



## TRANSFERRING SMI LOANS

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### INTRODUCTION

1. This memo gives guidance on the Loans for Mortgage Interest (Amendment) Regulations<sup>1</sup>, which come into force on 15.3.21.

*1 SI 2021/131; LMI (Amdt) Regs*

2. The regulations
  - 2.1 enable anyone with an outstanding Support for Mortgage Interest (SMI) loan to transfer ('port') their loan to a new property rather than repay it upon the sale of their home<sup>1</sup> **and**
  - 2.2 make minor changes in respect of Domestic Violence and Cold Weather Payments<sup>2</sup>.

**Note:** See ADM Memo 08/18 for detailed guidance on the Loans for Mortgage Interest.

*1 LMI (Amdt) Regs, reg 2; 2 reg 3*



## BACKGROUND

3. SMI loans are secured against the claimant's property through a legal or equitable charge against the property title and the loan is recoverable from any equity on the sale, transfer of ownership of the property or when the claimant dies. There is currently no exception to this provision<sup>1</sup>.

*1 LMI Regs 2019, reg 16*

4. From 15.3.21 anyone with an outstanding SMI loan, who is purchasing a new home, can transfer their loan to the new property whether they are currently in receipt of a qualifying benefit or not<sup>1</sup>.

**Note:** All references in the regulations to claimant also includes former claimants<sup>2</sup>.

*1 LMI regs, reg 16A(1); 2 reg 16A(7)*

## Transferring the outstanding loan

5. The loan can be transferred to another property where the conditions in paragraphs 6 and 7 are met.
6. The first condition is that the claimant, or their partner, inform the Secretary of State that they are selling Property 1 and request to transfer the outstanding amount from Property 1 to Property 2<sup>1</sup>.

*1 LMI Regs, reg 16A(2)*

7. Secondly, that the conveyancer or solicitor dealing with the sale of the property has provided a written undertaking<sup>1</sup>:
  - 7.1 to remove the outstanding charge (in England and Wales) or standard security (in Scotland) against Property 1;
  - 7.2 to transfer the outstanding amount to the claimant's conveyancer or solicitor (if they are not also acting for the claimant, or their partner);
  - 7.3 to register a new charge or standard security in favour of the Secretary of State for property 2;
  - 7.4 to hold the outstanding amount until completion, if there is a delay between sale and completion. If the purchase is not completed within three months, the amount is returned to the Department.

*1 LMI Regs, reg 16A(3)*



8. Where the Secretary of State meets the reasonable costs incurred by the conveyancer or solicitor in transferring the loan, those costs will be added to the outstanding amount of the loan, and will accrue interest<sup>1</sup>.

*1 LMI Regs Reg 16A(4)*

9. Any references to the outstanding charge or outstanding amount (paragraphs 7.2 and 7.4) is a reference to the outstanding equity, if it is less than the outstanding amount<sup>1</sup>.

*1 LMI Regs, reg 16A(5)*

### **Example 1**

Helen has sold her house to move to a property on one level, to meet her changing mobility needs. She is in receipt of UC and has an outstanding SMI loan of £15,000. She sells property 1 and, after clearing the mortgage and purchasing property 2, has equity of £20,000. She requests that the SMI loan be transferred to her new home to enable her to use the equity to make modifications to allow for wheelchair access. She has not requested the costs of the solicitor be added to the loan. Her solicitor removes the charge on her old home (Property 1), holds the £20,000 secure during the transfer process, and registers a new charge against her new home (Property 2). The outstanding loan amount remains at £15,000. A decision maker will need to determine if the £20,000 can be disregarded as capital.

### **Example 2**

Peter, a former claimant, and his partner Harry have purchased a property together (property 2) after Peter sold his home (property 1). He has an outstanding loan of £8,000. He requests that the loan be transferred to the new property. Both Peter and Harry will need to agree to a charge securing the outstanding loan to their new property, although Harry wasn't responsible for the outstanding loan. The solicitor removes the £8,000 charge on property 1 and registers a new charge of £8,300 on property 2, to include her fees.

### **Example 3**

Hannah wants to sell her home to move closer to her parents. She is no longer in receipt of a qualifying benefit but has an outstanding loan of £9,000. Her current home (property 1) is valued at £160,000 and she finds a new home (property 2) for £165,000. If she were to pay back the loan on the sale of her



home, she would not be able to afford to buy the house she wants. She requests that the outstanding loan is transferred to the new property.

### **Delays in moving to the new property**

10. If completion and execution of a new charge, or a standard security, in respect of Property 2 does not take place within 12 weeks beginning with the date of completion of Property 1, or such date as the Secretary of State agrees, then the outstanding amount of the loan, and any interest due, becomes immediately due and payable<sup>1</sup>.

*1 LMI Regs, reg 16A(3)*

### **Domestic Violence**

11. Currently, a claimant fleeing domestic violence can be treated as occupying two properties for up to 12 months **only** where they have a liability to make owner occupier payments on both properties.
12. From 15.3.21 the claimant will be treated as occupying the family home, and qualify for an SMI loan, if that is the only property the claimant is liable to make owner-occupier payments on<sup>1</sup> Housing costs may also be payable in respect of the property the claimant is living in temporarily<sup>2</sup>.

*1 LMI Regs, Sch 3, para 15; 2 IS Gen Regs, Sch 3, para 3(6)(a); JSA Regs, Sch 2, para 3(6)(a);  
ESA Regs, Sch 6 para 5(6)(a); SPC Regs, Sch II para 4(6)(a)*

### **Cold Weather Payments**

13. In the circumstances where a person is awarded owner-occupier loan payments and is entitled to State Pension Credit it is confirmed that they do not have to meet the second condition of entitlement<sup>1</sup> and therefore they do not have to have a family member under 5 years of age.

*1 SFCWP (Gen) Regs, reg 1A(3)*

### **ANNOTATIONS**

Please annotate the the number of this memo (Memo DMG 02/21) against the

following DMG paragraphs and memos:

23441, 44256, 78231, Heading Chap 39



Memo ADM 8/18, heading and paras 62 and 175

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [7/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: March 2021

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**