

Legislative Consent Memorandum

Renters' Rights Bill

Background

1. This memorandum has been lodged by Shirley-Anne Somerville MSP, Cabinet Secretary for Social Justice, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.
2. The Renters' Rights Bill was introduced by the UK Government in the House of Commons on 11 September 2024. The Bill is available on the UK Parliament website via this link: [Renters' Rights Bill - Parliamentary Bills - UK Parliament](#)

Content of the Bill

3. The Renters' Rights Bill introduces a range of provisions to change the law about rented homes, including provision to abolish fixed term assured tenancies and assured shorthold tenancies and imposing obligations on landlords and others in relation to rented homes and temporary and supported accommodation. The objective of the UK Government through this Bill is to ensure private renters in England and Wales have access to a secure and decent home and that landlords retain the confidence to repossess their properties where they have good reason to do so.
4. The policy intention for the relevant provisions is to prohibit discrimination and restrictions against people with children or people in receipt of benefits in the letting of private rented sector properties (known in short as 'blanket bans'). This policy intent aligns with the Scottish Government's work on rented sector reform and will provide an important element of protection to these vulnerable groups in the private rented sector.

Provisions which require the consent of the Scottish Parliament

5. There are a number of provisions related to blanket bans to bring effect to the policy intention in Scotland. The blanket ban provisions which introduce a prohibition on the discriminatory marketing of property, and which provide for certain discriminatory terms of tenancies to have no effect all relate to the area of housing which is within the legislative competence of the Scottish Parliament.
6. Additionally, the provisions which confer power on the Scottish Ministers to extend protections to persons of other descriptions (clause 52), to make

consequential provision (clause 139), and to bring the relevant provisions into force (clauses 49, 137, 139, 142, and 145), all alter the executive competence of the Scottish Ministers. It is for these reasons that an LCM is required for these specific provisions.

Clause 49: Discrimination relating to children or benefits status

7. This clause will prohibit outright blanket bans on renting to people in receipt of benefits or who have children or are likely to have children staying with them. The prohibition will cover certain discriminatory practices which make it harder for people who have children (or have children visit them) or who are benefits claimants to enter a tenancy for a property. This will involve the creation of a criminal offence, for which landlords and anyone acting directly or indirectly on their behalf may be liable upon summary conviction to a fine not exceeding level 3 on the standard scale. Clause 49 also has some retrospective effect as it will also render of no effect not just any terms of any new private residential tenancy but also:

- all ongoing private residential tenancies (under the Private Housing (Tenancies) (Scotland) Act 2016);
- assured tenancies (under the Housing (Scotland) Act 1988);
- or protected or statutory tenancies (under the Rent (Scotland) Act 1984) which might prevent tenants from having children present/claiming benefits.

8. Nothing in the provision prohibits a landlord from taking a prospective tenant's income into account when considering whether that person would be able to afford to pay the rent.

9. In the case of prospective tenants with children, it will be a defence for a prospective landlord or party acting or purporting to act on their behalf to show that the conduct is a proportionate means of achieving a legitimate aim. In the case of both prospective tenants with children and prospective tenants who are benefits claimants, it will also be a defence to show that the property is insured under a contract of insurance granted before the new rules come into force and which prohibits the use of the property by that category of person, and that the conduct is a means of preventing the insured person from breaching that term. There is also an exemption for individuals who may publish an advert or provide a method for tenants and landlords to communicate with one another but are not truly part of the prohibited conduct, such as newspapers and online platforms. This exemption can be extended by regulations made by the Scottish Ministers. This power, like the other powers referred to below, has been included at the Scottish Government's request and aligns with the comparable provision being made in England and Wales. These regulations would be subject to the negative procedure, as the scope of liability for the criminal offence is not being extended, only further categories of persons excluded.

10. This clause will render of no effect any term in a relevant tenancy which would prohibit or restrict occupation by or visits to a property by a child or which prohibits the tenant from being a benefits claimant. As noted, it applies to private residential

tenancies, assured tenancies and protected and statutory tenancies. It will have retrospective effect, in that it will apply to all relevant tenancies whether entered into before or after the commencement date.

Clause 52: Power of Scottish Ministers to protect others

11. This clause will grant the Scottish Ministers the power to make new provisions in the future, via regulations subject to the affirmative procedure, to extend these protections to persons of another description. This power is constrained to only the protections outlined in clause 49, meaning it must correspond to those provisions taken to protect tenants on benefits or who have children live with or visit them at their property. This power will only extend to the provisions relating directly to tenancies and tenancy agreements as the provisions relating to insurance contracts and standard securities are in reserved areas. Powers to extend the restrictions on insurance contracts and standard securities via subordinate legislation are being taken by the UK Government in clause 53.

Clause 54: Interpretation of Chapter 5

12. This clause contains the definitions of the terminology used in the clauses relating to mortgages (standard securities), insurance contracts and the power to extend the protection under Scots law to other categories of person.

Clause 137: Regulations

13. This clause clarifies that regulations made under the Bill can include consequential, supplementary, incidental, transitional or saving provision. The power to make transitional provision includes the power to make provision that applies in relation to tenancies entered, or advertising begun, before the date on which the regulations come into force. It allows regulations to be made in a different way for different purposes or geographical areas to provide, for example, for staged implementation. The Clause does not apply to regulations made under Part 5 itself. Regulations made by the Scottish Ministers under the Bill (i.e. regulations to extend protection under Scots law to persons of other descriptions) are subject to affirmative procedure.

Clause 139: Power of Scottish Ministers to make consequential provision

14. This clause will grant the Scottish Ministers the power to make provisions that are consequential to the blanket ban provisions contained within the Renters' Rights Bill. This power will enable Scottish Ministers to amend, repeal, or revoke provisions made by or under an Act of the Scottish Parliament. This will be subject to the affirmative procedure where amending primary legislation or subject to the negative procedure otherwise.

Clause 142: Commencement

15. This clause provides that Chapter 5 of Part 1 (Discrimination in the rental market: Scotland) comes into force on such day as the Scottish Ministers by regulations appoint.

Clause 145: Transitional Provision

16. This clause provides that the Secretary of State may, by regulations made by statutory instrument, make transitional or saving provisions in connection with the coming into force of any provision of the Bill. This includes the power to make different provisions for different purposes. The clause provides the Scottish Ministers with powers to make transitional or saving provision by secondary legislation in connection with the commencement of the discrimination in the rental market provisions in Part 1 Chapter 5. As with the equivalent regulation-making power of the Secretary of State, this can be used to provide for those provisions to apply to tenancies entered, before the date on which Part 1 Chapters 4 or 5 come into force.

Provisions which do not require the consent of the Scottish Parliament

17. In addition to the clauses noted in the previous section, three additional clauses are required in order to ensure the full range of protections are applied in Scotland. These clauses provide for certain discriminatory terms of mortgages and insurance contracts to have no effect and relate to the reserved area of financial services and consent is therefore not required, however the UK Government has engaged with the Scottish Government on drafting these clauses as they are essential.

Clause 50: Terms in standard securities relating to children or benefits status

18. This clause will render of no effect any term in a mortgage deed (known as a standard security in Scotland) which prohibits or restricts occupation by or visits to a property by a child or which prohibits the tenant from being a benefits claimant. As above, it applies to private residential tenancies, assured tenancies and protected and statutory tenancies.

19. It will have retrospective effect, in that it will apply to all relevant mortgages whether entered into before or after the commencement date.

Clause 51: Terms in insurance contracts relating to children or benefits status

20. This clause will render of no effect any term in an insurance contract which prohibits or restricts occupation by or visits to a property by a child or which prohibits a tenant from being a benefits claimant. As above, it applies to private residential tenancies, assured tenancies and protected and statutory tenancies. It will not have

retrospective effect and will apply only to insurance contracts entered into or renewed on or after the date of commencement.

Clause 53: Power of Secretary of State to protect others

21. This clause, included at the request of the Scottish Government, will enable the Secretary of State to extend to persons of other descriptions elements of the protections that are not able to be extended by the Scottish Ministers because they are not within the legislative competence of the Scottish Parliament (that is to say, this is a power which applies to reserved matters only). This will be subject to the affirmative procedure.

Reasons for recommending legislative consent

22. Following engagement with the previous UK Government on their Renters (Reform) Bill, the Scottish Government sought the Scottish Parliament's consent to apply the blanket ban provisions from that Bill to Scotland. As this Bill was not passed before the UK Parliament was prorogued, following the calling of a General Election, this consent process could not be completed.

23. After the results of the General Election were known and the Labour Party formed the current UK Government, officials from the UK Government contacted the Scottish Government to discuss the Labour Party's intention to lodge a Renters' Right Bill, including the blanket ban provisions and to ask if the Scottish Ministers wished for the UK Government to legislate for these provisions to apply to Scotland. Given the previous work on this matter, the Scottish Government have again decided to seek the Scottish Parliament's consent to apply to Scotland the blanket ban provisions. Addressing this kind of discrimination in Scotland's private rented sector aligns with the Scottish Government's own aims for rental reform, by helping to ensure people have a safe, secure, and affordable place to live.

24. Proceeding in this way, rather than seeking to address the issue via an Act of the Scottish Parliament, ensures that the full extent of the blanket ban provisions are able to come into effect in Scotland (and concurrently with the powers of Ministers in England and Wales) given the provisions which fall into reserved areas. Whilst an Act of the Scottish Parliament can bring into effect the majority of the blanket ban provisions, the provisions which render void terms in an insurance contract or mortgage - which requires a landlord to prohibit those with children (or likely to have children stay with them) or those in receipt of benefits from becoming or continuing as a tenant - are provisions which relate to reserved matters and cannot be legislated by the Scottish Parliament, and therefore do not require legislative consent. The voiding of these terms is important in order to prevent landlords from being contractually required to do something prohibited by the Bill. If the rest of the provisions were introduced via an Act of the Scottish Parliament then the protections afforded for these groups would be limited and would increase the potential liability for landlords in Scotland compared to those in England and Wales. Whilst legislative consent is not required for these provisions, the Scottish Government fully supports their inclusion and has engaged with the UK Government on their drafting.

Consultation

25. There has been an ongoing anti “No DSS” campaign throughout the UK for a number of years aimed at discouraging the ways in which properties are marketed to exclude these groups.

26. Results from a variety of commissioned research in Scotland and across the UK demonstrate that ‘No DSS’ policies are a significant issue for private renters. In Scotland, it has been reported that around one in five private renter households claimed Housing Benefit and that two thirds of landlords would prefer not to let to tenants who claim housing benefit.¹ It has also been noted that difficulty securing a private rental was disproportionately experienced in urban and pressured markets, by single people, single parents, those on lower incomes, disabled people, those claiming some form of housing allowance, black and minority ethnic tenants and more recent renters.²

27. In June 2022, UK Government published the White Paper “A Fairer Private Rented Sector³”, drawing on a number of consultation exercises to set out its ambitions for a fairer, more secure and higher quality private rented sector. Noting the evidence of the “No DSS” practice, it committed to making it illegal for landlords or agents to have blanket bans on renting to families with children or those in receipt of benefits.

28. The Scottish Government consultation “A New Deal for Tenants”, carried out in April 2022, did not ask a specific question regarding those on benefits or with children being excluded from some Private Rented Sector properties. However, the consultation analysis highlighted issues with the effect of such discrimination, particularly on women:

“with regards to women, there was reference to the gender pay gap and to a higher proportion of women in receipt of Housing Benefit. Connected to this was the suggestion that one of the main barriers people face is discrimination on the basis that they are receiving housing-related benefits. This included reports, including from people who commented based on their own experience, that some private landlords will not rent properties to people who are in receipt of welfare benefits”⁴.

29. It is well-documented⁵ that single parent families often consist of women and their children therefore measures designed to prevent this kind of discrimination in certain parts of the rental process would go some way to address an issue identified from the consultation.

¹ [No DSS Report - Shelter Scotland](#)

² [Rent-Better-Wave-1-Summary_print.pdf \(indigohousegroup.com\)](#)

³ [A Fairer Private Rented Sector \(publishing.service.gov.uk\)](#)

⁴ [A New Deal for Tenants: consultation analysis - gov.scot \(www.gov.scot\)](#)

⁵ [Lone parent families - Tackling child poverty priority families overview - gov.scot \(www.gov.scot\)](#)

Financial implications

30. Financial considerations have been taken into account in terms of the cost of introducing penalties for breaching the legislation. As behaviour of the type prohibited by these measures will attract a criminal sanction, there may be resource implications for Police Scotland. The expectation, however, is that this legislation will act as a deterrent and that likely offence volumes will be small although it is difficult to quantify at this stage for a new area of intervention. The Scottish Government will continue to engage with Police Scotland on this matter to quantify the financial implications of this legislation.

Post EU scrutiny

31. This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU because there are no relevant or corresponding EU laws relating to housing.

Conclusion

32. These provisions will introduce a new level of protection for vulnerable groups seeking a home in Scotland's private rented sector by preventing discrimination on the grounds of benefit status or having children. Delivering these new protections by way of an Act of the UK Parliament allows such groups in Scotland to be afforded the same scope of protections (including provisions on insurance and mortgage conditions) as in England and Wales. Therefore the Scottish Government recommends consenting to the blanket ban provisions.

Draft motion on legislative consent

33. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice, is:

“That the Parliament, in relation to the Renters' Rights Bill, consents to the provisions which restrict the behaviour of private landlords in relation to those with children and those who are benefit claimants, namely clauses 49, 52, 54, 137, 139, 142 and 145 of the Renters' Rights Bill, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, being considered by the UK Parliament.”

Scottish Government
September 2024

This Legislative Consent Memorandum relates to the Renters' Rights Bill (UK legislation) and was lodged with the Scottish Parliament on 24 September 2024

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