social Security Administration Act 1992.**

41. The Government's reasons for using the urgency provisions to introduce a single package of measures, which included the two year time limiting element for new JSA customers, are set out at paragraphs 12 to 15.

42. **The Committee comments that this measure also represents an unnecessary complication to an otherwise welcome – but already complex package – and as a first example of the time-limiting of a significant component of a benefit, it represents a worrying precedent and does not seem to us to have been fully thought through. It has been pointed out to them that projections are that unemployment will peak, at the earliest, later in 2009. Accordingly, the Committee is concerned that new claimants to JSA who may be unemployed for some time during the current recession may through no fault of their own, be denied the support they need in order to keep their homes.**

43. Time limiting of SMI for some customers is not intended to set a precedent. It was introduced after much thought and is designed to support the Government's objective to maximise employment and opportunity for all. While it is too early to know what the labour market might look like in 2011 the Government does

not believe that it is unreasonable or unrealistic to expect someone to have found work or started some relevant work-related activity within two years of starting to receive Jobseeker's Allowance. Whilst unemployment figures have risen during the downturn this has been at a lower rate than many expected. Furthermore the numbers of JSA customers moving into work have been very encouraging. Early evidence shows that, despite the downturn, the vast majority (99%) of JSA claims end within two years. Leaving benefit within two years, even in this economic climate, should therefore not be considered an unrealistic expectation for most job seekers.

44. **In proceeding with a time-limited scheme the Committee considers that little account has been taken of the evolution of the recession in the period since these arrangements were first announced. The continuing deterioration in the housing and labour markets and in the economic situation generally, and the potential for the new arrangements themselves to influence the behaviour of claimants (who, for example, may try to leave JSA for ESA when the cut-off point is imminent), lenders and the housing market, all add to the case for the lifting of the threat of their termination after two years. Furthermore, the very modest estimated savings (up to £5 million) that the Committee has been told may be made from the cut-off are outweighed by the potential costs of providing accommodation for homeless families following the repossession of their homes. The measure may have an indirect impact upon claimants who fall into arrears with their mortgage repayments, before the 104 week period, by encouraging lenders to take action for repossession well before the two year period has ended, on the basis that the arrears will worsen dramatically after the two years.**

45. As noted in paragraph 17, the Government is committed to monitoring and evaluating the package of changes, including the two year limit. This work will be completed towards the end of 2010 and before 5 January 2011, the earliest date from which the 104 week limit could impact on customers. It is too early to know how these arrangements might influence claimant behaviour but the Government continues to engage with lenders, the vast majority of whom are continuing to show forbearance. The Council of Mortgage Lenders has cut its forecast for the number of repossessions this year to 48,000. Having anticipated 75,000 repossessions in 2009 in last year's housing market forecasts, the forecast had already been revised down to 65,000 in June, but is now being cut again in recognition of lender forbearance, government measures to assist homeowners and the beneficial effect of continuing low interest rates which are helping most borrowers facing difficulty to keep their homes.

46. **The Committee is also concerned that older workers, who become unemployed when they are more than two years away from the age at which they can claim Pension Credit, and thus be entitled to SMI without a two year time limit, may be unable to meet their mortgage payments in the short term and as a result lose their home before they find new employment. Likewise, they believe that it would be simpler and fairer to apply the increased upper limit to claimants to Pension Credit. They note that as the impacts of the recession become more profound and**

widespread (for example, more workers who are over the qualifying age for Pension Credit will be losing their jobs), it becomes harder to justify the selective application of measures that aim to mitigate impacts of being without an income from employment.

47. The Government is committed to helping all those on JSA find employment regardless of their age. Older people seeking work should be no less likely to succeed than their younger counterparts as age discrimination at work is unlawful in almost all types of employment. Employees (or prospective employees) are protected from age discrimination, including discrimination in recruitment, employment terms and conditions. Those customers entitled to housing costs under the new rules immediately before reaching pension age who transfer to State Pension Credit will continue to receive assistance with their eligible housing costs up to the higher capital limit of £200,000 for as long as they remain entitled to State Pension Credit. State Pension Credit customers making claims for help with eligible housing costs will continue to benefit from not having to serve a waiting period before receiving eligible assistance, and will not have a two year time limit applied to that assistance. The current Standard Interest Rate of 6.08% applies to all age groups, not just those of working age. As resources are limited the Government decided to focus help from the increased capital limit on working age customers.

48. **The Committee states that there are a number of other issues of equity and consistency that are raised by these regulations. Respondents have pointed out, the date upon which a claim is made, and whether the claimant is entitled to some benefit while in her/his waiting period, now determines the outcome of the claim, and two claimants in otherwise identical positions will now be treated very differently. The group with only underlying entitlement to benefit in the waiting period is not necessarily any less vulnerable than those with benefit in payment. In many cases, once housing costs are added into such claimants' applicable amounts, they will be no better off, or will only be better off by the amount of income they have that is disregarded in the benefit calculation. Many will be worse off in the long term, particularly where their loans exceed £100,000 or they have a 39-week waiting period (or both).**

49. The Government acknowledges that those with only an underlying entitlement to a qualifying working-age benefit (that is to say, they are treated as entitled to ESA, IS or JSA during the housing costs waiting period) and who subsequently become entitled to that benefit once the SMI component becomes payable would not currently be assessed for SMI under the new rules. It agrees that those who make a new claim for a relevant[7] working age benefit on or after 5 January 2009 but who are in the situation described above should be treated in the same way as other working age customers who become entitled to payment of that benefit from the outset of their claim. We are therefore introducing regulations alongside this response to address this issue. Customers, including but not limited to those on IB, who were in a waiting period on 4 January 2009 and who were treated as entitled to benefit

[7] Income Support, Jobseeker's Allowance (Income-based), Employment and Support Allowance (Income-related)

under a linking rule are, however, excluded from these changes. However, a person in these particular circumstances could still benefit from the new rules if, after becoming entitled to a working-age benefit, he or she later makes a repeat claim that does not link to a prior period of entitlement.

50. **The Committee recognises that a quick and relatively straightforward way of making necessary changes to SMI was needed, they are not comfortable with the consequences of setting a fixed date for transition from the old scheme to the new one. In the cause of consistency, they would also have welcomed consideration being given, for example, to introducing the new capital limits to all claimants, rather than only new claimants of the relevant benefits.**

51. The Government notes the Committee's comments and acknowledges that as with any change that is introduced from a specific date, which is usually the most straightforward approach, there are likely to be different consequences for individuals depending on their circumstances. As noted at paragraph 47 the Government decided to focus help on working age customers. Those claiming State Pension Credit and getting help with their mortgage payments through SMI do not serve any waiting period, benefit from the Standard Interest Rate which has been frozen at 6.08% since November 2008, and are far less likely to have mortgages of over £100,000. Evidence[8] suggests that those of state pension age who make a new claim will not be disadvantaged by not receiving the higher limit since they generally have much lower levels of capital outstanding.

52. **The Committee identified a number of issues around the operation of both the original recommendations and the proposed amendments that suggest to them that the use of urgency has had the effect of leaving unresolved a number of significant policy and practice issues. The Committee views these as complex provisions, and believe that these loose ends have left some claimants and their advisers (and Jobcentre Plus staff members) without the clarity that is needed when difficult financial decisions have to be made. They have noted in the footnotes to their summary of the responses to the consultation that officials have sought to clarify a number of the points that respondents have raised. The Committee states that it is particularly important that all these points are fully articulated both in guidance to staff and in information to customers, and it must be recognised that many of the details about the application of these measures are not straightforward and that they will be confusing to staff and customers alike. It notes that these measures present an interesting example of the inevitable tensions between the generally wished for simplification of the benefit system, and the consequences of making the necessary adjustments to the system to meet a particular need or contingency.**

[8] DWP: Quarterly Statistical Enquiry, February 2008.

53. DWP officials ensured that a comprehensive question and answer brief about the operation of these changes was provided to welfare rights groups in advance of the changes coming into force. As is usual when developing and introducing any legislative changes operational staff in Jobcentre Plus and the Pension, Disability and Carers Service were engaged with and decision makers issued with full guidance on the operation of these changes. Information was also made available to customers on the DWP website, Directgov and subsequently through revisions to a DWP leaflet for homeowners explaining the additional help available with housing costs.

54. **The Committee are of the view that the position of those claimants without an entitlement to a relevant benefit until SMI is included (i.e. during their waiting period), should be reconsidered. The regulations as they stand may create a perverse incentive for some claimants (such as lone parents with an underlying entitlement to Income Support) to detach themselves from the labour market by giving up or reducing their part-time work so as to ensure that their mortgage repayments are met. Should you proceed with the proposed amending regulations, it is vital that all the outstanding issues are resolved and the resulting policy decisions are communicated to stakeholders.**

55. These points are addressed at paragraph 49 and in the next section of this paper.

The Committee's recommendations

56. The Government notes the Committee's recommendations that:

- **there was no reason to use the urgency provisions in relation to time limiting SMI, and would strongly suggest that the Department reviews the use of the urgency provisions in respect of this element of the package.**

- **the proposed package of amendments to the extant regulations includes the removal of the time-limiting of SMI. If the time limit is retained the Government should commit to completing a review of the two year cut-off by the end of February 2010.**

- **the proposed amendments to the original regulations should proceed, and that steps are taken urgently to resolve the outstanding policy and operational issues that have been identified in their report and further recommend that:**

  – **the proposed amendments should extend the package of support to customers currently in the waiting period who, for the purposes of their benefit claim, have an excess of income over requirements; and**

  – **that provision should be made to extend the benefits of the full package to those customers who were receiving IB, and in the waiting period, at 4 January 2009.**

- **the resolution of outstanding policy and operational issues should include engagement with stakeholders (such as respondents to our consultation) before the regulations are finalised in order to ensure that no issues remain unresolved, and that both the content and availability of public information on these complex measures will meet the needs of customers and their advisers.**

- **the Government takes the opportunity to review support for owner occupiers (both within the income related benefits system, and more generally) alongside the current review of Housing Benefit, with a view to considering support for housing costs irrespective of tenure type.**

57. The Government has considered these recommendations, but for the reasons outlined in this response intends to retain the two-year time limit for payment of Support for Mortgage Interest for those making claims to JSA on or after 5 January 2009. The Government's position on the use of the urgency provisions for time limiting is set out at paragraphs 12 and 13. The time limiting arrangements will be included in the overall evaluation of this package of temporary measures towards the end of 2010.

58. The Government intends to proceed with the proposed amendments to the original Regulations and guidance will be issued to staff to ensure that any questions about the policy and practical application of these amendments are addressed. Except as mentioned in paragraph 59, the Government agrees that the new rules should be extended to customers who first claim a relevant benefit on or after 5 January 2009 but who are not entitled to that benefit until the SMI component becomes payable. The Committee describes this group as those who are in the waiting period who, for the purposes of their benefit claim, have an 'excess of income over requirements'. The Government believes those now in a waiting period would have had a reasonable expectation at the time of their claim that they would benefit from the new rules that were introduced on 5 January 2009.

59. While it will be possible to amend regulations to ensure that this group benefits from the new arrangements from a future date, we cannot do so retrospectively. We intend to set up a scheme to address potential shortfalls, details of which will be published in due course.

60. The Government does not, however, accept the Committee's recommendation that the new rules should be extended to those customers who were receiving Incapacity Benefit (IB) and in a waiting period at 4 January 2009, some of whom could still benefit from the new rules in the future as explained in paragraph 49. Nor does it intend to extend help to those who were not entitled to a qualifying benefit on 4 January 2009 and who were treated under a linking rule as being in continuous receipt of a qualifying benefit in respect of a period which began on or before 4 January 2009. The policy intention from the outset was to use the limited resources available in a targeted way. It was never intended that every group or customer would receive the extra assistance available through this temporary set of measures. Furthermore, extending the

new rules to these groups would introduce the need to set up complex and potentially costly arrangements to identify, if feasible, those affected. Additional help has already been provided for customers in waiting periods at 4 January 2009 and focused deliberately on those actually receiving income-related benefits and those customers receiving contribution-based JSA or contributory ESA who were able to establish entitlement to the income-related element at the same time.

61. The Government has no specific plans to review the SMI rules alongside the wider consultation on Housing Benefit. It will, however, continue to monitor the impact of its schemes designed to support homeowners in the current climate and in particular will be reviewing the 2009 SMI changes towards the end of 2010.

62. Further information on the proposed changes set out in this response will be made available to DWP staff administering SMI as well as customers and stakeholders, through the usual communications channels. Full consideration will be given to meeting the information needs of customers and stakeholders. It has not been possible for the Government to engage specifically with stakeholders about the content and availability of information in advance of these Regulations being laid before Parliament. However, following feedback and questions from a number of stakeholders on the earlier guidance, DWP staff are aware of the need to provide comprehensive information on the operation of these regulations in an accessible format.

Conclusion

63. The Government is grateful to the Committee, and the interested parties who responded to the consultation exercise, for their consideration of the draft Regulations and for their comments on them.

64. The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 (S.I. 2009 No.3257) are now laid before Parliament.

The Rt Hon James Purnell MP
Secretary of State for Work and Pensions
Caxton House
London SW1H 9DA

13 May 2009

Dear Secretary of State

REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE UNDER SECTIONS 173(4) AND 174(2) OF THE SOCIAL SECURITY ADMINISTRATION ACT 1992 ON THE SOCIAL SECURITY (HOUSING COSTS SPECIAL ARRANGEMENTS) (AMENDMENT AND MODIFICATION) REGULATIONS 2008 AND THE SOCIAL SECURITY (HOUSING COSTS SPECIAL ARRANGEMENTS) (AMENDMENT) REGULATIONS 2009

1. Introduction

1.1 This report is unusual in that it covers two sets of regulations. The first set

of regulations (The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (SI 2008/3195)) were introduced following the use of the urgency provisions contained in Section 173 (1) (a) of the Social Security Administration Act 1992. The latter provisions for cases in which consultation with the Committee is not required state that:

173. – (1) Nothing in any enactment shall require any proposals in respect of regulations to be referred to the Committee ... if –

> *(a) it appears to the Secretary of State that by reason of the urgency of the matter it is inexpedient so to refer them; or*
> *(b) the relevant advisory body have agreed that they shall not be referred.*

1.2 Section 173 (2) of the Act provides for the referral to the Committee of regulations made in this way ... as soon as practicable after making them. Accordingly, we scrutinised this first set of regulations at our meeting on 7 January 2009, shortly after they were brought into effect.

1.3 The second set of regulations considered in this report are the proposed Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 that would amend the first set. We have scrutinised these proposed regulations in the normal way. Following consideration of both sets of regulations – the extant set and the proposed amendments to them – we took them both on formal referral. However, given that the two sets of regulations are inextricably linked and have been considered side by side, we decided that a single report covering both the original measures and the proposed amendments to them offers the best framework for a complete and effective presentation of our views.

The scrutiny and formal referral processes

1.4 The regulations that introduced the special arrangements to assist people paying mortgages who claim a relevant working age benefit (Jobseeker's Allowance (JSA), Income Support (IS) or Employment and Support Allowance (ESA)) were, as we note above, made using the urgency provisions. They were announced in September 2008, laid on December 15th 2008, and came into effect on January 5th 2009. After scrutiny at our January meeting, we selected them for formal referral, and requested some further information from officials to support this process. However, while we were waiting for officials to provide us with additional papers, we were alerted to a number of unintended consequences from this first set of regulations, and we had already noted that various stakeholder discussion groups were questioning whether the regulations as they stood would deliver the package that had been announced.

1.5 Officials subsequently confirmed that they were preparing amendments

to the regulations that would address the flaws that had been identified. They also advised us that they would need to make these amendments as soon as possible. Accordingly, we decided to defer the commencement of the formal referral exercise on the extant regulations until we had scrutinised the proposed amending regulations. The latter were brought to our meeting on March 4th and we decided that these, too, should be formally referred. The first stage of this unprecedented 'double' formal referral exercise commenced on Monday March 9th with the publication of a press release inviting comments on the proposals to reach us by April 3rd 2009. The documents to support this exercise (comprising both the extant and the proposed sets of regulations, and the Department's two Explanatory Memoranda detailing the nature, purpose and effects of these measures) are at Appendix 1. These documents were also published on our website on the same day.

1.6 We received five responses. Details of the organisations and individuals who responded are at Appendix 2. We are grateful to those who responded and to officials of the Department for Work and Pensions for their assistance.

2. The Extant and Proposed Regulations

2.1 The Secretary of State for Work and Pensions made the following amendments to The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (SI 2008/3195) which were laid on the 15 December 2008 under the provisions of S.173(1)(a) of the Social Security Administration Act 1992 and came into effect on the January 5th 2009.

Broadly, these regulations are intended to have the following effects for new claims, which do not link to previous claims, made after 4 January 2009 where the person becomes entitled to JSA, IS or ESA:

- an increase in the capital limit up to which mortgage interest can be met from £100,000 to £200,000;

- a reduction in the waiting period, depending on circumstances, from 39 weeks or 26 weeks to 13 weeks;

- the introduction of a two-year limit on the payment of Support for Mortgage Interest (SMI) for customers claiming Jobseeker's Allowance;

- a freeze in the Standard Interest Rate used as a basis of the SMI calculation at 6.08% for all SMI recipients, existing and new including pensioners receiving State Pension Credit; and

- to provide for those serving a waiting period for housing costs at 4 January 2009 to also benefit from these changes in order to address the regulations' cliff edge aspect.

2.2 The proposed Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 amend unintentional anomalies in the above regulations. In short, they would:

- incorporate minor amendments to make the legislation gender neutral in order to ensure consistency with current drafting practice;

- ensure that a claimant already in receipt of a relevant benefit which includes housing costs under the old rules continues to receive support calculated on this basis when moving to another relevant benefit where there is no gap in entitlement, rather than receiving support under the new rules;

- ensure that a claimant who is continuously entitled to the same benefit which includes support for housing costs under the old rules, continues to be dealt with under those rules; and

- ensure that a claimant who is in continuous receipt of a Jobseeker's Allowance cannot access a new 104 week period of payment of housing costs.

3. Summary of the Department's position

3.1 Changes to the Support for Mortgage Interest (SMI) rules were first announced by the Government on September 2nd 2008, and they form part of a package of measures aimed at supporting vulnerable home owners and the housing industry. The changes were originally due to be introduced from April 2009. However, due to the economic downturn, increasing unemployment and rising home repossessions the Government took the decision to introduce the measures in January 2009.

3.2 The reduction in the waiting period for SMI will ensure that eligible customers receive help with their mortgage interest payments earlier than the previous rules would have allowed. The increase in the capital limit is intended to reduce repossessions by taking account of increased property prices and mortgages, and at £200,000 is higher than the current average new mortgage advance of £150,000 (as at November 2008). The decision to limit payment of SMI to two years for JSA customers is based on the expectation that this will allow them (JSA customers) a considerable period in which to re-enter the labour market

3.3 According to the most recent (May 2009) estimates of the cost and impact of the SMI package that have been provided for us by the Department's officials, around 20,000 people will receive additional support each year. Around 3,000 will receive additional support from the increase to the capital limit. The Department's current estimate of the AME cost of reducing the waiting period to 13 weeks and increasing the capital limit to £200,000 is around £155m over 2009/10 and 2010/11. The additional cost of freezing the Standard Interest Rate at 6.08% for twelve months until December 2009 is estimated to cost around £235m. We have noted that the estimated savings of the two-year time limiting remain relatively low within the overall cost of the package, with estimated savings of around £5 million per annum by 2012/13. However officials have pointed out that given the uncertainty in the economy, all the estimates associated with this package are being kept under regular review.

4. The Committee's Position

The original package

4.1 At the time that these measures to address the worsening economic, employment and housing markets conditions were first announced jointly by the Department for Communities and Local Government and the Department for Work and Pensions on 2nd September 2008, we were entirely supportive of the case for offering increased support to those home owners who had lost their jobs and would have difficulty meeting their housing costs, thus putting their homes at risk. It was evident that a rapid response was required, and we understood why the urgency procedures were to be used in respect of a new package of support. However, from the outset, we could see no justification for the use of urgency in respect of the introduction of a two-year limit on the payment of SMI for customers claiming JSA. We were also concerned that no plans had been made for the management of a two-year scheme and dealing with the consequences of the cliff edge effects of termination.

The time limit

4.2 For the first time, a benefit was to be introduced that included an element that would be subject to an arbitrary cut-off point, and we could see no rationale for such a restriction. This change represented a major shift in policy, and it was to take effect without a full scrutiny and debate. In our discussions with both ministers and officials, and in subsequent correspondence, we argued strongly that while the Government had made a good case for moving quickly to legislate for early introduction of the improved support, there should be no urgency attached to the setting of the duration of the scheme, particularly as Ministers had made it clear that the arrangements would be subject to review in the light of developments in the housing market[9]. In our view, the time limit was neither appropriate nor necessary.

4.3 In addition to this important point of principle, we were also concerned that the use of urgency risked compromising what we believed would be complex policy and practice changes. Turning the policy that had been sketched out in the September announcements into comprehensive and coherent provisions, that would deal with the many and varied individual circumstances to which they would be applied in a fair and consistent manner, looked to be challenging. As the laying date for the regulations approached, and the Government decided to introduce the measures in January rather than April 2009, it was evident that a number of aspects of the provisions that had been announced were neither simple nor clear-cut. Stakeholders contacted us querying the application of the provisions to particular cases, and websites for welfare rights advisers carried a lively debate about how the regulations would work in practice. The resulting uncertainty and confusion point to the risks of using the urgency provisions for anything other than straightforward changes to regulations.

The proposed amending regulations

4.4 As we have explained above, it was while we were waiting for further information to support the formal referral of the regulations that came into effect on 5th January 2009 that we received confirmation from officials that the latter regulations were flawed in a number of respects and that amendments would be needed in short order. We agreed to consider these proposed amendments at our March meeting. However, having scrutinised the proposals, we came to the view that they did not appear to have resolved all the questions that had been raised about the practical application of the extant regulations, and so we decided that these proposals, too, should be subject to formal referral. As we have observed above (paragraph 4.3), the use of urgency in this instance appears to have resulted in insufficient time being made available to produce a fully worked-through policy before regulations were laid.

The Committee's initial response to the regulations and the proposed amendments

4.5 The issues of detail that we raised at our January meeting when we considered the regulations that had already come into effect:

- the principle of time-limiting an element of benefit entitlement, and the rationale for setting the cut-off point at two years;

- the lack of detail in the information that the Department could provide about the numbers and groups who might be potentially affected;

[9] We have noted that the Parliamentary Under Secretary in oral evidence reported to the House of Lords Committee on the Merits of Statutory Instruments that these regulations were intended to be temporary, and that the policy would, "be in place for two years, so the current default is that we will revert back to the previous situation after two years". However, as these regulations stand, there is no end date for the scheme specified.

- the linking of claim periods, and the potential perverse incentives on people who are entering employment on a short-term or part-time contract basis;

- the impacts on lone parents and people on Employment and Support Allowance (ESA) who are in receipt of SMI and who move on to JSA; and

- the impact on 'vulnerable customers' of a move from a twenty six week waiting period to a thirteen week waiting period which would appear to leave them benefiting less from the changes (i.e. in that they move from no help with costs for 8 weeks, followed by fifty percent of costs for eighteen weeks, with full costs met after week twenty six) in a less advantageous position than those categorised as non-vulnerable who move from a thirty nine to a thirteen week waiting period.

4.6 At our meeting in March, scrutinising the proposed amending regulations we raised two further specific concerns:

- whether those claimants with an underlying entitlement to a relevant benefit would benefit from the changes to SMI; and

- the inequity created by the inclusion of ESA claimants, and the exclusion of Incapacity Benefit (IB) claimants, from the groups to benefit from the changes to the waiting period.[10]

More generally, we were concerned that in the haste to make changes to the SMI provisions, it appeared that a number of policy and practice issues had either been ignored or over-looked.

5. Summary of responses to the consultation

5.1 Respondents broadly welcomed the major beneficial elements in the original package of regulations. In particular, they supported the increase of the capital limit for SMI from £100,000 to £200,000, and the reduction in the waiting period for relevant benefits before SMI would be paid. These were seen as an important, well-targeted response to the economic downturn.

5.2 However, there was no support for either the two-year time limit or the use of the urgency provisions to effect its introduction. Respondents also raised questions about the practical application of the regulations (in particular with regard to the transition between the old and the new regulations and their application of the latter to new claimants to JSA), and, more generally, about the Government's overall policy in relation to support for owner occupiers. It was suggested that the Government should follow through these temporary measures with a review of support for home-owners, to take place alongside the current review of Housing Benefit.

[10] This applies only to 'cliff edge' cases, i.e. those in a waiting period at 4th January. This is because when ESA was introduced at the end of October last year, IB could no longer be claimed.

5.3 With regard to the arrangements for transition from the old provisions to the new, respondents drew our attention to a number of inequities and inconsistencies that will result from the application of the regulations, both as they stand and as and when they are subject to the proposed amendments. In particular, it was pointed out to us that:

* those with no actual entitlement to a relevant benefit until SMI is included (for example, someone in the waiting period is working part-time for less than 16 hours, but whose income exceeds the amount of benefit that they would be entitled to before housing costs are included), will not gain from these changes unless they reduce their working hours or give up their part-time work completely and rely only upon their Income Support/Employment and Support Allowance/ Jobseeker's Allowance;

- only new claimants receiving a relevant working age benefit will be able to claim SMI on the increased capital limit. This means that existing claimants approaching retirement age will not benefit when they claim Pension Credit[11];

- it would appear that those who make new claims, and who would previously have claimed IS (e.g. lone parents) but are now required to claim JSA, will be caught by the 2 year limit;

- the period of the freezing of standard interest rate may be too short, and consideration should be given to extending the period as many people are locked into fixed interest rates in the longer term[12];

- the new measures have created a situation in which claimants in identical positions are now treated differently depending upon the date they claimed and whether or not they are (or were) receiving a relevant benefit during their waiting period, and in which some claimants who will continue to be subject to the £100,000 limit may fall further into arrears;

- there will be adverse impacts following from the removal of SMI at 8 weeks from the most vulnerable claimants who will now have to wait for 13 weeks before entitlement begins[13].

[11] With regard to Pension Credit claims, officials have pointed out that while customers already on Pension Credit by 4 January and those claiming Pension Credit after attaining state pension age, cannot benefit from the increased capital limit, working age claimants who are receiving benefit calculated using the increased capital limit can keep that limit if they claim Pension Credit within twelve weeks of their working age benefit ending. Guidance to staff processing such claims deals specifically with this provision.

[12] Officials have pointed out that the regulations do not contain an end date for the 6.08% rate, and that the Chancellor has just announced, in the Budget, a further six months at this rate.

[13] Officials have suggested to us that this group will be better off overall (on the basis that they will receive 100% of SMI entitlement after 13 weeks), unless they stop claiming SMI very early.

The case for a review of support for owner occupiers in the benefit system

5.4 The Government is currently reviewing Housing Benefit. One respondent (Citizens Advice) argued that this opportunity should be used to review support for housing costs in the round, those of both tenants and owner occupiers.

5.5 Citizens Advice pointed out to us that the current system of support is based upon policy assumptions from the early 1990s when it was expected that owner occupiers would be able to cover their mortgage payments in the short term from their own resources; by private insurance in the medium term; and then with the assistance of the state in the long term. Citizens Advice argue that these assumptions no longer hold good, and that in the light of developments in the broader Government policy towards home ownership, a mortgage safety net is needed that can help more vulnerable borrowers sustain home ownership.

6. The Committee's Conclusions

6.1 While we have welcomed the Government's early action to address the consequences of the deteriorating housing and labour markets, we remain of the view that a commitment to review the operation of the main elements of the new SMI scheme in the light of the changing labour and housing markets would have been sufficient to indicate that these changes were not intended to be permanent. We can see no need or justification for an arbitrary two year cut-off point, and we have noted that the estimated savings are relatively modest. Nor can we see anything 'urgent' about its introduction as part of this package of regulations, and would question whether a measure that will not impact upon claimants before January 2011 can satisfy the urgency provisions under Section 173 (1) (a) of the Social Security Administration Act 1992.

6.2 This measure also represents an unnecessary complication to an otherwise welcome – but already complex package – and as a first example of the time-limiting of a significant component of a benefit, it represents a worrying precedent and does not seem to us to have been fully thought through. For example, it has been pointed out to us that projections are that unemployment will peak, at the earliest, later in 2009. Accordingly, we are concerned that new claimants to JSA who may be unemployed for some time during the current recession may through no fault of their own, be denied the support they need in order to keep their homes.

6.3 It seems to us that in proceeding with a time-limited scheme, little account has been taken of the evolution of the recession in the period since these arrangements were first announced. The continuing deterioration in the housing and labour markets and in the economic situation generally, and the potential for the new arrangements themselves to influence the behaviour of claimants (who, for example, may try to leave JSA for ESA when the cut-off point is imminent), lenders and the housing market, all add to the case for the lifting of the threat of their termination after two years. Furthermore, the very modest estimated savings (up to £5 million) that we have been told may be made from the cut-off are outweighed by the potential costs of providing accommodation for homeless families following the repossession of their homes.

6.4 The measure may have an indirect impact upon claimants who fall into arrears with their mortgage repayments, before the 104 week period, by encouraging lenders to take action for repossession well before the two year period has ended, on the basis that the arrears will worsen dramatically after the two years. We are also concerned that older workers, who become unemployed when they are more than two years away from the age at which they can claim Pension Credit, and thus be entitled to SMI without a two year time limit, may be unable to meet their mortgage payments in the short term and as a result lose their home before they find new employment. Likewise, we believe that it would be simpler and fairer to apply the increased upper limit to claimants to Pension Credit. As we have noted, as the impacts of the recession become more profound and widespread (for example, more workers who are over the qualifying age for Pension Credit will be losing their jobs), it becomes harder to justify the selective application of measures that aim to mitigate impacts of being without an income from employment.

6.5 There are also a number of other issues of equity and consistency that are raised by these regulations. As respondents have pointed out, the date upon which a claim is made, and whether the claimant is entitled to some benefit while in her/his waiting period, now determines the outcome of the claim, and two claimants in otherwise identical positions will now be treated very differently. The group with only underlying entitlement to benefit in the waiting period is not necessarily any less vulnerable than those with benefit in payment. In many cases, once housing costs are added into such claimants' applicable amounts, they will be no better off, or will only be better off by the amount of income they have that is disregarded in the benefit calculation. Many will be worse off in the long term, particularly where their loans exceed £100,000 or they have a 39-week waiting period (or both).

6.6 While we recognise that a quick and relatively straightforward way of making necessary changes to SMI was needed, we are not comfortable with the consequences of setting a fixed date for transition from the old scheme to the new one. In the cause of consistency, we would also have welcomed consideration being given, for example, to introducing the new capital limits to all claimants, rather than only new claimants of the relevant benefits.

6.7 We have also identified a number of issues around the operation of both the original recommendations and the proposed amendments that suggest to us that the use of urgency has had the effect of leaving unresolved a number of significant policy and practice issues. These are complex provisions, and these loose ends have left some claimants and their advisers (and Jobcentre Plus staff members) without the clarity that is needed when difficult financial decisions have to be made.

6.8 As we have noted in the footnotes to our summary of the responses to the consultation that we received, officials have sought to clarify for us a number of the points that respondents have raised. It is particularly important that all these points are fully articulated both in guidance to staff and in information to customers, and it must be recognised that many of the details about the application of these measures are not straightforward and that they will be confusing to staff and customers alike. These measures present an interesting example of the inevitable tensions between the generally wished for simplification of the benefit system, and the consequences of making the necessary adjustments to the system to meet a particular need or contingency.

6.9 We are of the view that the position of those claimants without an entitlement to a relevant benefit until SMI is included (i.e. during their waiting period), should be reconsidered. The regulations as they stand may create a perverse incentive for some claimants (such as lone parents with an underlying entitlement to Income Support) to detach themselves from the labour market by giving up or reducing their part-time work so as to ensure that their mortgage repayments are met. Should you proceed with the proposed amending regulations, it is vital that all the outstanding issues are resolved and the resulting policy decisions are communicated to stakeholders.

7. Recommendations

7.1 The original regulations have been made, laid and implemented following the use of the urgency provisions. While we support the main elements of the regulation package, we have concluded that there was no reason to use the urgency provisions in relation to time limiting SMI, and we would strongly suggest that the Department reviews the use of the urgency provisions in respect of this element of the package.

7.2 We further recommend that the proposed package of amendments to the extant regulations includes the removal of the time-limiting of SMI. However, should you decide to retain the time limit, we recommend that you commit to completing a review of the two year cut-off by the end of February 2010.

7.3 We agree that the proposed amendments to the original regulations should proceed, and recommend that steps are taken urgently to resolve the outstanding policy and operational issues that we have identified in this report. We further recommend that:
(a) the proposed amendments should extend the package of support to customers currently in the waiting period who, for the purposes of their benefit claim, have an excess of income over requirements; and
(b) that provision should be made to extend the benefits of the full package to those customers who were receiving IB, and in the waiting period, at 4 January 2009.

7.4 We would also recommend that the resolution of outstanding policy and operational issues should include engagement with stakeholders (such as respondents to our consultation) before the regulations are finalised in order to ensure that no issues remain unresolved, and that both the content and availability of public information on these complex measures will meet the needs of customers and their advisers.

7.5 Finally, we strongly recommend that the Government takes the opportunity to review support for owner occupiers (both within the income related benefits system, and more generally) alongside the current review of Housing Benefit, with a view to considering support for housing costs irrespective of tenure type.

Richard Tilt
Chair of the Social Security Advisory Committee

APPENDIX 1

EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY COMMITTEE

The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008

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Introduction

1. We are making changes to Employment and Support Allowance Regulations, Income Support Regulations, Jobseeker's Allowance Regulations, and State Pension Credit Regulations[14] to introduce changes to the rules on payment of mortgage interest. These changes are part of a package of urgent measures the Government announced on 2 September to support home owners and the housing industry. The changes more accurately reflect the value of people's property and reduce the waiting time before help with mortgage interest becomes available. The Government took the decision to introduce the measures in light of the economic downturn, increasing unemployment, rising repossessions and, following from that, the drive to reduce, as far as possible, the likelihood of homes being repossessed. The Regulations were made and laid on 15 December and come into force on 5 January 2009.

2. The Regulations provide that the waiting period before full Support for Mortgage Interest (SMI)[15] is paid in Income Support (IS), Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA), will be shortened from 39 or 26 weeks to 13 weeks. For vulnerable customers and those with existing housing costs, the waiting period will be changed from 8

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[14] The Employment and Support Allowance Regulations 2008 (SI 2008/794), the Income Support (General) Regulations 1987 (SI 1987/1967), the Jobseeker's Allowance Regulations 1996 (SI 1996/207) and the State Pension Credit Regulations 2002 (SI 2002/1792).

[15] SMI includes other qualifying loans, such as those for eligible home improvements, as well as loans taken out to purchase the home.

weeks at 50% SMI and 26 weeks at 100% SMI, to 13 weeks at 100% SMI for new working age claims.

3. The other main changes are the capital limit up to which mortgage interest can be met will increase from £100,000 to £200,000; a two year time limit on **payment of SMI will be introduced but only for new, some repeat and some existing JSA** claims[16]; and those in receipt of SMI over £100,000 will keep the higher capital limit when they move onto State Pension Credit from a working age benefit. The Government is also freezing the Standard Interest Rate used as the basis of the SMI calculation at 6.08% for six months, for all existing and new SMI customers, including those claiming state pension credit.

4. The Regulations also provide assistance for those already in receipt of relevant benefits but who will not have completed their 26 or 39 week waiting period for SMI by the 5th January 2009. The higher capital limit of £200,000 will also apply to these customers as well as the two year time limit for those on Jobseeker's Allowance. Customers who have served 13 weeks or more of their waiting period by 5 January will be entitled to SMI on eligible housing costs from that date. Those who have served a period of less than 13 weeks at 5 January will receive SMI on eligible housing costs at the point at which they will have served a full 13 weeks. Those in vulnerable groups in receipt of the 50% rate at 5 January will continue to receive this rate on capital up to £100,000 until the 13 week point when they will receive the full rate on capital up to £200,000. Customers who move from a working age benefit to State Pension Credit within 12 weeks and who are receiving SMI on capital up to £200,000 can continue to receive SMI at the higher capital limit for as long as they remain entitled to State Pension Credit.

5. In accordance with Section 173 of the Social Security Administration Act 1992, the Government believes it was inexpedient to refer the proposals to the Social Security Advisory Committee (SSAC) because of the urgent need to introduce them as soon as possible.

6. As these regulations have been laid we do not propose to hold a public consultation on them.

Policy and operational background

7. The changes introduced by the Regulations are intended to provide help more quickly to nearly 5,000 homeowners, at a time when many of them are experiencing great financial pressure. The current economic outlook is uncertain and household repossessions are rising. There has been a fall in both the number of people in employment and the employment rate. The number of inactive people of working age has increased, but the inactivity rate is unchanged. The number of vacancies has fallen while growth in average earnings, both including and excluding bonuses, has decreased.

[16] **Some customers moving to JSA from IS or ESA or IS are excluded from this time-limiting, paragraph 19 below refers.**

8. The unemployment rate was 5.7% for the three months to August 2008, up 0.5% over the previous quarter and up 0.4% over the year. The number of unemployed people increased by 164,000 over the quarter and by 146,000 over the year, to reach 1.79 million. The claimant count was 939,900 in September 2008, up 31,800 over the previous month and up 104,900 over the year. The last time there were larger quarterly increases in the unemployment rate and level was in the early 1990s. These statistics were published by the Office for National Statistics on 15th October.

9. Household repossessions have been increasing throughout 2008 and this has informed the introduction of these changes. Statistics published by the Council of Mortgage Lenders in November showed that there were 11,300 repossessions in the third quarter of 2008, 12% higher than the 10,100 in the second quarter. The Council of Mortgage Lenders continues to expect the total number of repossessions this year to be around 45,000, an increase from 27,000 in 2007. The numbers of households in arrears has also been increasing, and the Council of Mortgage Lenders forecast that there will be 170,000 mortgages in arrears of more than three months by the end of the year.

10. The waiting period for SMI is being reduced so that customers will receive help with their mortgage interest payments earlier than under the 26 or 39 week waiting periods. This reduction is intended to reduce the arrears that can build up on a mortgage account through missed payments and also to reduce repossessions by payment of interest to mortgage lenders earlier. HM Treasury secured agreement in November from the Council of Mortgage Lenders that they would recommend to their members that repossession action is not taken for the first three months of missed repayments.

11. The increase in the capital limit to £200,000 is also intended to reduce repossessions by taking account of increased property prices and mortgages. The new limit exceeds the current average mortgage advance of £150,000 and is also intended to take account of regional variations in property prices, such as in London and the south east of England. The current average property price is just over £200,000, so mortgages at this level of 95% loan to value would be covered by this increase in the capital limit.

12. The time-limit on payment of SMI to JSA customers is underpinned by the principle of providing short-term help through the benefits system and because it is not considered appropriate that this help is provided indefinitely particularly in the current economic climate. This is intended to focus the help that is given through the benefits system on those on low income when they need it most.

13. The Government believes that individuals who can work should use their own efforts, or available routes such as the New Deal programmes offered by Jobcentre Plus to retrain, where appropriate, and return to work as soon as possible to sustain their housing situation. The decision to limit payment of eligible mortgage interest to customers claiming JSA to two years is based on the expectation that this will allow them a considerable period of time in which

to re-enter and become established in the labour market. With the additional £1.3 billion that the Government is investing in helping to continue delivering effective support to get people back into work, this expectation is considered realistic.

14. The Standard Interest Rate is being fixed at 6.08% for all customers existing and new to take account of the interest rates which our customers actually pay and so protect them against repossession. Almost 80% of mortgages are either fixed or standard variable rate mortgages. Data from the Council of Mortgage Lenders and the Bank of England show that the weighted average interest rate for mortgages is 5.83%. Around 74% of mortgages issued over the last two years are fixed rate mortgages at an average interest rate of 5.74%. The fix of the Standard Interest Rate will mean that customers in these circumstances receive interest payments that match closely the rates they are required to pay.

15. Some existing customers people will experience a temporary drop below 6.08% (actually, 4.58%) because the Department's IT systems normally "track" the Bank of England base rate, which was reduced from 6 November. It takes time to adjust our IT systems, but we are taking action to ensure that this is compensated for. This is designed to deliver the Chancellor's pledge. Overall, people will receive 6.08%.

16. JSA (IB) and ESA (IR) cases are covered by the JSA Payments System. In this case the scan which reduced the rate to 4.58% has been re-run and cases reset at 6.08%, to avoid the reduction.

17. IS and Pension Credit cases are covered by the Income Support Computer System. Corrective action here will take longer. The reduction to 4.58% cannot be reset from 14 December. Instead, we will fully compensate people by resetting their standard interest rate at a higher percentage to ensure that overall they will have received an average of 6.08%. Following the compensatory readjustment of the interest rate, we will reset it at 6.08%. Some cases may require clerical intervention.

18. Customers who move from IS or ESA to JSA within 12 weeks will not be subject to time-limiting. This is because these customers are further away from the labour market at the point of transfer compared to a jobseeker who claims JSA having left work.

Current rules for SMI

19. SMI is available through the benefit system towards eligible mortgage interest during periods of sickness and unemployment and is paid as an integral part of IS, income-based JSA, State Pension Credit and income-related ESA. Customers may also qualify for help towards certain home improvement loans, and towards meeting other housing costs (such as ground rent and specific service charges). It is reasonable to expect that homeowners with the assistance of lenders should make provision for short periods when they are unable to meet their mortgage payments. The Government does not provide assistance towards arrears, endowment policies or capital repayments.

20. Currently, and in summary, customers with a loan taken out prior to 2 October 1995 – receive 50% of eligible mortgage interest after serving an 8 week waiting period, and 100% of their eligible interest from week 27, up to a capital limit of £100,000, and there is no limitation on the length of time for which housing costs can be paid. If the customer falls into certain specific groups, they also serve these waiting periods, irrespective of when their loan was taken out. The groups are:-

- widow(ers) or people who have been abandoned with responsibility for children;
- prisoners detained in custody pending trial or sentence upon conviction
- those with caring responsibilities; and
- those who have been refused payments under an insurance policy due to either a pre-existing medical condition or because they were infected by HIV or AIDs.

21. Customers with a mortgage taken out after 2 October 1995 receive no help for the first 39 weeks of their claim, and 100% of their eligible mortgage interest from week 40, up to a capital limit of £100,000 (unless the loan was taken out to adapt the existing dwelling to meet the needs of a disabled person, where the £100,000 ceiling does not apply). There is no limitation on the length of time for which housing costs can be paid. Customers in receipt of State Pension Credit are not required to serve a waiting period, and receive help from day one for their eligible housing costs.

22. The Employment and Support Allowance Regulations, the Income Support Regulations , the Jobseeker's Allowance Regulations and the State Pension Credit Regulations provide for a standard rate of interest to be payable on all eligible loans. Currently, this is calculated by using the Bank of England Base Rate plus an additional 1.58%.

23. There are linking rules in the Employment and Support Allowance Regulations, the Income Support Regulations and the Jobseeker's Allowance Regulations. Where these rules apply, a claimant can be treated as entitled to benefit for a particular period. This counts towards any waiting period and means that the person qualifies for housing costs sooner.

24. There is a 12 week linking period which applies to claimants who make repeat claims to these benefits. Claims made within 12 weeks of each other are treated as continuous so that if the claimant is serving a waiting period the qualifying date for payment of eligible housing costs is the same as it was in the earlier claim. If the claimant was in receipt of payment of eligible housing costs in the earlier claim, these payments will resume from the start of the subsequent claim.

25. For claimants who move into work or undertake programmes intended to move them into work or closer to the labour market such as New Deal, there is a 52 week linking period. There is also a 26 week linking period for claimants who leave benefit because their income from either child support or a Mortgage Payment Protection Insurance policy exceeds the amount

of benefit to which they are entitled. In addition, there is a 104 week linking period for Welfare to Work beneficiaries who become incapable of work again within 104 weeks.

The Regulations

26. In summary, the changes introduced by the regulations:

- shorten the waiting period in Income Support (IS), Jobseeker's Allowance (JSA) and income-related Employment and Support Allowance (ESA) before full SMI is paid. This will shorten the period from 39 or 26 weeks to 13 weeks for new working age claims and change it from 8 weeks at 50% SMI to 13 weeks at full SMI for vulnerable customers;

- increase the capital limit for new working age claims from £100,000 to £200,000;

- allow certain claimants who are receiving help with mortgage interest and interest on other qualifying loans up to the higher capital limit of £200,000 and who claim State Pension Credit to retain entitlement to help up to the higher capital limit of £200,000.

- freeze the Standard Interest Rate used as the basis of the SMI calculation at 6.08%;

- introduce a two year time limit on SMI for new JSA claims only, with normal linking rules applying;

- provide for those already serving a waiting period at 5 January to also benefit from these changes (SMI from 13 weeks, £200,000 capital limit and two year time limit) to address the cliff edge effect of these changes.

27. The Government has stated that the system of support for home-owners would be reviewed once housing market conditions improve and that the Standard Interest Rate will remain at 6.08% for six months (the latter will require amending regulations once the situation is reviewed). These Regulations amend and modify the housing costs provisions in the Employment and Support Allowance Regulations 2008, the Income Support (General) Regulations 1987, the Jobseeker's Allowance Regulations 1996 and the State Pension Credit Regulations 2002.

Regulation 1 (2) - (4)

Regulation 1(2) provides that regulations 4 to 6 come into force for those claimants to whom they apply on the first day of the benefit week on or after 5th January 2009. The effect of this is that claimants will receive full week not part week payments under these regulations.

Regulation 1(3) provides that the remaining provisions of the regulations come into force on 5th January 2009.

Regulation 1(4) provides that “benefit week”, “housing costs” and “relevant benefit” have the same meaning as they do where they are defined in the Employment and Support Allowance Regulations 2008, the Income Support (General) Regulations 1987, and the Jobseeker’s Allowance Regulations 1996.

Part 1

Regulation 2 (1) and (2)

This regulation provides that the standard rate is to be fixed at 6.08% instead of being based on the Bank of England base rate plus 1.58%. Therefore it amends the formula for the standard rate which is used to calculate the rate of interest on a loan that will be met under paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations, paragraph 12 (1) of Schedule 3 to the Income Support Regulations, paragraph 11(1) of Schedule 2 to the Jobseeker’s Allowance Regulations and paragraph 9 (1) of Schedule 2 to the State Pension Credit Regulations.

This provision will be reviewed within six months.

Part 2

This part applies to certain existing claimants who have made a claim for Employment and Support Allowance, Income Support or Jobseeker’s Allowance and who are serving waiting periods for help with housing costs on 4th January 2009.

Regulation 3 (1) - (5)

Regulation 3 (1) – (5) modifies the Employment and Support Allowance Regulations, the Income Support Regulations and the Jobseeker’s Allowance Regulations. The effect of this is that certain existing claimants who are entitled to one of these benefits at 4th January 2009, and who are not entitled to housing costs or are entitled to 50% of eligible housing costs at that date because they are serving a 26 week (existing housing costs) or 39 week (new housing costs) waiting period can become entitled at an earlier date than they otherwise would have.

Those claimants who have served 13 weeks or more of a waiting period at 5th January will become entitled at that date to payment of eligible housing costs within the further provisions of Part 2.

Those claimants who have served less than 13 weeks of a waiting period at 5th January will become entitled at the date at which they have served a waiting period of 13 weeks to payment of eligible housing costs within the further provisions of Part 2.

Regulation 3 (2) provides that Part 2 does not apply if a person makes a further claim to a relevant benefit after 4th January 2009.

Regulation 4

This regulation applies to claimants to whom Part 2 applies, and who are receiving Employment and Support Allowance. It amends the Employment and Support Allowance regulations by, reducing the 26 week or 39 week qualifying period before housing costs may be met to 13 weeks; and, providing that the maximum amount of loans that qualify under these regulations that can be met is £200,000 instead of £100,000.

Regulation 5

This regulation applies to claimants to whom Part 2 applies, and who are receiving Income Support. It amends the Income Support regulations by, reducing the 26 week or 39 week qualifying period before housing costs may be met to 13 weeks; and, providing that the maximum amount of loans that qualify under these regulations that can be met is £200,000 instead of £100,000.

Regulation 6

This regulation applies to claimants to whom Part 2 applies, and who are receiving jobseeker's allowance. It amends the Jobseeker's Allowance

regulations by, reducing the 26 week or 39 week qualifying period before housing costs may be met to 13 weeks; and, providing that the maximum amount of loans that qualify under these regulations that can be met is £200,000 instead of £100,000.

This regulation also provides that no amount may be met in respect of interest on a qualifying loan where a Jobseeker's Allowance claimant has been in receipt of interest on a qualifying loan for 104 weeks, including linked periods of receipt. This restriction does not apply where a claimant was previously entitled to Income Support or Employment and Support Allowance 12 weeks or less before claiming Jobseeker's Allowance.

Regulation 7

This regulation clarifies that Part 2 does not have any effect on the amount of housing costs to which a person is entitled in respect of a period ending before these Regulations come into force or in respect of a period which ends after that date during which the person is entitled to the benefit concerned for a continuous period of not more than 12 weeks.

Part 3

This part applies to certain claimants who make claims for Employment and Support Allowance, Income Support or Jobseeker's Allowance.

Regulation 8 (1) - (6)

Regulation 8 provides that Part 3 applies where Part 2 applied to a claimant at any time.

It also provides that Part 3 applies where a person claims or claimed Employment and Support Allowance, Income Support or Jobseeker's Allowance at any time after 4th January 2009, and;

- the claim is not or was not immediately preceded by a linked period under the housing costs linking rules;
- or where the claimant, that person's partner or, in the case of a joint-claim for Jobseeker's Allowance, the other member of the couple, was previously entitled to State Pension Credit and more than 12 weeks (or in some cases 26 weeks where the claimant was receiving payments from a mortgage payment protection insurance policy and had previously received an applicable amount that included housing costs) has elapsed since the last day of entitlement to State Pension Credit.

Regulation 9

Regulation 9 modifies the housing costs provisions of the Employment and Support Allowance Regulations, for claimants to whom this Part applies. It provides that a person who is required to satisfy a qualifying period before housing costs may be met must have been continuously entitled to Employment and Support Allowance for a continuous period of at least 13 weeks.

It also provides that the maximum amount in respect of loans that qualify under these regulations that can be met is £200,000 instead of £100,000.

Regulation 10

Regulation 10 modifies the housing costs provisions of the Income Support Regulations, for claimants to whom this Part applies. It provides that a person who is required to satisfy a qualifying period before housing costs may be met must have been continuously entitled to Income Support for a continuous period of at least 13 weeks.

It also provides that the maximum amount in respect of loans that qualify under these regulations that can be met is £200,000 instead of £100,000.

Regulation 11

Regulation 11 modifies the housing costs provisions of the Jobseeker's Allowance Regulations, for claimants to whom this Part applies. It provides that a person who is required to satisfy a qualifying period before housing costs may be met must have been continuously entitled to Jobseeker's Allowance Regulations for a continuous period of at least 13 weeks.

It provides that the maximum amount in respect of loans that qualify under these regulations that can be met is £200,000 instead of £100,000.

This regulation also provides that no amount may be met in respect of interest on a qualifying loan where a Jobseeker's Allowance claimant has been in receipt of interest on a qualifying loan for 104 weeks, including linked periods of receipt. As in Part 2 this restriction does not apply where a claimant was previously entitled to Income Support or Employment and Support Allowance 12 weeks or less before claiming Jobseeker's Allowance.

Part 4

Regulation 12 (1) - (3)

This regulation modifies the State Pension Credit Regulations 2002 so that in certain cases the maximum amount in respect of loans which qualify under those Regulations is £200,000. This applies where a person or his or her partner was in receipt of housing costs under Part 2 or 3 of these Regulations whilst receiving Employment and Support Allowance, Income Support or Jobseeker's Allowance and the person becomes entitled to state pension credit within 12 weeks of that entitlement ending. An entitlement to housing costs on capital up to £200,000 established by a claimant under this regulation will continue for as long as that person remains entitled to state pension credit.

Research, monitoring and evaluation

28. We are still in the process of identifying requirements for management information on these changes. We will consider urgently whether any research and evaluation is required to assess the impact of these changes and write to the Committee with further information on this.

29. We are awaiting detail from Communities and Local Government on the criteria to be used in deciding when the housing market has recovered. Housing market recovery will be instrumental in determining when these changes should be reviewed.

Consultation

30. There has been no formal consultation on these Regulations. As set out above, the Secretary of State for Work and Pensions has decided that because of rising unemployment and increasing household repossessions, the matter is so urgent that it would have been inexpedient to refer the proposals for legislation to the Social Security Advisory Committee.

Marketing/Information strategy and communications

31. Existing communication channels within DWP will be used to provide staff and customers with information on the changes.

Impact Assessment

Equality and diversity

32. A separate Equality Impact Assessment is attached.

Complexity

33. The main changes in this package reduce the complexity of existing legislation, as the treatment of pre and post 1995 mortgages and vulnerable groups, which currently serve different waiting periods of 8, 26, and 39 weeks, are being standardised for all new claims to benefit (that do not link to previous claims) at 13 weeks. This measure simplifies the benefit system significantly. Increasing the capital limit to £200,000 and freezing the interest rate used for SMI are also clear and straightforward measures which do not increase complexity in the system. The existence of two sets of rules for mortgages does however add some complexity in identifying which rules a customer should be paid SMI under.

34. The two year time limit for JSA claims is an essential measure to ensure customers are clear about what is expected of them by way of meeting their responsibilities to find work and reflects the Government's position around rights and responsibilities, such as the recent well publicised White Paper on Welfare Reform. However, the change does introduce some complexity to the benefits system. To mitigate this, we are ensuring that we are following best practice as set out in the Department's Simplification Guide. In particular, we are working to ensure that processes around linking claims and the transition between benefits are as consistent and coherent as possible.

35. We also note the change which provides transitional protection for the new £200,000 capital limit for new working age SMI customers flowing onto Pension Credit blurs the demarcation of these changes as a working age measure and may be viewed as inconsistent with the treatment of existing working age customers moving to Pension Credit who are only protected until their SMI anniversary date. This change therefore introduces additional complication as it creates a special group within Pension Credit that will require different treatment from the bulk of the Pension Credit live load. However, we believe that it would not be appropriate to reduce these customers capital limit steeply from £200,000 to £100,000, with the potential problems that would cause for them. Additionally, we note that currently, SMI customers reaching pension age have average capital outstanding on their mortgages of less than £50k and so the measure is likely to affect very few people.

Operations

36. The proposals increase the administrative steps staff need to follow. The time-limiting of JSA is a new procedure. Also, as the changes have been introduced very swiftly, the IT system is not yet ready to deal with the changes. Workarounds will be appropriate in the interim period and we are working closely with Jobcentre Plus counterparts (on bulletins etc and

changing IT) to ensure that the position is remedied as soon as possible. For example, given the difficulty in identifying the group of customers who are currently in receipt of benefit and serving waiting periods who will benefit from these changes, it is unlikely that the changes will be made to benefit payments in the immediate future but scans will identify the cases and arrears will be paid as soon as possible.

37. The proposed measures will entail staff following set procedures not exercising subjective judgements.

Customers

38. We believe that the rationale and the operation of the proposed new provisions can be easily understood by customers. Customers will not be required to answer more questions, provide more information and evidence or undertake new activities, although JSA customers will be made aware of the time-limiting aspect of their claims.

Child poverty

39. These measures should make a positive contribution to reducing child poverty as they reduce the likelihood of household repossessions.

Business/local government

40. These regulations will not impact on small business.

Changes to Support for Mortgage Interest with effect from 5 January 2009 – Questions and answers

What are the main changes being introduced?

We are introducing a number of measures for new and some repeat working age claims (those that do not link under existing rules to previous claims) from 5 January 2009:

- the waiting period before full Support for Mortgage Interest (SMI) on eligible loans is paid in Income Support (IS), income-based Jobseeker's Allowance (JSA) and income-related Employment and Support Allowance (ESA), will be shortened from 39 or 26 weeks to 13 weeks; and changed from 50% SMI at 8 weeks to 13 weeks at full SMI for vulnerable customers for new working age claims;
- the capital limit up to which mortgage interest can be met will increase from £100,000 to £200,000;
- a two year time limit on payment of SMI will be introduced but only for new and some repeat income-based JSA claims; and
- we will allow those in receipt of SMI over £100,000 to keep the higher capital limit when they move onto State Pension Credit from a working age benefit for as long as they remain entitled to State Pension Credit.

We are also freezing the Standard Interest Rate used as the basis of the SMI calculation at 6.08% for six months, for all existing and new SMI customers, including those claiming state pension credit.

Additionally, for those in receipt of relevant benefits, but who will not have completed their 26 or 39 week waiting period for SMI, at the 5th January 2009:

- customers who have served 13 weeks or more of their waiting period by 5 January 2009 will be entitled to SMI on eligible housing costs from that date;
- those who have served a period of less than 13 weeks at 5 January will receive SMI on eligible housing costs at the point at which they will have served a full 13 weeks;
- those in vulnerable groups will receive the 50% rate on capital up to £100,000 until the 13 week point when they will receive the full rate on capital up to £200,000;
- the higher capital limit of £200,000 will also apply to these groups as well as the two year time limit for those on Jobseeker's Allowance.

When can new claims benefit from the new measures?

- Claims made on or after 5 January 2009 can benefit from the new measures, as that is when the Regulations come into force.

Can claims made before the 5 January 2009 benefit from the new provisions?

- Yes, those already in receipt of relevant benefits whose claim is live in the benefit week in which 5 January 2009 falls, and who have not completed their 26 or 39 week waiting period for SMI by the 5th January 2009 can benefit from these new provisions, and will also be subject to the two year limit for those on Jobseeker's Allowance.

Will existing customers already in receipt of SMI benefit from any of the new SMI measures?

- No. They will continue to receive SMI under the rules which applied at the time that they claimed benefit.

If a claim to benefit made on or after 5 January links to a claim made before the 5 January, would it be treated under the new or old rules?

- It would be treated under the old rules. That is, any remainder of a 39 or 26 week waiting period will have to be served if it has not been served already, and the capital limit will be £100,000. The SMI would not be time limited for JSA customers.

What are the linking rules?

- There is a 12 week linking period which applies to customers who make repeat claims to Income Support or income-based JSA. This rule links the housing costs in claims made within 12 weeks of each other as continuous so that, for example, the qualifying date for SMI is the same as it was in another earlier claim.

- For customers who move into work or undertake programmes such as New Deal, there is a 52 week linking period where they were receiving payment of eligible mortgage interest when they left benefit to move into work.

- There is a 26 week linking period for customers who leave benefit because their income from either child support or a Mortgage Payment Protection Insurance policy (MPPI) exceeds the amount of benefit to which they are entitled.

- There is a 104 week linking period for Welfare to Work beneficiaries who become incapable of work again within 104 weeks.

How should claims be made?

- Claims to benefit should be made in the ordinary way.

What is the new waiting period for SMI?

- The waiting period before full SMI is paid in Income Support, Jobseeker's Allowance and Employment and Support Allowance, will be 13 weeks for new working age claims from 5 January 2009.

People in vulnerable groups currently receive SMI at 50% of their eligible interest after a period of 8 weeks until week 26 when 100% of eligible interest is paid. Will this remain the case for new claims on or after 5 January?

- No. The waiting period for vulnerable groups is being brought into line with the waiting period for all other working age customers. This means that vulnerable groups will receive 100% of eligible interest after a waiting period of 13 weeks.

Have Jobcentre Plus offices been informed of the changes?

- Yes.

Will customers with existing claims currently serving a waiting period who will benefit from the reduction from 26 or 39 weeks to 13 weeks benefit immediately from the changes?

- Given the challenge in identifying this group of people it is unlikely that the relevant changes will be made to benefit payments in the immediate future but arrears will be paid as soon as possible.

What happens at the end of the time limit on income based JSA claims?

- After a period of two years of a continuous or linked claim, Support for Mortgage Interest will cease.

Can customers in receipt of income-based JSA claim SMI afresh?

- If the two-year SMI entitlement is exhausted, it can be claimed afresh only where claims do not link. A waiting period of 13 weeks has to be served before SMI is payable, but the customer would start a new period of entitlement to two years SMI.

What about customers who move from Income Support to Pension Credit?

- Currently, customers who are in receipt of Income Support, ESA or JSA immediately before they first become entitled to Pension Credit have their income protected by the inclusion of a transitional amount in their Pension Credit if their Income Support, ESA or JSA applicable amount exceeds the rate of Pension Credit to which they are entitled.

This protection lasts until their SMI anniversary date (that is, up to a maximum of 12 months).

- From 5 January 2009, the Government has decided to protect the entitlement to housing costs on capital up to £200,000 for those in receipt of the reformed SMI prior to pension age who transfer to Pension Credit. These customers will continue to receive assistance with their eligible housing costs up to the higher capital limit of £200,000 for as long as they remain entitled to State Pension Credit.

Do you intend to protect the position of customers who cease to be entitled to Income Support but then claim income-based JSA?

- There is protection for customers who move from Income Support to income based JSA, such as carers, and including Lone Parents and partners moving onto JSA under the conditionality proposals. These customers will benefit from the increased capital limit of £200,000 and the reduced 13 week waiting period but will have no time-limiting applied, and do not have to serve a new waiting period where they claim within 12 weeks.

What about Lone Parents or partners who make new claims?

- Those lone parents or partners who make new claims to JSA on or after 5 January 2009 who are not transferring from Income Support would be treated under the new provisions.

Is the position of customers who move from Employment and Support Allowance to JSA protected?

- There is protection for the conditions of SMI for customers who move from ESA to JSA. These customers keep their existing capital limit at the point at which they move on to JSA, have no time-limiting applied, and do not have to serve a new waiting period.

Will payments still be made direct to lenders?

- Yes, the reforms make no changes to the Mortgage Interest Direct scheme.

Will you review these reforms later?

- We shall look to review the system of support for homeowners once housing market conditions are more favourable.

Some customers report that the interest rate used for SMI has reduced, when it should have been frozen at 6.08%. Why is that happening?

- In his Pre-Budget Report, the Chancellor made clear that the Government would maintain the level of support for mortgage interest at 6.08% for six months.

- Some people will experience a temporary drop below 6.08% (actually, 4.58%) because our IT systems normally "track" the Bank of England base rate, which was reduced from 6 November. It takes time to adjust our IT systems, but we are taking action to ensure that this is compensated for.

- This is designed to deliver the Chancellor's pledge. Overall, people will receive 6.08% throughout the relevant period.

Additional note to Social Security Advisory Committee

Additional amendment – The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009

A further minor amendment is planned to SI 2008/3195 concerning cases where the claimant, that person's partner or, in the case of a joint-claim for Jobseeker's Allowance, the other member of the couple, was previously entitled to State Pension Credit. This will clarify the capital limit of £100,000 continues to apply unless at least 12 weeks or in some cases 26 weeks elapsed since the customer became entitled to Employment and Support Allowance, Income Support or Jobseeker's Allowance and last day of entitlement to State Pension Credit.

Query about how couples who separate are treated by the Regulations

Q: Will the existing housing costs linking rules concerning the treatment of couples and former couples apply for the purpose of determining when a Jobseeker's Allowance customer has exhausted his entitlement to Support for Mortgage Interest (SMI)?

A: Yes. Paragraph 13(1) of Schedule 2 of the JSA Regulations 1996 applies in the same way to SI 2008/3195 as it did to the previous SMI rules. In particular, where the claimant's ex-partner was getting Jobseeker's Allowance for the couple and they separate, the member of the couple who had not been in receipt of Jobseeker's Allowance is treated as having been entitled to a Jobseeker's Allowance for the same period as his or her partner had been or had been treated as being.

Data issues

DWP officials are developing an integrated package of monitoring and evaluation activity, with a full evaluation to be carried out towards the end of 2010, in order to determine the effectiveness of the reforms and so the future direction of this support. Officials are considering how this could be done through existing management information and, in addition, they are working to identify information gaps so that they can gather appropriate information from lenders to help better understand the specific mortgage products and circumstances of customers who are in receipt of Support for Mortgage Interest.

Timescales for the monitoring and evaluation of SMI are subject to the outcome of the feasibility work which is underway and on which officials are planning to report during April. Further to this, officials are undertaking a six month review of the decision to freeze the Standard Rate of Interest.

Reaction of mortgage lenders to the SMI changes

Mortgage lenders welcomed the reduction in the waiting period and increased capital limit, and the SIR freeze, but had concerns over the two-year time limit

The Government has established a Lending Panel to bring together Government, regulators, lenders, trade bodies and consumer groups. The Panel will monitor lending to both households and businesses, drive up best practice across the mortgage market and promote awareness of initiatives to find alternatives to repossession, helping protect borrowers in financial difficulty from repossession.

The major mortgage lenders on the Panel have agreed to a moratorium on repossessions – committing not to repossess for at least 3 months after an owner-occupier falls into arrears. Some mortgage lenders have now gone further, and committed not to start repossession proceedings for at least 6 months after an owner-occupier is in arrears.

EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY COMMITTEE

The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009

Introduction

1. The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (SI 2008/3195) made changes to Employment and Support Allowance Regulations, Income Support Regulations, Jobseeker's Allowance Regulations, and State Pension Credit Regulations to introduce changes to the rules on payment of mortgage interest.

2. The Explanatory Memorandum (EM) associated with that Statutory Instrument gives details of those changes and the reasons for introducing them. In brief they:

- shorten the waiting period in Income Support (IS), Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA) before full SMI is paid. These changes shorten the period from 39 or 26 weeks to 13 weeks for new working age claims and change it from 8 weeks at 50% SMI to 13 weeks at full SMI for vulnerable customers;

- increase the capital limit for new working age claims from £100,000 to £200,000;

- allow certain claimants who are receiving help with mortgage interest and interest on other qualifying loans up to the higher capital limit of £200,000 and who claim State Pension Credit to retain entitlement to help up to the higher capital limit of £200,000;

- introduce a "two year" time limit on SMI for some new JSA claims, with normal linking rules applying.

The above changes apply to new claims made after 4th January 2009 where the person is entitled to ESA, IS or JSA and is not required to be treated as being in receipt of the benefit under the existing housing linking rules in connection with that entitlement . In addition they:

- set the Standard Interest Rate used as the basis of the SMI calculation at 6.08%;

- provide for those already serving a waiting period at 5 January to also benefit from these changes (SMI from 13 weeks, £200,000 capital limit and two year time limit) to address the cliff edge effect of these changes.

3. The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 make amendments to SI 2008/3195 to ensure that it fully reflects the original policy intention and further clarifies where the new rules are intended to apply.

Policy and operational background

4. The earlier EM associated with SI 2008/3195 gives full details of the policy and the urgent need to introduce these changes to support homeowners and assist in preventing repossessions during the current economic climate.

5. The proposed amending Regulations help ensure that assistance is focused on providing help more quickly to homeowners at a time when there has been a fall in both the number of people in employment and the employment rate and when household repossessions are rising. As was mentioned in the earlier EM, this is a temporary package of measures aimed at those directly affected by the current economic downturn. The changes made to housing support will be reviewed once housing market conditions improve.

6. It was always the intention that repeat claimants who were receiving benefit under the old housing cost rules should remain under those rules unless they left benefit for a period of more than 12 weeks . The amendments ensure that claimants who make repeat claims after 4th January 2009 and are, either now or in future, in receipt of a relevant benefit under the old rules will continue to have their housing costs assessed under those rules on moving to another relevant benefit where there is no gap in entitlement. We also intend that claimants who are continuously in receipt of the same benefit and who are subject to the old rules should remain subject to them. The amendments also prevent JSA claimants attempting to circumvent SMI time limiting.

7. Where a repeat claimant has already been awarded ESA, IS or JSA without there being a gap in entitlement, it is proposed that they will have their benefit re-assessed under the old rules with effect from the date these Regulations come into force in that person's case. We do not propose to take any steps to recover any additional housing costs that may have been paid in the intervening period.

The Regulations

8. These amending Regulations:

- incorporate minor amendments to make the legislation gender neutral to ensure consistency with current drafting practice;
- ensure that a claimant already in receipt of a relevant benefit which includes housing costs under the old rules continues with support calculated on this basis when moving to another relevant benefit where there is no gap in entitlement rather than getting assistance under the new rules;
- ensure that a claimant who is continuously entitled to the same benefit which includes support for housing costs under the old rules continues to be dealt with under those rules;
- ensure that a claimant who is in continuous receipt of a Jobseeker's Allowance cannot access a new 104 week period of payment of housing costs.

Regulation 1(2)

9. Regulation 1(2) provides that the proposed amending Regulations would come into force for those claimants to whom they apply on the first day of their benefit week on or after 6th July 2009. So, claimants' housing costs fall to be re-assessed with effect from that date, where appropriate. This is subject to the savings mentioned in regulation 3.

Regulation 1(3)

10. Regulation 1(3) is an interpretation provision.

Regulation 2(2)(a) and (b)(i)

11. Regulation 2(2)(a) and (b)(i) makes minor amendments to the drafting of SI 2008/3195 so that it is gender neutral.

Regulation 2(2)(b)(ii)

12. This provision prevents repeat claimants from being assessed under the new housing cost rules where they were previously in receipt of a relevant benefit under the old rules and there is no gap in entitlement. This ensures that those moving straight from one benefit to another or who otherwise have no have no gap in entitlement continue to have their housing costs assessed in the same way as their original claim.

Regulation 2(3)

13. This Regulation is being amended to make it clear that no amount may be met in respect of interest on a qualifying loan where a Jobseeker's Allowance claimant to whom the limitation applies has been in receipt of interest on a qualifying loan for 104 weeks, including linked periods of receipt.

Regulation 2(4)

14. This amendment is consequential on the changes referred to in paragraph 12 above. It clarifies that where such a claimant falls under the old rules, or would done had they remained on ESA, IS or JSA, and they or (as the case may be) their partner claim State Pension Credit, the maximum capital limit for eligible mortgage interest is £100,000.

Regulation 3

15. This ensures that the changes made by these Regulations do not affect the amount of benefit a person is entitled to in the period before the changes made by these Regulations come into force.

Impact Assessment

Equality and diversity

16. A separate Equality Impact Assessment was produced for the original changes introduced by SI 2008/3195. The amendments introduced by these Regulations restore the original policy intention and so are in keeping with the earlier assessment. As the impact of the unintended effects is judged to be minimal, no change is being made to the earlier assessment or to the overall costs of this package.

Complexity

17. These amendments add clarity and consistency to the extent of the changes made by SI 2008/3195 by ensuring those already in receipt of help with housing costs under the old rules continue to be assessed under this basis until there is a break in claim which exceeds the linking rules.

Operations

18. Staff will need to identify claimants who have been assessed under new rules following a change in their relevant benefit or following surrender and re-claim in order to re-assess under the old rules. This will be a one-off exercise required in order to restore the original policy intention. No action will be required to seek recovery of any additional benefit that may have been paid to individuals in the period before the proposed Regulations come into force.

Customers

19. Customers may see a reduction in their benefit in the limited circumstances described above following a period of unintended increase in their benefit. However, No action will be required to seek recovery of any additional benefit that may have been paid to individuals in the interim period and the numbers are judged to be minimal.

Child poverty

20. The impact of the amending regulations is judged to be minimal and so have a neutral effect on reducing child poverty. The regulations restore the original policy intention and put customers back in the position that they would have been in but for the unintended consequences of SI 2008/3195.

Business/local government

21. These Regulations will not impact on small business.

APPENDIX 2

LIST OF RESPONDENTS TO THE CONSULTATION EXERCISE

Organisations
1. Citizens Advice
2. Child Poverty Action Group

Individuals
3. Gary Vaux
4. Carolyn George
5. John Mason (Member of Parliament for Glasgow East)

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